



Customer Service Terms

Birdee Pty Ltd (ACN 625 421 712)



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1. Overview of Birdee

- (a) Welcome and thank you for using Birdee! We understand the importance of a seamless customer experience at your favorite retailers and we are here to make that happen. Our services include providing participating service providers (cafés, retailers and so on, collectively called “Providers”), with access to your customer profile and information to remove lengthy ordering and check-out processes through automation, allowing them more flexibility in customer service through the Birdee technology (collectively, “Services”).
- (b) Our site located at <https://birdee.solutions> (“Site”) is owned and operated Birdee Pty Ltd (ACN 625 421 712) (“we”, “us”, “our”). Please read these terms and conditions (“Terms”) carefully as they form a contract between you as a Site user and us (“Agreement”). By using the Services, you agree with and accept the Terms in this Agreement.
- (c) This Agreement and all policies and guidelines related to the Services, together with the Australian Consumer Law contained within Schedule 2 to the *Competition and Consumer Act 2010* (“Australian Consumer Law”), form the entire agreement between you and us. If you do not accept any Terms of the Agreement, please cease to use the Site immediately.
- (d) We reserve the right to amend the Terms at any time. You should revisit this page periodically to review the most current Terms. By continuing to use our Services, you accept the Terms as they apply from time to time.

2. Account Registration and Access to Services

- (a) To access our Services, you may register for a customer account (“Account”) and accept these Terms and our [Privacy Policy](#) which forms a contractual relationship between you and us and allows you access to our Services.
- (b) As part of the registration process and as a condition of your access to our Services, you may create one Account only and provide us with your current, complete and accurate identification, and other information (some of which is not mandatory) including, but not limited to, your name, phone number, photograph (ideally one that would allow Birdee to complete your facial recognition), valid email address, and password (“Registration Data”).
- (c) Without limiting this clause 2, you must be aged 18 years or older to be eligible to enter into this Agreement.
- (d) As soon as you become a registered user on Birdee, you will be recognised by our Providers. We may also provide you access to a user dashboard that allows you to see and verify your order history and interactions with the different service providers.
- (e) If your Registration Data changes, you must promptly update us to reflect those changes.
- (f) By accessing the Site and using our Services, you acknowledge and agree that:
 - (i) the provision of your Registration Data is made by you voluntarily and we have no control over the submission or uploading of your Registration Data;
 - (ii) you are responsible for maintaining the confidentiality of your Registration Data at all times;
 - (iii) your access to and use of our Services is non-transferable;
 - (iv) we may deny anyone access to an Account, our Services or the Site at any time and for any reason without notice;
 - (v) if you think your Registration Data or Account has been compromised in any way you should inform us immediately;

- (vi) we reserve the right, but are not obliged, to monitor, review, verify, edit, modify or delete material, content, data or information created, generated or transmitted by registered users through the Site ("User Content") and we do not control the accuracy of User Content; and
 - (vii) we are not obliged to confirm the identity of any Site user.
- (g) By registering for an Account, you agree that we may send you emails or text (SMS) messages as part of the normal business operation of your use of the Services. You may opt-out of receiving messages from us by contacting us and you acknowledge that opting out of receiving messages may impact your use of our Services.

3. User obligations

By accessing the Site or any Services, you agree to:

- (a) frequently check the email address you provide to our team, and acknowledge that such address will be the primary method by which we will communicate with you concerning any of the Services;
- (b) advise us of any difficulties or problems experienced by you with the Site, our Services, staff, or procedures immediately upon (or otherwise within a reasonable time of) occurrence of the problem or difficulty;
- (c) use the Services for lawful purposes only;
- (d) not commit any act or engage in any practice that:
 - (i) is harmful to our systems, reputation or goodwill; or
 - (ii) interferes with the integrity of the Site, including, but not limited to, by hacking, transmitting any viruses, spyware, malware or any other code of a destructive or disruptive nature;
- (e) not create Accounts with us through unauthorised means, including by using an automated device, script, bot or other similar means;
- (f) not restrict, or attempt to restrict, another user from using the Site;
- (g) not encourage or facilitate violations of the Terms;
- (h) not distribute or send communications that contain spam, chain letters, or pyramid schemes;
- (i) not harvest or otherwise collect information about others, including Registration Data, without their consent;
- (j) not bypass measures used to prevent or restrict access to our Services; and
- (k) not interfere with the privacy of, harass, intimidate, act violently or inappropriately towards or be discriminatory against another Site user.

