

# Terms of use

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Version 201404

These terms and conditions (the “**Terms of Use**”) apply to the platform Dairy Data Warehouse (“**DDW**”) and all services provided on DDW whether you visit DDW via the website [www.dairydatawarehouse.com](http://www.dairydatawarehouse.com) or via any other system, such as one of our apps (collectively the “**Service**”). Access to DDW and the Service is provided to you (the “**User(s)**”/“**You**”/“**Your**”) by or on behalf of DairyDataWarehouse B.V. with registered address Oostersingel 23, 9401 JZ, Assen, The Netherlands (the “**Company**”).

In addition to these Terms of Use special terms may apply to certain services provided on DDW or agreed between You and Your principal, such as the Access Rights (“**Special Terms**”). In the event of conflict between the Special Terms and these Terms of Use, the Special Terms shall prevail unless otherwise expressly stated. The Terms of Use and any Special Terms which You have agreed to are jointly referred to as the “**Agreement**”.

Terms starting with a capital letter, such as the term “Agreement”, are defined in these Terms of Use and have the meaning assigned to them also when appearing above the definition.

## 1. ACCEPTANCE OF TERMS OF USE

By using DDW and/or the Service You acknowledge that You have read, understood and agree to be bound by the Terms of Use and any Special Terms provided to You, and undertake not to use the Service in breach of the Agreement.

## 2. AGE AND AUTHORITY

- 2.1 If You are an individual You hereby confirm and warrant that You are at least 18 years old and that You are not otherwise barred from entering into a binding contract under applicable laws.
- 2.2 If You are acting on behalf of a company, body or legal entity You hereby confirm and warrant that You are authorized to enter into contracts and otherwise act on behalf of that company, body or legal entity and that neither You nor the company, body or legal entity that You represent are restricted from entering into a binding contract for any reason.

## 3. DESCRIPTION OF THE SERVICE

- 3.1 Subject to Your Access Rights, the Service enables You to, among other things, access Herd Data and to access or purchase services made available at DDW from time to time.
- 3.2 “Access Rights” means the access rights to the Service and Herd Data granted to You by the Company and the terms and conditions applicable to such access rights, which in no event will go beyond the access rights granted by the Data Provider making such Herd Data accessible.
- 3.3 “Data Provider” means a natural or legal person that has granted the Company access and rights of use to certain Herd Data for the purpose of the Services.
- 3.4 “Herd Data” means data made accessible by Data Providers and other herd related data.
- 3.5 “Content” means Herd Data, text, messages, software and any other information.

#### 4. USER NAME, PASSWORD AND SECURITY

- 4.1** To use the Service You must create a user account at DDW. During registration You shall choose a user name and a personal password. You may not choose a user name that is harmful, abusive, racially or ethnically offensive, sexually explicit, defamatory, infringing or invasive of personal privacy rights. It is Your obligation to ensure that any information that You submit to the Company via DDW or otherwise is truthful and accurate and to maintain the accuracy of such information (including Your email address).
- 4.2** You are obliged to keep confidential and not disclose Your user name and/or password to any third party or otherwise allow any third party to use Your access to the Service. If You have reason to believe that a third party has gained access to Your user name and/or password You must immediately inform the Company via email to [info@dairydatawarehouse.com](mailto:info@dairydatawarehouse.com).
- 4.3** You are responsible for the use of the Service under Your login details. You are liable for any damage or loss incurred by the Company or any third party due to unauthorized use of Your user name and/or password.
- 4.4** We recommend you have installed an up-to-date anti-virus software or similar protection against viruses and other malicious code. Except as expressly provided for by mandatory law, the Company or its assignees do not accept any liability in relation to the security of Your information or any damages You may suffer from viruses or other malicious code transmitted to You via the Service.

#### 5. LICENSE AND DIFFERENT FORMS OF USE

- 5.1** Subject to Your Access Rights, Your compliance with the Agreement and payment of applicable fees, the Company grants You a non-exclusive, limited license to use Herd Data solely for Your internal business use.
- 5.2** By uploading Content to the Service You grant to the Company, a non-exclusive, perpetual, transferable, worldwide, irrevocable and royalty-free licence (with the right to sublicense) to – without restrictions – reproduce, make available, use, publish, distribute, modify, adapt, publicly perform and publicly display such Content on DDW and the Service and otherwise as required in order to perform the Service and in marketing and promotion of the Company and/or the Service in all media and all countries. You agree to and warrant that the content is owned or duly licensed to You and that the Company does not need the permission or license from any third party to use the above described Content.

