



Microba Terms and Conditions

The following general terms and conditions (“Terms”) form a legally binding agreement between You and Us in relation to Our engagement to provide Microbiome Services and Your access to, and use of, Microba. By accessing or using Microba You acknowledge that You have read, understood and agree to be bound by these Terms. If You do not accept these Terms, You must not submit a Microbiome Request and You must refrain from accessing or using Microba. Please read these Terms carefully. By clicking “agree”, submitting a Microbiome Request or by otherwise using or accessing Microba, You agree to the following Terms.

Definitions for certain capitalised terms are set out at the end of these Terms.

Any information provided by us (including any information contained on our website or in any microbiome report) is for information purposes only. Such information is not medical advice and must not be taken to be a substitute for a consultation with your health care professional or doctor. It is not intended to diagnose conditions nor prescribe the use of any remedy, diet or lifestyle practice. Your health is your responsibility and if you have any concerns related to your health we recommend that you seek the advice of your health care professional or doctor.

Eligibility

By using Microba You represent and warrant that You are at least 18 years old and that or that You have the permission of a parent or guardian if You are less than 18 years old. Parents and guardians of Users under the age of 18 must read and agree to be bound by these Terms and agree to be responsible for their child’s use of Microba (specifically the Microbiome Services). Where You provide Us with information in relation to Your child or children, You warrant that You are the legal guardian of Your child and have authority to provide this information to Us.

We may in our absolute discretion require certain additional consents to be provided by You (such as by executing certain consent documentation) (including in Your capacity as a parent or legal guardian of a User, if applicable) before we agree to provide any Microbiome Services.

Due to the nature of the Microbiome Services, We do not provide the Microbiome Services to certain persons below two years of age, or as otherwise notified on Our Website. We also reserve the right to decide at Our discretion for any reason to not provide the Microbiome Services to You by notifying You in writing.

If You are accepting these Terms on behalf of a company, organisation, association or agency as its authorised legal representative, then You represent and warrant that You have the power and authority to bind such company, organisation, association or agency to these Terms.

Registered Users

The use of Microbiome Services require You to register with Us and open an account. To do so, You must complete the registration process in the manner described on Our Website. We will not perform any Microbiome Services or provide You with a Microba Sample Kit unless you have opened an account. By registering with Us, You agree that all information You provide to Us (including any information set out in any Microbiome Request) is accurate and up to date and does not infringe any person’s rights. You must also update Your details if any of them change.

Registration is non-transferable. You are responsible for all of the activities that occur under Your account. You should carefully choose Your password and user name and protect them from unauthorised use. Please let Us know immediately of any unauthorised use of Your account or any other breach of security. We are not liable for any loss if someone else uses Your password or account.

Payment terms

We will provide the Microbiome Services to You in consideration for You paying to Us certain Fees as set out by Us on the Website. You acknowledge that the availability of any part or feature of Microba may be conditional upon the payment of such Fees.

You acknowledge and agree We may change Our Fees at any time. We will endeavour to notify You via the Website of any changes to the Fees before they come into effect, however this may not always be possible.

You acknowledge that Our performance of any part the Microba Services is conditional upon Us receiving Fees in advance. We do not represent or guarantee that the Microba Services will be performed or completed within any specific timeframe. We will not be liable for any delay in the timely performance of the Microbiome Services.

If You do not accept the Fees or any changes to the Fees, You must not access or use Microba.

If You make any payments for Fees with a credit or charge card or an online payment account, You warrant that You are the cardholder or account holder and that the billing information provided is accurate, and You authorise Us to charge the designated credit or charge card or online payment account for the total amount of the Fees, plus any applicable GST. All payments and purchases made in connection with Microba are in Australian dollars and are non-refundable.

Where applicable, You agree to pay all GST and other similar taxes imposed in connection with the supply of the Microbiome Services to You.

You are responsible for all internet service provider fees, telecommunication and other charges required for your connection to, or use of, Microba.

Microbiome Requests, Microbiome Services and Sample collection

Any User may submit a Microbiome Request. Upon receiving a Microbiome Request (as well as any additional consents We may require before We provide any Microbiome Services) and payment of the relevant Fees, We will send to You a Microba Sample Kit. Microba Sample Kits are subject to availability. We will not be liable for any delay in providing You with a Microba Sample Kit. Certain Microbiome Services may require more than one Sample over a period of time.

You may then collect, package and send the Sample to Us in the manner set out in the Microba Sample Kit. We will only accept Samples that have been sent to us using the prescribed Microba Sample Kit and otherwise collected and packaged in accordance with Our instructions to You.