4. Use of Services

Your cooperation in complying with these Terms is essential to ensure that all Birdee users can enjoy their experience with our Services. Without limiting any other provision of the Terms, you also agree not to do any of the following:

- (a) use the Services in a pornographic, defamatory, fraudulent, lewd, or obscene manner, including but not limited to infringing any third-party intellectual property or privacy rights, whether directly or in context or by juxtaposition with other services or products;
- (b) use the Services as part of a trademark, design mark, tradename, business name, service mark, or logo; or
- (c) modify, adapt, merge, decompile, disassemble, reverse engineer or create derivative works out of the Services.

5. User Content

- (a) You are solely responsible for any User Content:
 - (i) you post, publish or otherwise transmit through the Site;
 - (ii) you obtain through accessing or using the Site; or
 - (iii) you post, publish or otherwise transmit to any third-party platforms associated with us, such as our Facebook page or Instagram account.
- (b) You grant us a royalty free, worldwide, perpetual, irrevocable, non-exclusive, transferable, assignable, sub-licensable licence to use, reproduce, modify, copy, store and exploit your User Content for our business or commercial purposes. You warrant and guarantee that you have the right to grant this license to us in respect of any User Content which you post, publish or otherwise transmit User through the Site, including photographs of people. If your User Content includes images of people, you warrant and guarantee that you have that person's written permission to grant us this license, and you will furnish proof of that permission to us upon request.
- (c) The views expressed in any User Content are the views of users and not those of us unless specified otherwise. We are not responsible for and disclaim all liability in respect of any comments, views or remarks expressed in any User Content. We encourage you to report problems, offensive content, comments and malicious use of the Site.

6. Payment Terms

- (a) Now, or in the future, we may charge fees to users in consideration for the use of our Services or as a way for you to pay for a Provider's own services via the Birdee platform ("Fees"). All Fees are in Australian Dollars (AUD). We will be entitled to add on GST for any supply in Australia. We will inform you of any applicable Fees (including any applicable GST) prior to charging any Fee.
- (b) In this clause 6, "Payment Method" means a bank transfer, credit card or debit card payment made using our payment gateway, or other such method made available by us and notified to you. Your obligation to keep your Payment Method up-to-date at all times.
- (c) You as a Birdee user are responsible for paying any Fees that you owe to us. Except as otherwise provided on the Site, these Terms or our [Refunds and Cancellation Policy](#), Fees are non-refundable.
- (d) Except as required by law, we are under no obligation to refund any payment made by you, in part or in full, for any reason, including, without limitation, deactivation of your Account or discontinued use of our Services.
- (e) Please note that the Payment Method may involve the use of third-party payment service providers. These service providers may charge you additional fees when processing payments in connection with the Services. While we currently assist you by voluntarily absorbing the fees imposed by major applicable Payment Methods, we are not responsible for any such fees and disclaim all liability in this regard. Your Payment Method may also be subject to additional terms and conditions imposed by the applicable third-party payment service provider. Please review these terms and conditions before using your Payment Method.
- (f) We reserve the right to delay or cancel any payment for purposes of preventing unlawful activity, fraud, risk assessment, security or investigation.
- (g) We will take steps to rectify any payment processing errors that we become aware of. These steps may include crediting or debiting (as appropriate) the same Payment Method used for the original payment by you, so that you end up receiving or paying the correct amount

