

DataFarming General Terms and Conditions

1. Terms and Conditions

- 1.1. This website is operated by Data Farming Pty Ltd ABN 56 619 577 150 ("**DataFarming**").
- 1.2. These terms and conditions ("the **Terms**") apply whenever you access the Website, regardless of how you access the Website, and when you use the DataFarming Services or access the DataFarming Products.
- 1.3. Your use and access of this Website, the DataFarming Services or DataFarming Products indicates your acceptance of the Terms ("**Effective Date**") as they exist at the time you use the Website, the DataFarming Services or DataFarming Products.

2. Definitions

- '**us**', '**we**' and '**our**' means DataFarming.
- '**DataFarming Products**' means all products available using the DataFarming Services, including but not limited to data file downloads generated using DataFarming Services.
- '**DataFarming Services**' means the products and services made available through the Website including but not limited to DataFarming's free services, DataFarming's paid services including pay per use or subscription-based DataFarming Services from time to time.
- '**Intellectual Property Rights**' means any and all intellectual and industrial property rights throughout the world including the various rights and property conferred under statute, common law, and equity in relation to patents, inventions, designs, copyrights, trademarks, trade names, business names, corporate names, logos, get up, know-how, trade secrets and confidential information, and the right to have trade secrets and confidential information kept confidential whether or not now existing and whether or not registered or registrable including any right to apply for the registration of such rights and all renewals and extensions.
- '**Invited User**' means a person who the User invites to access and use the DataFarming Services.
- '**Product Fee**' means the fee charged by DataFarming for DataFarming Products, this may be a one-off fee or a fee per hectare as described in Your quote.
- '**Subscription Fee**' means a premium paid by you to access the DataFarming Services at the frequency and amount described in Your quote.
- '**Subscription**' means your subscription for the DataFarming Services for the subscription period as described in Your quote.
- '**User**' means the person who registers to use the DataFarming Services, and, where the context permits, includes any entity on whose behalf that person registers to use the DataFarming Service.
- '**Website**' means the Internet site at the domain datafarming.com.au and maps.datafarming.com.au or any other website operated by DataFarming and includes DataFarming Services.
- '**You**', '**you**', '**your**' and '**Your**' means the person using the Website and where the context permits includes any entity on whose behalf that person registers to use the DataFarming Service.

3. Use of Services

DataFarming grants to You a non-transferable, terminable, non-sublicensable, non-exclusive and limited licence to access and use the DataFarming Services subject to the Terms. The term of the licence commences on your acceptance of the Terms and (subject to the Terms) ends on termination or cancellation of DataFarming Services in accordance with the Terms. You must not use the Website for any purpose or in any way which is unlawful or for the purpose of data mining.

4. Access Obligations

- a) You must ensure the security and confidentiality of your User details, including any username and/or password assigned to, or created by, you and not share those details with anyone else.

- b) You are wholly and solely responsible for all activities which occur through the use of your User details by you or any person acting on your behalf or acting with knowledge of your username and/or password (including any transactions made through the Website, any DataFarming application, DataFarming Services or DataFarming Products and any unauthorised use of credit cards or bank accounts). Without limiting this provision, if Your negligence results in unauthorised access to Your DataFarming account then You will be responsible for the transactions conducted through Your DataFarming account as a result of the unauthorised access.
- c) You must notify us immediately if you become aware of any unauthorised access to your profile account or business account subscription or any unauthorised use of your User details, and You must take all other actions that DataFarming reasonably deems necessary to maintain or enhance the security of DataFarming systems and networks and Your access to the DataFarming Services and DataFarming Products.
- d) You must not allow your User details to be used by any other person.

5. Payment Obligations / Subscription / Cancellation

The fees for the DataFarming Services and DataFarming Products are as follows:

- Pre-payment of the Product Fee for DataFarming Product downloads must be made by You prior to obtaining the data file/s. Payment for DataFarming Products is in Australian Dollars (A\$).
- The Subscription Fee must be made by You prior to receiving access to the DataFarming Services in accordance with your Subscription. On or before the end of your Subscription, we will contact you to remind you that your subscription maybe renewed. You will be able to manage your subscription, including cancelling the subscription at any time. Cancelling of the subscription means that your subscription will not be renewed at the end of the subscription period. You will still have access to the subscription services until the current period is finished.