We are not obliged to provide You with a refund or replacement if You damage, misuse or misplace a Microba Sample Kit (for example, if You fail to follow Our instructions for Sample collection). If You require a replacement kit due to damage, misuse or misplacement of a Microba Sample Kit we will charge you a replacement fee.

All Samples will be at Your risk until they are received by Us. We are not liable for any Samples damaged in the sampling process or lost or damaged in transit. In such circumstances, We in our absolute discretion may choose to either provide you with a new Microba Sample Kit for free or We may charge you a replacement fee (as determined by Us).

We will label each Microba Sample Kit with the details of the User that has submitted the Microbiome Request and is required to provide the Sample. You warrant that any Sample you send to Us contains only materials from that User's body and You irrevocably consent to Us carrying out Microbiome Services on that Sample. Where You have submitted a Microbiome Request for or on behalf of another person, You warrant and represent to us that that person consents to Us carrying out Microbiome Services on that Sample and has read and understood these Terms.

We will carry out the Microbiome Services using reasonable care and skill, however We make no guarantee that We will be able to successfully perform the Microbiome Services on Your Sample (for example, if Your Sample does not contain sufficient biological material or the results from our Services do not meet our standards for accuracy). If We determine in our absolute discretion that the Microbiome Services cannot be accurately and safely carried out on the Sample provided by You (**Failed Sample**), we will notify You and may request that You submit another Sample. In the event of a Failed Sample, We in our absolute discretion may choose to either provide you with a new Microba Sample Kit for free or We may charge you a replacement fee (as determined by Us).

We retain the right to make any changes to the Microbiome Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Microbiome Services.

You acknowledge that we will not return any Sample to You. We may destroy, dispose and/or retain any Samples as we see fit depending on the nature of the issue and the type of Sample.

Unless You have agreed otherwise (for example, where You have entered an agreement or arrangement with Us or Our research partners to not access the results of Your participation in a research study conducted by Us, as described in our Participant Information

Sheet), We will provide you with Your Microbiome Report as part of the Microbiome Services (as well as any additional consents We may require before We provide with Your Microbiome Report). We may provide You with Your Microbiome Report online (in which case, You may access Your Microbiome Report by logging into Your account). We may agree to provide a hard-copy of Your Microbiome Report upon request, which may be subject to additional Fees.

Information You provide to Us

Users will be required to send personal information to Us (including when submitting a Microbiome Request). Such information may include:

- personal information;
- health related information;
- family health information and history;
- lifestyle information; and
- any other information that You provide to us (including when registering as a User or completing a Microbiome Request),

(User Information). You acknowledge that the Microbiome Services is conditional upon You providing certain User Information.

We will use, store and handle User Information in accordance with the requirements of the Privacy Act 1988 (Cth) and the Australian Privacy Principles that apply to Us and Our privacy policy which may be accessed at <https://www.microba.com/privacy-policy/>.

You consent to Us collecting, storing, using, and disclosing Your User Information (which may include Your personal information) in accordance with Our privacy policy, which applies to You and Your use of Microba at all times. You further acknowledge that some of the User Information that we collect from You is sensitive information for the purposes of the Australian Privacy Principles (including health information). You consent to our collection, storage, use, and disclosure of such information in accordance with Our privacy policy and these Terms.

You further consent to Us disclosing to Australia Post certain personal information that You provide to Us (which may include Your email address, mobile phone details and/or your residential address) in connection with Us providing the Services to You, and You acknowledge and agree that Australia Post may use such information for the purposes of providing notification of tracking events (and collecting any relevant feedback in relation to the delivery or tracking service).

We do not claim ownership of User Information or any other content, data or information that you may provide to us.

Aggregated information

Unless and until You notify us otherwise (refer to the consent withdrawal process set out below), You agree and consent that we may de-identify and aggregate User Information, Your Microbiome Report and other results, data and other information generated, inputted or derived from performing the Microbiome Services by removing any and all identifiers and removing or altering other information that may allow identification (De-identified Data). Without limitation, We may use such De-identified Data to conduct, publish and/or present research studies, and/or to develop diagnostics, therapeutics or other products/services. To the extent that De-identified Data is owned by You, you grant us an irrevocable perpetual, non-exclusive, assignable, worldwide and royalty free licence (with a right to sub-licence) to use and commercialise the De-identified Data for such purposes as we see fit. This right continues even if You no longer use Microba or are deregistered as a User.

You acknowledge that You acquire no rights in any research or commercial products that may be developed or derived by Us or our licensees from any De-identified Data.