7. Intellectual Property Rights

- (a) The Site, our Services and all of our related services are subject to copyright. The material on the Site is protected under the laws of Australia and through international treaties.
- (b) In these Terms, “Intellectual Property (Rights)” means all intellectual property rights, including all copyright, patents, trade-marks, design rights, trade secrets, circuit layouts, source code, domain names, logos, button icons, scripts, design elements, graphics, know-how and other rights of a similar nature worldwide, whether registered or unregistered, and any applications for registration or rights to make such an application.
- (c) We own or are the licensee of all rights, title and interest (including Intellectual Property) in the Site or to the material (including all text information and content, graphics, logos and software) made available to you on the Site (collectively, “Site Content”). Your use and access of the Site do not grant or transfer any rights, title or interest to you in relation to the Site Content.
- (d) You may view the Site using a web browser or mobile device, and electronically copy and print in hard copy the Site Content solely for your personal and non-commercial use.
- (e) We retain all rights, title and interest in and to our Services and the Site. Nothing you do on or in relation to our Services or the Site will transfer any:
 - (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright;
 - (ii) right to use or exploit a business name, trading name, domain name, trade mark or industrial design; or
 - (iii) thing, invention, design, system, work or process that is the subject of a patent, registered design or copyright or any other Intellectual Property Right (or an adaptation, improvement, modification of such a thing, invention, design, system, work or process).
- (f) You must not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, commercially exploit, reverse engineer, create derivative works from, transfer or sell any Site Content or any other material in whatever form contained within the Site unless expressly stated otherwise in these Terms.
- (g) The obligations accepted by you under this clause survive termination or expiry of these Terms.

8. Third Party Links and Cookies

- (a) The Site may contain links and other pointers to Internet websites or applications operated by third parties. We do not control these linked websites and are not responsible for the contents of any linked website. Your access to any such website is entirely at your own risk. You should contact the relevant third-party directly to enquire on that information prior to entering into a transaction in relation to the third-party products and services.
- (b) As you use the Site, we may collect information about you from other people (such as the Payment Method account details required to process a transaction) and by using tracking technologies such as cookies, web beacons and other web analytics software or services. You can find out more in our [Privacy Policy](#).

9. Disclaimer

- (a) To the fullest extent permitted by law, you agree and acknowledge that:
 - (i) our Services (and any third-party products and services you access via our Services) are provided “as is” and “as available” and the entire risk arising out of your use of our Services remains solely

- with you;
- (ii) we do not guarantee the timeliness, completeness or performance of any aspect of the Services;
 - (b) we retain complete control over the Site and may alter, amend or cease the operation of the Site in our sole discretion;
 - (c) we make no warranty or representation that our Services or the Site will meet your expectations or requirements;
 - (d) we make no warranty or representation that the Site will be fit for purpose, continuous, uninterrupted, accurate, fault-free, virus-free, secure or accessible at all times; and
 - (e) while we endeavour to ensure that all information provided as part of our Services is correct at the time of publication, we make no warranty or representation that such information will be free of errors, omissions or inaccuracies. We may remove any content, material and/or information from the Site or the Birdee technology without giving any explanation or justification for removing the material and/or information.
 - (f) Nothing in this clause limits any rights you may have in respect of a Provider's use of the Site or Services. You may be the beneficiary of specific warranties or indemnities granted by Providers.

10. Exclusion and Limitation of Liability

- (a) To the fullest extent permitted by law, we are not liable to you or to anyone else for any direct or indirect loss or damage, including consequential loss, loss of data, reputation, goodwill and opportunity, arising out of or in connection with our Services or this Agreement. We exclude all representations, warranties or terms (whether express or implied) other than those set out in these Terms.
- (b) Pursuant to s64A of Schedule 2 of the Australian Consumer Law, this clause 10 applies in respect of services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Our liability for breach of a guarantee conferred by the Australian Consumer Law (other than those conferred by s51 to s53 of the Australian Consumer Law) is limited at our option to:
 - (i) the re-supply of the services or products; or
 - (i) the payment of the direct cost of having the services or products resupplied.

11. Privacy

We will collect, use and disclose any personal information you provide us when accessing using the Site in accordance with our Privacy Policy. For more information on our information collection and handling practices, please view our [Privacy Policy](#).

