

## **Terms and Conditions**

The Client and/or the Approved Client acknowledges that YMR is the operator of the Website offering referral, listing and advertising services to the Client and/or Approved Client and it **accepts and agrees to be bound by these terms and condition by continuing to use the Website**. YMR is not the Supplier nor is YMR the Supplier of the Supplier Products and the Client and/or Approved Client acknowledges that YMR is not the agent of the Supplier or of the Client. The Client and/or Approved Client acknowledges that YMR is not a provider of medical services usually supplied by a medical practitioner nor does YMR provide any technical or general medical advice.

### **1. Dictionary**

#### **Definitions**

The following words have these meanings in these terms and conditions unless the contrary intention appears:

Approved Client	means a person who is approved by YMR to use and access the Website and the words 'Approved Client' may be used interchangeably with the word 'Client'.
Client	means a person who may access the Website and the words 'Client' may be used interchangeably with the words 'Approved Client'.
Client Information	means any information about the Client which YMR may request the Client to provide from time to time and includes, without limitation, any credit card details of the Client.
Client Registration	means registration of the Client Information with YMR to enable the Client to become an Approved Client
Inventory Details	means any information about a Supplier Product which a Supplier is required to enter into the Website, including, without limitation, the cost and description of that Supplier Product and the Supplier's Terms.
Supplier	means the person who either owns the Supplier Product or will facilitate the supply of the Supplier Product such as a selling agent and/or assignee.
Supplier Product(s)	means any goods or services of the Supplier that are sold or advertised on Medical.com.au.
Supplier's Terms	means the terms and conditions of the Supplier for the sale of any Supplier Product to the Client.
Website	means Medical.com.au or such other Website operated by YMR from time to time.
Website Rules	means any terms, conditions agreements or rules which govern the use of the Website
YMR	means YourMedicalRep.com.au (Holdings) Pty. Ltd.

#### **Interpretation**

In these terms and conditions, unless the contrary intention appears:

- (a) a reference to "this Agreement" means the agreement reached between YMR and the Client on these terms and conditions;
- (b) words importing the singular shall import the plural and vice versa;
- (c) a reference to any gender shall be deemed to be a reference to all genders;

- (d) any headings have been provided for ease of reference only and shall not be used in the interpretation of these terms and conditions;
- (e) all powers, rights, remedies and authorities conferred upon the parties may be exercised on behalf of and in the name of them from time to time by any of their respective authorised solicitors or attorneys from time to time either authorised to act for them generally or in a particular case;
- (f) explanatory comments do not form part of these terms and conditions and are not legally binding;
- (g) a provision of these terms and conditions will not be interpreted against a party just because the party prepared the provision;
- (h) a reference to a clause, is a reference to a clause of these terms and conditions.;
- (i) a reference to a clause includes a reference to a sub-clause;
- (j) a reference to a Statute, Law, Regulation, Act or Regulation includes an amendment or re-enactment to those instruments and includes subordinate legislation in force under it;
- (k) a reference to these terms and conditions includes an amendment or supplement to, or replacement or novation of these terms and conditions;
- (l) a reference to a party to these terms and conditions or any other Agreement includes that party's successors, assignees, agents, directors, employees, associates contractors and sub-contractors;
- (m) a reference to an Agreement other than these terms and conditions includes an undertaking, Agreement or legally enforceable arrangement or understanding whether or not in writing; and
- (n) a reference to a person or words denoting a person or party includes any company, statutory corporation, partnership, joint venture, association, board, government or semi-government, agency or authority and that person's successors, assignees, employees, associates contractors and sub-contractors and legal personal representatives.

## **2. Application**

These terms and condition are effective from the date of this document and supersede all previous versions.

## **3. Use of the Website**

- (a) The Client agrees that its use of the Website and the purchase of any Supplier Products will be governed by these terms and conditions, the Website Rules and the Supplier's Terms.
- (b) The Client agrees that it will not access or use the Website or purchase any Supplier Product unless it is an Approved Client.
- (c) The Approved Client agrees and acknowledges that the Supplier and/or YMR, may at any time and in the Supplier and/or YMR's sole discretion, deem that the Approved Client is no longer an Approved Client.
- (d) The Approved Client agrees that it will be bound by the Website Rules as created and amended by YMR from time to time and honour its obligations pursuant to those Website Rules.
- (e) The Approved Client agrees that the Website Rules as created and amended by YMR from time to time form part of these terms and conditions and if there is any conflict between these terms and conditions and the Website Rules, then these terms and conditions will prevail.

## **4. Joining the Website**

- (a) The Client, before using the Website or purchasing any Supplier Product, will register its details with YMR on the Website or via any other means accepted from time to time by YMR.

- (b) The Client agrees to provide the Client Information to YMR upon its registration on the Website.
- (c) The Client warrants that the Client Information is true and correct in every detail, particularly its contact details, so that it may alerted to any changes to the Websites policies, terms or conditions.
- (d) Subject to these terms and conditions and the Website Rules, the Client shall be deemed to be an Approved Client by YMR upon registration of the Client Information as provided pursuant to this clause.