You have the right to request that your personal information is not de-identified and aggregated for the purposes set out in this clause. To do so please send us an email request at info@microba.com. Upon receiving this request, we will provide you with a form which must be signed and returned to Us so that we may process the request. You agree that any such request will only be effective from the point in time that we process Your request.

Intellectual Property

We and our licensors (as applicable) own all Intellectual Property in Microba (including without limitation text, graphics, architecture and coding and any copyright subsisting in them). We own all trade marks, branding and logos contained in, or relating to, Microba and you cannot use them for any purpose without our express written consent.

Without limiting the above, all Intellectual Property rights in the Microbiome Report (except User Information) is owned by Us. You may access and download Your Microbiome Report where available and may disclose such information to family and medical professionals for the purposes of obtaining medical advice, however You must not modify, publish, transmit, distribute, participate in the transfer or sale, create derivative works, or in any way exploit, Your Microbiome Report in whole or in part without Our prior written permission.

Outcomes and reliance on information

Nothing contained in any Microbiome Report or on Our Website should be construed as medical advice. Any information We provide to You (including information set out in Your Microbiome Report or on Our Website) is provided on an "as is" basis for general information only and must not be considered professional medical advice or a recommendation. You must not rely on such information and should not make any decisions in reliance on such information.

We are not a medical or health provider and the Microbiome Services are not supported by clinical verification. We will not diagnose, treat or prevent any condition or disease. While we provide information and perform the Microbiome Services, we do not give medical advice and any concerns you might have should be directed to your health care practitioner. Any and all information We provide to You (including any information set out in Your Microbiome Report) must not be considered a substitute for medical advice or a doctor's consultation, evaluation or treatment, and You should discuss any information set out in Your Microbiome Report with a medical professional. Users accept liability for any decision made (or not made) or action taken (or not taken) in reliance on any information contained or omitted from Your Microbiome Report. You must not disregard professional advice, or delay seeking it, because of any information contained in Your Microbiome Report.

Microbiome Coaching Services and third-party service providers

We may offer You Microbiome Coaching Services as part of the Microbiome Services. Our Fees for such Microbiome Coaching Services (if any) will be set out on Our Website. Any information provided to you through the Microbiome Coaching Services is for your general information and use only and must not be considered a substitute for medical advice. We will not diagnose conditions as part of our Microbiome Coaching Services.

We may also provide details of preferred external service providers from time to time (including dieticians and doctors). We only provide such details for User convenience and do not specifically endorse any external service provider, organisation, association or entity referred to in, or linked to, Our Website. It is your responsibility to make your own decisions about what health care professional or other external service provider you use. You acknowledge that we may have commercial cross-referral agreements in place with external service providers from time to time.

Advertisement information and cookies on Our Website

We may allow certain third parties to post information (including advertisements or promotions) on the Website. We are not responsible for any incorrect, inaccurate, incomplete or unreliable information provided by such third parties. You are solely responsible for relying on any such information. You may not copy, duplicate, distribute, display, sell, translate, publish, transmit or modify any such information without express consent from Us.

Advertisements displayed on the Website may set cookies. These cookies, which are industry standard and used by most websites, allow the ad server to recognise Your computer each time they send You an online advertisement to compile non-personal identification information about You or others who use Your computer. This information allows ad networks to, among other things, deliver targeted advertisements that they believe will be of most interest to You. If You do not want information to be collected through the use of cookies, there is a simple procedure in most browsers that allows You to deny or accept the cookie feature. But please be aware that denying the cookie feature may prevent You from taking full advantage of the Website.

External sites

In using Microba, You may come across links or references to external merchants or suppliers. Please be aware that We do not make any promises about what they may supply to You. Therefore, any transaction You have with these merchants are between You and these merchants, and We do not get involved. By accessing external Website links to these merchants and other sites through Microba, We do not promise that they are appropriate, that they work or that they are virus free. We accept no responsibility for them or for any loss or damage that may arise from Your use of them.

Access to Microba

We reserve the right to suspend, withdraw, discontinue or amend all or any part of Microba without notice. We will not be liable if, for any reason, Microba is unavailable at any time or for any period. From time to time, We may restrict access to all or any part of Microba. You are responsible for making all arrangements necessary for You to have access to the Website. You are also responsible for ensuring that all persons who access the Website through Your internet connection are aware of these Terms, and that they comply with them.

Unauthorised access or use of Microba may give rise to a claim for damages and/or be a criminal offence.

Changes to the Microba and its availability

We may change or improve Microba at any time. We may also stop making Microba available or modify its availability in any way. We are under no obligation to update any material that may be out of date at any given point in time.