#### 6. RULES OF CONDUCT

- 6.1** You agree to and warrant that You will not:
- distribute or reproduce all or any part of DDW or the Service (except as set out in the Agreement),
  - alter, disassemble, decompile or reverse engineer any part of DDW or the Service, except to the extent explicitly permitted by applicable law, - use software that reads or adds data on DDW or the Service automatically, - use DDW and/or the Service to request or encourage other users to breach this Section, or any other provision of the Agreement,
  - abuse DDW or the Service or use it for any unlawful or unauthorized purpose (which includes transmitting any computer viruses through DDW, or using DDW in a manner which violates or infringes the rights of anyone else).
- 6.2** You agree to and warrant that You will only use Herd Data:
- in accordance with the Agreement, including in accordance with the Access Rights,
  - with due care, taking into consideration that the Herd Data is provided “as is” and does not constitute a recommendation or advice to take or omit any particular action,
  - in a way that does not promote or encourage illegal activity,
  - in a way that is not harmful, abusive, offensive or illegal or which infringes the rights of any third party (including but not limited to copyright and trade marks).

## **7. INTELLECTUAL PROPERTY RIGHTS**

Copyrights, trademarks, trade names, data base rights and other intellectual, industrial and/or proprietary rights (whether registered or not) in and related to the Service, including but not limited to DDW, are owned by the Company and/or its affiliates, suppliers or licensors. All rights not expressly granted by the Company in the Agreement are reserved by the Company.

## **8. COMPANY'S LIABILITY**

- 8.1** Subject to any separate agreement between the Parties, the Company aims at an uptime for the Services of 98 percent calculated on a monthly basis. The Company gives no warranties, express, implied or otherwise, as to the accessibility, quality, suitability, or accuracy of the Service and disclaims any warranties or conditions of merchantability, fitness for a particular purpose, title or non-infringement, other than as set out in this Agreement. Furthermore, there are situations when the Service will not be accessible, including but not limited to situations due to necessary maintenance and circumstances outside the control of the Company such as changes to third party software interacting with DDW, net access failure, which shall not be considered a fault in the Service and the Company shall not be liable to You on account thereof.
- 8.2** The Herd Data is provided "as is" and the Company gives no warranties, express, implied or otherwise, as to the accessibility, quality, suitability, or accuracy of the Herd Data and disclaims any warranties or conditions of merchantability, fitness for a particular purpose, title or non-infringement.
- 8.3** To the fullest extent permitted by applicable law the Company, its officers, directors, shareholders, predecessors, successors in interest, assigns, employees, agents, subsidiaries and affiliates, suppliers or licensors shall not be liable to You or any third party for any indirect, special or consequential loss or damages including but not limited to loss of data, capital, profits, revenue or goodwill arising out of or in connection with the Agreement or the use or inability to use all or part of the Service, even if advised of the possibility of such damages.
- 8.4** To the extent the Company is liable to indemnify You for any loss or damages, the Company's aggregate liability to You, whether for negligence, breach of contract or any other cause of action or omission in connection herewith shall be limited to the aggregate fees relating to the Service causing the damage, that You have paid during the 12 months preceding the event causing the damage.
- 8.5** The Company is committed to protecting DDW, the Service and Your information. While the Company takes reasonable precautions, no security measures are completely secure, and the Company does not guarantee the security of Your information or that viruses or other malicious code will not be transmitted to You via the Service at any time.
- 8.6** The Company shall not be liable to You for any claims made by third parties towards You.

## **9. TAKE DOWN FUNCTION**

The Company reserves the right to immediately close down Your access to DDW or remove Content that has been published, posted or uploaded in breach of the Agreement or otherwise is harmful for or has an adverse effect on the Company, the Data Provider or a third party, or is of a nature that in the Company's reasonable discretion for any reason calls for removal.