6. Accessibility and Availability

- a) Without limiting the Terms:
 - i. DataFarming does not guarantee, represent or warrant that Your access will be uninterrupted, reliable, timely, secure, error free or bug free.
 - ii. Your access to the DataFarming Services and DataFarming Products may be suspended without notice in the case of telecommunications interruption or bottleneck, system failure, maintenance or repair or any reason beyond our control (including services provided by third parties becoming unavailable).
 - iii. the availability of DataFarming Services and DataFarming Products is dependent on third party providers including access to maps generated through satellite imagery and yield data processing providers, and from time to time, these maps may not be available due to factors beyond DataFarming's reasonable control including but not limited to cloud cover or other weather events.
- b) **There is a risk that there will be cloud cover over your property at the time of image capture (which is outside of our control). Where our third party satellite imagery supplier deems a capture as 'successful', we are required to purchase the image. If on a 'successful' image capture there is cloud over the paddock identified by You in your quote, we are unable to give a refund in those circumstances.**
- c) Where we have guaranteed a certain number of captures during a selected period, we offer a refund for the captures that did we did not deliver.
- d) For our low priority single captures, if we are unable to capture the single image during the time window supplied, we will refund the full purchase price.

7. Support Centre

- Technical Problems: Support assistance will be available to You in respect of the DataFarming Services and DataFarming Products in the case of technical problems and does not include training in computer skills that are considered pre-requisite for use of the DataFarming Services and DataFarming Products. If You need technical help, please check the support provided online by DataFarming on the Website or failing that email us

at support@datafarming.com.au. Support hours will be between 9:00am to 5:00pm Australian Eastern Standard Time and DataFarming will endeavour to respond to your request for technical help as soon as possible.

- Service availability: Whilst it is DataFarming's intention that the DataFarming Services and DataFarming Products should be available 24 hours a day, seven days a week, it is possible that on occasions the DataFarming Services, DataFarming Products or Website may be unavailable to permit maintenance or other development activity to take place. DataFarming will endeavour to minimise the impact to Users in relation to any planned maintenance.

If for any reason DataFarming has to interrupt the DataFarming Services or access to DataFarming Products for longer periods than DataFarming would normally expect, DataFarming will use reasonable endeavours to publish in advance details of such activity on the website.

8. Termination and Refunds

You may terminate DataFarming Services at any time by contacting us support@datafarming.com.au. DataFarming may also terminate or suspend any and all services and access to the DataFarming Services immediately, without prior notice or liability, if the user breaches any of the terms or conditions of the Terms. Any fees paid for DataFarming Products and DataFarming Services which have already been provided are non-refundable. DataFarming shall use reasonable endeavours to notify a User if DataFarming has terminated or suspended access to the DataFarming Services.

9. Warranties and Liabilities

- a) Except where expressly specified, the Website's contents are provided for your information only. You should verify any information contained on or provided through the Website and seek independent advice suited to your specific circumstances prior to making any decisions.
- b) To the fullest extent possible:
 - i. DataFarming does not warrant the accuracy of the content on or through the Website nor that the functions contained in the Website will be uninterrupted or error free or free of any computer viruses or programming bugs.
 - ii. You acknowledge that DataFarming has no control over the truth or accuracy of the information contained on the Website and that any information provided on the Website is solely for guidance and is not to be relied on.
 - iii. DataFarming excludes all liability, rights, conditions and warranties including those implied by law (other than those which cannot be excluded and those expressly set out in this document) to the extent the law permits.
 - iv. Nothing in this document, will exclude, restrict or modify any condition, warranty, right or liability implied into this document by law which cannot be excluded, restricted or modified by agreement. This may include the guarantees relating to the supply of goods and services contained in the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
 - v. Liability of DataFarming for any breach of any terms and conditions implied by law is limited to, at DataFarming's discretion, replacement of the goods, the cost of replacing the goods, repair of the goods or payment of the cost of having the goods repaired, supplying the services again or payment of the cost of re-supplying the services.
 - vi. DataFarming is not liable for any loss of opportunity, loss of revenue, loss of profit, loss of contracts with third parties, loss of production, increase in operating cost, loss of goodwill, loss arising from business interruption, or loss of production, or any other loss which is also consequential or indirect loss, arising in connection to your use of the Website, any DataFarming Services or any DataFarming Products.
 - vii. For any liability that cannot be excluded, and to the extent the law permits DataFarming's maximum liability arising out of or in connection with your use of the Website, any DataFarming Services or DataFarming Products will not exceed the amount paid to DataFarming by you for the DataFarming Products and/or DataFarming Services.