12. Indemnity

- (a) You agree to indemnify us for all losses, damages, liabilities, claims and expenses (including reasonable legal costs) incurred by us arising out of or in connection with your use of the Site, User Content, your breach of the Terms or any rights of third parties, except to the extent we directly caused or contributed to the loss, damage, liability, claim or expense.
- (b) We reserve the right, at our own expense, to assume the exclusive control of any matter otherwise subject to indemnification by you, and in such case, you agree to cooperate with our defence of such claim.

13. Termination

- (a) We may, in our sole discretion, remove your access to any Services and terminate this Agreement at any time.
- (b) You remain obligated to complete any outstanding payment for any Fees incurred before the termination date.
- (c) We reserve the right to:
 - (i) cease operating the Site, and cease providing the Services, without notice and for any reason; or
 - (ii) terminate our relationship with you without notice and with immediate effect if you, in any way, breach the Terms;
- (d) If one of the events described in clause 13(a), (b) and (c) occurs, then:
 - (i) you will not have any access to the Site or your Account; and
 - (ii) we will not otherwise be liable for any costs, losses or damages arising as a result of terminating your access to the Site.

14. Dispute Resolution

- (a) We reserve the right, but have no obligation, to monitor disputes between users.
- (b) *Compulsory process.* If a dispute arises out of or relates to this Agreement as between us and a user, either party may not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement ("Dispute") unless it has complied with this clause 15. A party claiming that a Dispute has arisen must notify the other party to the Dispute giving details of the Dispute.
- (c) *Initial Period.* During the 15-Business Day period after notice is given (or any longer period agreed in writing by the parties to the Dispute) (Initial Period) each party to the Dispute (Disputant) must cooperate and take all reasonable steps necessary to resolve the Dispute.
- (d) *Mediation.*
 - (i) If the Disputants are unable to resolve the Dispute within the Initial Period, each Disputant agrees that the Dispute must be referred for mediation to a mediator agreed on by the Disputant.
 - (ii) If the Disputants are unable to agree on a mediator within 7 days after the end of the Initial Period, then the parties must submit the dispute for mediation through the Law Society of Queensland and have the President of that Law Society appoint a Mediator and set the matter for mediation.
 - (iii) The role of the mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Disputant unless that Disputant has so agreed in writing.
 - (iv) Each Disputant must pay its own costs of complying with this clause 14(d). The Disputants must pay equally the costs of any mediator engaged.
 - (v) The mediation will be held in Queensland, Australia.
- (e) *Failure to Resolve.* After the Initial Period, a Disputant that has complied with this section may terminate the dispute resolution process by giving notice to each other Disputant. A party to a Dispute will only be entitled to pursue other remedies available to it at law or otherwise, if the parties have failed to resolve the dispute within 30 Business Days after commencement of dispute resolution.
- (f) *Confidentiality.* All communications concerning negotiations made by the Disputants in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable law of evidence.

15. No Waiver

No waiver of rights under this Agreement shall constitute a subsequent waiver of this or any other right under this agreement. Any failure on our part to enforce any right or provision of these Terms will not constitute a waiver of future enforcement of that right or provision.

16. Severability

If any provision of our Terms is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid and will not affect the enforceability or validity of the remaining provisions.

17. Law and Jurisdiction

These Terms are governed by and construed in accordance with the laws of Queensland, Australia. You submit to the non-exclusive jurisdiction of the Courts of Queensland and Courts of Appeal from them for determining any dispute concerning these Terms.

18. Force Majeure

Force Majeure means an event which is beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a Provider, third-party hosting provider or utility provider, strikes, fires, acts of God, and governmental action. Neither you or we shall be deemed to be in breach of these Terms for any delays or failures in the performance of either party which results from a Force Majeure.

19. Feedback and Contact

Your feedback is important to us and our community. We welcome and encourage you to provide feedback, reviews, comments and suggestions for improvements to the Site and our Service ("Feedback"). You may submit Feedback by contacting us at contact@birdee.solutions or by writing to:

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Terms last updated 23/01/2019.