We will always try to give You notice of any changes to Microba or its availability before such changes take effect, although this may not always be possible. To the maximum extent permitted by law, We do not accept liability for any damage or loss which You may suffer or incur as a result of such actions.

Prohibited uses

You agree that You will only use Microba for lawful purposes. If You send or post information on or using Microba, You are responsible for anything You send or post. You must not send or post anything that is offensive; infringes any person's rights; is against any applicable law; or which We think is inappropriate.

You must ensure that Your access to and use of Microba is not illegal or prohibited by any laws which apply to You. By using Microba, You represent and warrant that You will not:

- infringe the rights of any other person, including without limitation any Intellectual Property rights;
- defame another person;
- provide false information, misleading or inaccurate information to Us or any other User;
- impersonate, or otherwise misrepresent affiliation, connection or association with, any person or entity;
- disclose another person's confidential information or otherwise contravene Your privacy obligations or any other person's privacy obligations;
- use or attempt to use any engine, software, tool, agent, or other device or mechanism (including without limitation browsers, spiders, robots, avatars, or intelligent agents) to harvest or otherwise collect information from Microba for any purpose, including without limitation use on third-party websites;
- attempt to probe, scan, or test the vulnerability of Microba or any associated system or network, or breach security or authentication measures without proper authorisation;
- threaten, offend or abuse Us or another User; or
- do any which is otherwise, in Our view, inappropriate or harmful to Microba.

Promotions and voucher codes

We may offer and distribute voucher codes from time to time. A voucher code is a code that must be entered at checkout on transactions for certain Microbiome Services in order to receive a discount or other benefit as determined by Us. Each voucher code is subject to these Terms and any other specific terms and conditions as set out by Us in relation to the voucher code offer (for example on our Website or otherwise notified by Us to You). Voucher codes are not redeemable for cash, are valid for qualifying purchases only (as determined by Us) and must be redeemed within the validity period. Unless stated otherwise, voucher codes may only be used once. We do not accept any liability for lost voucher codes. Voucher codes are not transferable unless specifically authorised by Us. We reserve the right in Our absolute discretion to refuse any voucher code where We suspect the voucher code has been leaked, stolen or misused or the voucher code has expired.

Security and integrity

You must not violate the security of Microba in any way. We may suspend or cancel Your account or Your access to Microba if We suspect any security violation. We may also inform any law enforcement body of any suspected unauthorised or criminal activity. Examples of security violations include:

- attempting to gain unauthorised access to any part of Our servers or system infrastructure You were not intended to have access to;
- use Microba in a way that was not intended by Us;
- attempting to reverse engineer Microba or any system or offering provided through it;
- interfering with or disrupting (or attempting to interfere or disrupt) any servers or networks connected to Microba;
- sending or storing any harmful code (including, for example, any computer virus, trojan, worm or other code that is harmful or disabling or which assists in or enables unauthorised access to or corruption of data); or
- using any feature of Microba or any other means to send unsolicited commercial correspondence to other Users.

Disclaimer of warranties

By accessing our Website and using Microba, to the extent permitted by law you assume all risks associated with such access and use.

The Microbiome Services are subject to continuing research, clinical experience, reasonable differences in opinions among authorities, unique aspects of individual situations and the possibility of human error. We cannot promise or guarantee any specific outcomes from Your use of Microba. To the extent permitted by law, no representation or warranty (express or implied) is made:

- as to the outcomes, currency, completeness, accuracy, reliability, suitability, and / or availability of Microba, the Microbiome Services or Your Microbiome Report; and
- that Microba, the Microbiome Services or Your Microbiome Report will meet your health or medical requirements.

Limitation of liability

To the maximum extent permitted by law, We (and our directors, employees and agents) do not accept any liability for, and You agree to release us from any claim in relation to any loss, howsoever caused, suffered or incurred by you arising from Your use of Microba (including without limitation any consequential losses or damages).

Without limiting the above, to the extent permitted by law, any liability we do owe (including any liability for failure to comply with consumer guarantees required by the Australian Consumer Law) is limited to the amount you paid to use Microba, or (if we choose) us providing the service or product again.

Indemnity and release

You agree to indemnify, defend and hold Us (and Our directors, employees and agents) harmless from and against all claims, liabilities, losses and expenses (including reasonable legal fees on a full indemnity basis) that arise from:

- any reliance on any information We provide to You;
- any breach of these Terms by You;
- any breach of any rights of a third party by You; or
- any breach of any applicable law by You.