10. Product fees

DataFarming charges fees for certain DataFarming Products or other features or services made available through DataFarming Services (including the Product Fee and the Subscription Fee). Unless stated to be otherwise:

- a) charges for any goods or services supplied (or offered for supply) via DataFarming are stated exclusive of GST. DataFarming will charge GST (to persons liable to pay GST) in addition to the charges at the time that DataFarming levies the charges;
- b) Product fees are calculated AU\$/ha. The total fee will be stated exclusive of GST prior to payment;
- c) Subscription Fee is payable annually in advance and will be stated exclusive of GST prior to payment;
- d) You must pay for the relevant DataFarming Product or, features or services prior to us making the DataFarming Product, features or services available to You, or must pay for it in accordance with the payment terms notified to You.

11. Usage and Intellectual Property Rights

Title to, and all Intellectual Property Rights in the DataFarming Services, DataFarming Products, the Website and any documentation relating to the DataFarming Services remain the property of DataFarming (or its licensors).

Unless otherwise indicated, we own or license from third parties all rights, title and interest (including copyright, designs, patents, trademarks and other intellectual property rights) in all material (including all text, graphics, logos, audio and software) made available through the Website, DataFarming Services and DataFarming Products (**Content**).

Your use of the DataFarming Services and DataFarming Products and use of and access to any Content does not grant or transfer any rights, title or interest to You in relation to DataFarming or the Content. However, we do grant You a licence to access DataFarming and view or create Content on the terms and conditions set out in these DataFarming Terms of Use and, where applicable, as expressly authorised by us and/or our third-party licensors.

DataFarming Services and DataFarming Products are for your personal use only. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, create derivative works from, transfer, or sell any Content, software, products or services available through DataFarming without the prior written consent of DataFarming.

Title to, and all Intellectual Property Rights in, the data or material created by You, uploaded by You or is otherwise made available (**Client Data**) to DataFarming through its website or otherwise remains Your property. However, Your access to DataFarming Products through the Website is contingent on full payment of the DataFarming fees where applicable.

If You upload or otherwise disclose or make available any Client Data to DataFarming, You:

- (a) grant Us an irrevocable, non-exclusive, worldwide, royalty-free, sub-licensable, perpetual licence to use, modify, reproduce, edit, adapt, transmit, store, back-up, communicate, exploit and otherwise commercialise the data or material in any form and for any purpose including but not limited to the purpose of providing the DataFarming Services and DataFarming Products to You and to improve its product offerings to existing and future customers;
- (b) warrant that You have the right to grant the licence granted in paragraph (a) above;
- (c) warrant that the material does not breach the DataFarming Terms of Use or infringe any third party intellectual property rights.

Your Client Data will remain unidentifiable where made available publicly by DataFarming through materials such as case studies.

DataFarming recommends that you maintain copies of all Client Data that you input into the DataFarming website. You can request your original uploaded data files by contacting

DataFarming by email at support@datafarming.com.au. DataFarming will endeavour to respond to this file retrieval request within 10 working days. Whilst DataFarming makes all reasonable endeavours to prevent data loss, DataFarming does not make any warranty or guarantee that there will be no loss of data. To the extent permitted by law, DataFarming expressly excludes liability for any loss of data no matter how caused.