## 10. TERM AND TERMINATION

- 10.1** These Terms shall start to apply when accepted by You and shall remain in force until Your subscription expires or until terminated by either Party in accordance with this Section (the "Term"), provided that any rights and obligations in the Agreement that by its wording is intended to survive expiration or termination as set out in Section 13, shall not be affected by such expiration or termination.
- 10.2** The Company may by notification to Your email address terminate the Agreement and Your access to the Service with immediate effect if You commit a material breach of the Agreement (including but not limited to any breach of the provisions above in sections "User name, password and security" or "Rules of conduct"). The Company reserves the right to claim damages and all other rights provided by law.
- 10.3** The Company shall have the right to terminate Your access to the Herd Data of a certain Data Provider with immediate effect and without prior notice if that Data Provider notifies the Company that You are no longer authorised to access the Herd Data of the Data Provider or that the Company is restricted access to Herd Data of the Data Provider, in which case You will not be liable for any fees payable to the Company referring to such Herd Data. If You are only using the Service in relation to one Data Provider and the Company is restricted access to Herd Data of that Data Provider or that Data Provider notifies the Company that You are no longer authorised to access its Herd Data the Agreement will automatically terminate with effect from the last date of the then current calendar month without any further prior notice.
- 10.4** The Company shall furthermore have the right to terminate the Agreement and cease to provide access to the Service with immediate effect and without prior notice if required by law or an authority decision or because the Company ceases to provide the Service.

## 11. FORCE MAJEURE

The Company shall not be liable for any default or delay in the performance of its obligations under the Agreement if and to the extent the default or delay is caused, directly or indirectly, by fire, flood, elements of nature, acts of war, terrorism, or civil unrest or any other similar cause beyond the reasonable control of the Company. In such event, the Company is excused from further performance for as long as such circumstances prevail.

## 12. PERSONAL DATA

The Privacy Statement DairyDataWarehouse applies to use of the Service, and its terms are made a part the Agreement by this reference. To view the Privacy Statement DairyDataWarehouse, click [<here>](#). Additionally, by using the Service, You acknowledge and agree that internet transmissions are never completely private or secure. You understand that any message or information You send to or through the Service may be read or intercepted by others, even if there is a special notice that a particular transmission (for example, credit card information) is encrypted.

## 13. SURVIVAL

Notwithstanding anything else herein, all provisions in the Agreement which by their nature extend beyond the Term shall remain in effect after Termination, including, but not limited to, Sections 5.2, 6, 7, 8.2-8.6, 12, 16, 17 and 18.

## 14. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement and understanding between You and the Company in relation to the subject matter of the Agreement. Any representation, promise, or condition not explicitly set forth in this Agreement shall not be binding on either You or the Company. You confirm that You are not relying on any representations or warranties of the Company except as specifically set out in this Agreement. For the avoidance of doubt, this Agreement sets out the full liability of the Company and any and all obligations and liability provided by law possible to exclude is hereby excluded.

## **15. CHANGES TO THE AGREEMENT**

You acknowledge and agree that the Company may occasionally, at its own discretion, make changes to the Agreement, including these Terms of Use. When the Company makes changes to the Agreement You will be notified via the Service. Your continued use of the Service after those changes are made constitutes Your acceptance of the changes to the Agreement, which shall enter into force on the date of such continued use.

## **16. SEVERABILITY**

Should any provision of the agreement between You and the Company governed by this Agreement be deemed to be void, invalid, unenforceable or illegal, all other provisions shall continue in full force and effect and the Company and You shall agree to new provisions in substitution for such invalid provisions. Such new provisions shall as regards their contents and effect, be as close as possible to the original text as written, but adjusted in such a way that the rights or obligations intended can indeed be derived from them.

## **17. ASSIGNMENT**

**17.1** The Company has the right to assign all or parts of its rights and/or obligations under the Agreement to its affiliated companies and/or any other third party without Your approval.

**17.2** You may not assign Your rights or obligations under the Agreement.

## **18. APPLICABLE LAW AND COMPETENT COURT**

**18.1** The Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed and interpreted under the laws of the Netherlands, excluding its conflict of law rules, unless otherwise required by mandatory law of a member state of the European Union or any other jurisdiction.

**18.2** Any dispute, controversy or claim arising out of or in connection with the Agreement or any non- contractual obligation arising out of or in connection herewith, or the breach, termination or invalidity thereof, shall be exclusively brought before the courts of the Netherlands, using the District Court ("Rechtbank") of The Hague as the first instance.