

# Terms of Use

**Betty Butter Blog Pty Ltd ACN 609 424 446**

**Malcolm Burrows** B.Bus.,MBA.,LLB.,LL.M.,MQLS.  
Legal Practice Director

## Contact Information

Telephone: (07) 3221 0013  
Facsimile: (07) 3221 0031

## Address Details

Office: Suite 12, Level 9, 320 Adelaide Street, Brisbane QLD 4000  
Mail: GPO Box 2324, Brisbane QLD 4001

e: [mburrows@dundaslawyers.com.au](mailto:mburrows@dundaslawyers.com.au) | [www.dundaslawyers.com.au](http://www.dundaslawyers.com.au)

**Liability limited by a Scheme Approved under Professional Standards Legislation**

## Notes on using this Agreement

These Terms of Use should be copied and added in html to separate pages on the Site. The link to the page should be available from links in the footer of each page of the Site.

Certain clauses have been highlighted in yellow for you to use or remove at your discretion depending whether the website has these features.

## 1. Terms of Use

As consideration for allowing you users (**Users**) to view the Content on our website, located at the url [www.bettybutterblog.com](http://www.bettybutterblog.com) (**Site**), Users agree to the following Terms of Use of use (**Terms of Use**)

The Site is operated by Betty Butter Blog Pty Ltd ACN 609 424 446 (**Company**) and provides Users with access to the Content and Facilities pursuant to a non-exclusive, world-wide, non-transferable licence contained in this Terms of Use.

By viewing the Content, using the Facilities on the Site or creating a User Account, Users acknowledge and agree that they have had sufficient opportunity to read and understand these Terms of Use, and that they are legally able to agree to be bound by them. Users who do not agree to these Terms of Use must leave the Site immediately.

## 1.1 Definitions

**Act** means the *Copyright Act 1968* (Cth) as amended and updated from time to time.

**Content** means text, data, speech, music or other sounds, visual images (animated or otherwise) in any form, or in any combination of forms as defined in Schedule 7 of *Broadcasting Services Act 1992* (Cth).

**Facilities** means any feature that appears on the Site for Users to use.

**Prohibited Material** means any Content that the Company, in its sole discretion, deems inappropriate for inclusion on the Site and includes Content that:

- (a) may breach a third parties copyright or other intellectual property right;
- (b) is abusive or defamatory;
- (c) is otherwise illegal; or
- (d) contains a link to other websites that contain any Prohibited Material.

**User Account** means an account created by a User for the purposes of accessing the Sites enhanced Content and Facilities.

**User Comment** means any comment left by a User using the Facilities on the Site.

## 2. Permitted use

### 2.1 Content

- (a) Unless otherwise indicated, the Company reserves all copyright in the Content and design of the Site.
- (b) The Company grants Users a limited licence embodied in these Terms of Use each time they visit the Site.
- (c) Users must not use, reproduce, communicate, publish, or distribute any of the Content on the Site. In particular, User's must not reproduce or use any of the information on the Site for commercial benefit.
- (d) Unless provided with a mechanism to do so, Users must not sell, lease, furnish or otherwise permit or cause others to provide access to the Site.
- (e) Other than for the purposes of and subject to the conditions prescribed under the Act, or as otherwise provided for in these Terms of Use, no part of the Content may in any form or by any means (including framing, screen scraping, electronic, mechanical, microcopying, photocopying or recording) be reproduced, adapted, stored in a retrieval system or transmitted without prior written permission.

### 2.2 Moderation of Comments

The Company reserves the right to moderate and remove any comment made by Users for any reason that the Company, in its sole discretion, decides.

### 3. Use of User Account

---

#### 3.1 User Account and Password

Users agree to keep any passwords provided by the Site Confidential. Users are expressly prohibited from sharing account details with third parties.

#### 3.2 Termination of User Account

- (a) The Company reserves the right to limit, cancel, suspend or terminate User Accounts without notice to User's and without providing a reason if the Company is of the view that:
  - (i) the User is breaching any of these Terms of Use ; or
  - (ii) the use of the User Account may be a breach of a third party's intellectual property rights.
- (b) Users Agree not to hold the Company liable for claims, demands or damages (including actual and consequential) of any kind for the closing of a User Account.