Changes to and breaches of these terms

We may change these Terms at any time. You are expected to stay up to date with any such changes that We make to these Terms, as they are binding on You. If You continue to access Microba after such changes take effect, You are taken to have agreed to the changes. Some provisions contained in these Terms may be superseded by provisions or notices published elsewhere on Our Website. We reserve the right to investigate any suspected non-compliance with, or breach of, any provision contained in these Terms for any reason. We also reserve the right to suspend or terminate a User's right to access Microba for any reason. This includes, but is not limited to, where We reasonably believe that a User is in breach of a provision of these Terms.

Force majeure

We will not be liable for any delay or failure in the timely performance by Us in the performance of the Microbiome Services if such delay or failure is caused by occurrences beyond Our control.

Termination

We may suspend Your access to Microba (or any part of Microba), or terminate Our agreement with You and Your access to Microba for any reason, including without limitation if We reasonably consider that You are in breach of any provision of these Terms. We may, at Our discretion, terminate Our agreement with You and Your access to all or part of Microba without the need to provide reasons.

Jurisdiction

These Terms and any disputes or claims arising out of or in connection with them or their subject matter or formation shall be governed by the laws of Queensland. You submit to the jurisdiction of the courts of Queensland in respect of any claim arising from, or related to, these Terms, although We reserve the right to bring proceedings against You for breach of these Terms in Your country of residence or any other relevant jurisdiction.

Severance

If any provision of these Terms is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision will, to the extent required, be severed from these Terms and rendered ineffective as far as possible without modifying the remaining provisions of these Terms, and will not in any way affect any other circumstances of or the validity or enforcement of these Terms.

Interpretation

In these Terms, unless the contrary intention appears:

- headings do not affect interpretation;
- singular includes plural and plural includes singular;
- words of one gender include any gender;
- ‘including’, or similar words, does not limit what else might be included;
- reference to a person includes a corporation, joint venture, association, government body, firm, and any other entity;
- reference to a party includes that party’s personal representatives, successors and permitted assigns;
- reference to a thing includes a part of that thing;
- reference to a document is to that document as amended or varied;
- conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
- ‘writing’, ‘written’ and ‘in writing’ include any mode of representing or reproducing words in a visible form;
- ‘sign’, ‘signed’ and ‘signature’ include physical, electronic or digital signatures, including specifically scanned signatures or digitally authenticated or signed through the use of software applications;
- any legislation includes any subordinate legislation and amendments;
- another grammatical form of a defined expression has a corresponding meaning; and
- a promise, representation, warranty or indemnity in these Terms:
 - on the part of two or more persons binds them jointly and severally; and
 - in favour of two or more persons is for the benefit of them jointly and severally.

Key terms

In these Terms, unless the contrary intention appears:

- “Fee” means any fee charged by Us for Your use of the Microbiome Services;
- “Intellectual Property” means any registered or unregistered rights in any copyrights, patents, inventions, discoveries, trade marks, processes, systems, methods, know-how, designs or confidential information or any rights of a similar nature under the laws of Australia or anywhere else in the world;
- “Microba” means, collectively and individually, Us, the Website and the Microbiome Services;
- “Microba Sample Kit” means the microbiome sampling kit that We will send to You, setting out detailed instructions on how to provide Your Sample;
- “Microbiome Coaching Services” means any personalised feedback, advice or discussions that We may provide to You in connection with Your Microbiome Report (this excludes any advice, feedback or discussions You may have with any third party);
- “Microbiome Report” means the report and any other information produced by Us from conducting the Microbiome Services on Your Sample setting out certain information regarding Your microbiome;
- “Microbiome Request” means a request from a User for Us to carry out Microbiome Services in the form prescribed on Our Website;
- “Microbiome Services” means the microbiome genotyping, analytical and sequencing services, research, information, products and/or resources provided or conducted by Us on, from or through Microba, the Microbiome Coaching Services, and any other services We may provide in accordance with these Terms, including without limitation our product known as ‘Microba Insight’;
- “Sample” means the biological material to be supplied by You from Your body for the purposes of Us providing the Microbiome Services and Deliverables;
- “User” means any person who completes the Microba registration process or otherwise uses the Microbiome Services;
- “Website” means the Website operated by Us at www.microba.com.au and includes, without limitation, any subdomains and services associated with such Website;
- “We”, “Us”, “Our” means Microba Pty Limited ABN 82 617 096 652 and its related bodies corporate and associates (as defined in the Corporations Act 2001 (Cth)); and
- “You”, “Yourself”, “Your” means any person, company or organisation who is a User (including any person that is agreeing to these Terms on behalf of a User).