12. Unacceptable Activity

You must not do any act in relation to the use of the website, DataFarming Services or DataFarming Products that DataFarming in its opinion deems to be inappropriate, deceptive, defamatory, obscene or that is unlawful or is prohibited by any applicable laws, including but not limited to:

- a) any act that would constitute a breach of either the privacy (including uploading private or personal information without an individual's consent) or any other of the legal rights of individuals;
- b) uploading files that contain viruses, worms or other malicious computer programming or in any other way introduce or permit the introduction of any virus, worms or other malicious computer programming that may cause damage to our property or the property of other individuals;
- c) attempting to undermine the security or integrity of DataFarming computing systems or networks or, where the DataFarming Services or DataFarming Products are hosted by a third party, that third party's computing systems and networks;
- d) using, or misusing, the DataFarming Services or the DataFarming Products in any way which may impair the functionality of the DataFarming Services, DataFarming Products or website, or other systems used to deliver the DataFarming Services or the DataFarming Products or impair the ability of any other User to use the DataFarming Services, DataFarming Products or website;
- e) attempting to gain unauthorised access to any materials other than those to which You have been given express permission to access or to the information technology system on which the DataFarming Services and DataFarming Products are hosted;
- f) transmitting, or inputting into the website, DataFarming Services and DataFarming Products, any files that may damage any other person's computing devices or software, any content that may be offensive, or material or data in violation of any law (including data or other material protected by copyright or trade secrets which You do not have the right to use);
- g) reselling any of the Content or DataFarming Services or DataFarming Products made available by DataFarming through the website;
- h) use any device or process to copy, adapt, disassemble, decompile, reverse engineer or in any way reproduce, modify or circumvent the navigational structure, security or presentation of DataFarming or any computer programs used to deliver the DataFarming Services or the DataFarming Products or to operate the website;
- i) unauthorised extraction of imagery or other products including through inspection of browser history files, web page elements, screen shots, or any other download not provided through an explicitly identified download/report function in the application;
- j) allowing other people to access Your User account or Your DataFarming licence or disclosing Your password and login details to any third party.

Without limiting any other provision of these Terms, You must only use the DataFarming Services, DataFarming Products and Website for Your own lawful internal business purposes, in accordance with these Terms. You may use the DataFarming Services and DataFarming Products on behalf of others as an Invited User but if You do so you must ensure that You are authorised to do so, and that you do so only in accordance with these Terms.

13. Linked sites

The website may contain links to websites operated by third parties. Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, we do not endorse and are not responsible for the content on those linked websites and have no control over or rights in those linked websites.

14. Third Party Terms and Conditions

If You enable third-party applications for use in conjunction with the DataFarming Services, You acknowledge that DataFarming may allow the providers of those third-party applications to access Content and Your data and as required for the interoperation of such third-party applications with the DataFarming Services and the DataFarming Products. To the extent permitted by law, DataFarming shall not be responsible for any disclosure, modification or deletion of Content and Your data resulting from any such access by third-party application providers.

15. Indemnity

To the extent permitted by law, You agree to fully indemnify us and our affiliated companies, and each of their directors, officers, employees and agents, and hold us harmless, against any liability, expenses, costs, loss or damage arising out of, or in connection with:

- a) Your use of, access to or conduct in connection with DataFarming Services, DataFarming Products or any Content, including any breach by You of the Terms, and
- b) any unauthorised access to DataFarming Services or DataFarming Products through your account,

except to the extent that such liability, loss, cost, expense or damage is the result of our negligent act or omission.

16. Privacy

In addition to these Terms, our Privacy Policy and Collection Notice apply to the use of the Website, the DataFarming Products and DataFarming Services. These documents are available **here**. You should review the Privacy Policy and Collection Notice and not use the Website, our DataFarming Products or DataFarming Services if you do not consent to the collection of your personal information.

17. Waiver

The failure or delay on the part of any party in exercising any power or right conferred on it under these Terms will not operate as a waiver of the power or right, nor will any single exercise of any power or right preclude any other or future exercise of it, or the exercise of any other power or right under these Terms. Any waiver by a party will only be binding and effective if it is given in writing.

18. Severance

If the whole or any part of a provision of the Terms is invalid, illegal or unenforceable, then such provision will be severed from the Terms and neither that part or provision or its severance will affect the validity or enforceability of the remaining parts or provisions of the Terms.

19. Governing Law

- a) These Terms shall be governed by and interpreted in accordance with the laws of Queensland, Australia.
- b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal therefrom.