### 4. Prohibitions on use of Site

---

The Site and the information and facilities contained therein must not be used in any manner that infringes the Company's rights. Users must not:

- (a) post any Prohibited Material on the Site;
- (b) data mine or conduct automated searches on the Site or any of the Content on our Site, whether through the use of additional software or otherwise;
- (c) frame or mirror the Site;
- (d) tamper with, hinder the operation of, or make unauthorised modifications to the Site or any of its Content;
- (e) transmit any virus, worm or other disabling feature to, or via, the Site;
- (f) abuse, defame, harass, stalk or threaten the Company or third parties;
- (g) advertise or offer to sell any goods or services, or conduct or forward surveys, contests, or chain letters from the Site;
- (h) delete any author attributions, legal notices or proprietary designations or labels in any file that is uploaded by a User; or
- (i) use the Site to send commercial, unsolicited or bulk electronic messages to anyone in any way which would constitute an infringement of the *Spam Act 2003* (Cth).

#### 4.2 Take down procedure

- (a) The Company takes reasonable steps to be aware of Content published by Users on the Site.
- (b) The Company commits to remove all Prohibited Material, as soon as practical after becoming aware of it.
- (c) To notify the Company of Prohibited Material please send a notification to [betty@bettybutterblog.com](mailto:betty@bettybutterblog.com) that includes the following information:
  - (i) the alleged Prohibited Material and its location on the Site;
  - (ii) the nature of the Prohibited Material, for example, that it infringes copyright;
  - (iii) the contact details of the complaining party (**Complainant**) including for example:
    - I. address;
    - II. telephone number (land line and mobile); and
    - III. email address; and
  - (iv) if the Prohibited Material is alleged to be a breach of a third party's copyright:

- I. an electronic or physical signature of the copyright owner or authorised agent of the owner of the allegedly infringing material;
  - II. a statement that the Complainant has a good faith belief that use of the Prohibited Material in the manner complained of is not authorised by the copyright owner or the law; and
  - III. a statement that the information in the notification is accurate and, under penalty of perjury, that the Complainant is authorised to act on behalf of the owner of the right alleged to be infringed.
- (d) The Company may immediately remove Content, including but not limited to Prohibited Material from the Site without further notice.
  - (e) The Company will not be liable for any loss or damage that a User may incur from the removal of any Content or Prohibited Material from the Site.

## 5. Provision of service

- (a) The Company may without notice suspend access to the Site or disconnect or deny Users access to any part of the Site during any technical failure or maintenance period.
- (b) The Company may, in its sole discretion, block or deny any particular User with access to any of the Content or Facilities contained on the Site.
- (c) The Company may make improvements and changes to Site and the Content at any time without notice.

## 6. Limitation of liability

### 6.1 No duty of care

- (a) Users access the Site at their own risk and are responsible for compliance with the laws of their jurisdiction in addition to these Terms of Use.
- (b) Users acknowledge and agree that use of the Site is at their own risk and the Company assumes no duty of care for Users.
- (c) If relying on the Content, Users must make their own investigations to ensure its accuracy.

### 6.2 Disclaimer of warranties

Users expressly acknowledge and agree that, to the maximum extent permitted by law:

- (a) their use of the Site is at their sole risk. The service is provided on an "as is" and "as available" basis. The Company and its officers, employees, agents, expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement;
- (b) the Company and its make no warranty that:
  - (i) the Content will meet Users requirements;
  - (ii) the information contained in the Content is accurate or reliable;
  - (iii) the Content will be uninterrupted, timely, secure or error-free;
  - (iv) the quality the Content, or other material obtained by Users through the Site will meet their expectations; and
  - (v) any errors will be corrected;
- (c) any Content downloaded or otherwise obtained through the Site is accessed at their own discretion and risk, and they will be solely responsible for any damage to their computer or loss of data that results from the download of the Content; and
- (d) no advice or information, whether oral or written, obtained through the Site or from the Content creates any warranty not expressly stated herein.

### 6.3 Limitation of liability

- (a) To the maximum extent permitted by the law, the Company, its officers, employees, agents are not liable for any loss or damage, including, but not limited to, direct, indirect or consequential

losses including any form of consequential loss such as any third party loss, loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings, pure economic loss and an increased operating cost, personal injury or death, however suffered or sustained in connection with:

- (i) any inaccurate or incorrect information provided on the Site;
  - (ii) Users use of the Content;
  - (iii) any failure or delay including, but not limited to, the use or inability to use any of the Content;
  - (iv) any interference with or damage to Users' computer systems which occurs in connection with use of this Content;
  - (v) the cost of procurements of substitute goods and Content resulting from any goods or Content purchased or obtained through the Content;
  - (vi) any unauthorised access to or alteration of your Account information;
- (b) For claims that cannot be excluded, the liability of the Company for such a claim will (at the Company's option and to the extent permitted by law) be limited to:
- (i) in the case of goods:
    - I. repairing or replacing those goods; or
    - II. paying the cost of having those goods repaired or replaced; and
  - (ii) if the breach relates to Content:
    - I. resupplying the Content or its equivalent; or
    - II. paying the cost of having the Content or its equivalent resupplied.

#### **6.4 Links to third party Sites**

- (a) The Company does not represent that the Content on other websites to which the Site contains links to does not infringe the intellectual property rights of any person anywhere in the world.
- (b) Any links on the Site to other websites that contain Content that infringes any intellectual property rights of any person are not an authorisation from the Company to infringe a third party's intellectual property rights.

## **7. Miscellaneous provisions**

### **7.1 Access to the Site outside the Jurisdiction**

No representation or warranty is made that the Content on the Website complies with the laws of any country outside of Australia. If Users access the Site from outside Australia, You do so at your own risk.

### **7.2 Changes to Terms of Use**

- (a) The Company may change these Terms of Use at its discretion by providing notice on the Site.
- (b) The version of the Terms of Use that applies to Users will be available on the Site each time a User visits the Site.

### **7.3 Entire agreement**

These Terms of Use and any warranties implied by law which are not capable of being excluded or modified amount to the entire agreement with the Users. Any contact with the Company or its officers, agents or authorised representatives that includes any statements representations, warranties (if any) whether expressed or implied, including any collateral agreement or warranty, with reference to the subject matter or the intentions of either of the parties are merged and otherwise are excluded and cancelled by those contained in these Terms of Use.

### **7.4 Governing law and jurisdiction**

The laws of Queensland and Australia govern this Agreement. Users submit to the non-exclusive jurisdiction of the Supreme Court of Queensland and the Federal Court of Australia.

## **7.5 Indemnity**

By using the Site, Users indemnify the Company and its officers, employees, subsidiaries and agents against any claim or proceeding that is made, threatened or commenced, and any liability, loss, damage or expense (including reasonable legal costs on a full indemnity basis) that the Company may incur or suffer as a direct or indirect result of:

- (i) a breach of these Terms of Use of Use;
- (ii) an actual or alleged breach by Users of any law, legislation, regulation, by-law or code of conduct caused by data uploaded or downloaded from the Site; and
- (iii) any claims brought by or on behalf of any third party relating to any act or omission by Users, including breach of a third parties copyright or trade mark.

## **7.6 RSS Feeds**

If Users utilise any of the Facilities on the Site such as RSS Feed(s) (**Feed**) that may or may not (as the case may be) available from time to time, the format of the Feed must not be interfered with. Users must include the back link to the full article on the Site and show any included attestation.

## **7.7 Severance**

If any part of these Terms of Use are found to be void, unlawful or unenforceable then that part will be deemed to be severable from the balance of the document and the severed part will not affect the validity and enforceability of the remaining Terms of Use .

## **7.8 Trademarks**

- (a) The Company may be the owner of several common law (or where indicated), registered trade marks which appear on the Site. Unauthorised use of these trademarks will infringe the Company's intellectual property rights.
- (b) The Company reserves its rights with regards to any infringement of its intellectual property rights by Users.

## **7.9 Waiver**

If the Company does not act in relation to a particular breach by Users of these Terms of Use, this will not be treated as a waiver of its right to act with respect to subsequent or similar breaches.