#### **5. Sale of the Supplier Product**

If the Approved Client purchases any Supplier Product on the Website, the Approved Client undertakes that:

- (a) it will pay the full purchase price for that Supplier Product within the trading terms of the Supplier; and
- (b) it will honour the Supplier's terms and conditions for the purchase in respect of that Supplier Product and it has the sole responsibility to satisfy itself of those terms and conditions.

Any payments required to be made for the purchase of a Supplier Product under these terms and conditions are to be made at the direction of YMR and YMR may appoint an agent for the collection of moneys owing pursuant to these terms and conditions from time to time. Any agent appointed by YMR from time to time is a collecting agent only and has no interest in the transaction giving rise to the moneys collected.

#### **6. Freight**

Freight of Supplier Products is in accordance with the terms of the Supplier. YMR does not guarantee or verify postage terms of the Supplier and is not liable for any loss, delay, damage or otherwise that occurs to the product during freight.

The Approved Client acknowledges that freight is a matter to be agreed upon between the Supplier and the Approved Client and YMR has no involvement in the freight of products.

#### **7. Customs Duties and Delays**

- (a) It is the Approved Client's responsibility to pay additional costs such as duties, taxes, and customs clearance fees for importation unless otherwise expressly advised by the Supplier in writing.
- (b) Import duties, taxes, and charges are not included in the item price or freight cost unless otherwise stated by the Supplier's Terms. These charges are the Approved Client's sole responsibility.
- (c) It is the Approved Client's responsibility to determine what additional costs are involved with importation and determine with the relevant receiving country's customs authority, prior to purchasing any Supplier Product, what is required for importation.
- (d) The Approved Client acknowledges that it is illegal to falsify customs declarations in order to avoid customs fees and the Supplier will prepare the necessary documentation in accordance with the relevant rules and regulations for the importation receiving county.

#### **8. Obligations of the Client**

The Client and Approved Client covenants and warrants that:

- (a) it has read and understood the Inventory Details and Supplier terms and conditions which relate to any Supplier Product;

- (b) it will uphold the good name and protect the goodwill and reputation of YMR and the Supplier at all times, and refrain from making defamatory or slanderous comments which may adversely affect YMR or the Supplier; and
- (c) it will not:
  - (i) infringe any laws, third party rights or our policies;
  - (ii) use YMR's services if it is not able to form legally binding contracts or is under the age of 18;
  - (iii) fail to pay for Supplier Products purchased;
  - (iv) circumvent or manipulate YMR's fee structure, the billing process, or fees owed to YMR;
  - (v) post any materials to the Website which is false, inaccurate, unlawful, harassing, libellous, defamatory, abusive, threatening, harmful, vulgar, obscene or objectionable and otherwise which may be likely to cause harm to YMR or the users of the Website;
  - (vi) transfer its account to another party without YMR's consent;
  - (vii) distribute or post spam, unsolicited, or bulk electronic communications or chain letters unless otherwise authorised by YMR;
  - (viii) distribute viruses or any other technologies that may harm YMR, or the interests or property of the Website users;
  - (ix) copy, modify or distribute content from YMR's copyrights and trademarks; or
  - (x) harvest or otherwise collect information about users, including email addresses, without their consent.
  - (xi) use the Website in such a way as to deny other users of unrestricted access to the Website; and
  - (xii) use the Website in a way that interferes with or obstructs the performance of the Website.

## **9. Compliance with Laws, Requirements and Guidelines**

- (a) The Client agrees and acknowledges that it must hold all necessary licences and comply with all legal and product manufacturer requirements relating to the purchase, storage, sale, marking or use of the products and information issued by product manufacturers from time to time.
- (b) The Client agrees and acknowledges that it must comply with all relevant adverse event reporting requirements as required by the Therapeutic Goods Administration or such other regulatory bodies as they may apply from time to time.
- (c) The Client has the onus of ensuring the Supplier Product is listed on the Australian Register of Therapeutic Goods (ARTG), or such other register as relevant to the receiving county, and if not, it is the Client's sole responsibility to do all other things necessarily required to have the product approved for importation into Australia or such other jurisdiction as may apply.
- (d) To the extent permitted by law, YMR makes no representations, warranties, representation or otherwise leads the Client to believe that any of the products on the Website are approved or in any way supplied by the Supplier in accordance with any legislation, regulations, guidelines or regulatory framework as it applies to any relevant jurisdictions and that any representations made to this effect are made by the Supplier, without consent, approval or Agreement with YMR.

## **10. Powers of YMR**

The Client and Approved Client agrees that:

- (a) YMR may modify the Website in any way without notice to the Client or the Approved Client;
- (b) YMR may, at any time and in its sole and absolute discretion, restrict the Client or the Approved Client from accessing the Website or any part of the Website; and
- (c) YMR may modify these terms and conditions without being obliged to give reasons for the modification and upon the giving of five (5) days notice to the Client or Approved Client and such modifications will apply from such dated being six (6) days from the date of the said notice.

## **11. Representations and Warranties**

The Client and the Approved Client acknowledge that it has not relied on anything supplied by YMR as an inducement to purchase a Supplier Product. The Client and Approved Client further acknowledge that YMR has not made any representation or given any warranties:

- (a) in relation to the Website whatsoever;
- (b) that any statistical data provided on the Website with respect to any purchases made by the Client and/or Approved Clients and any other accounting information is accurate or up-to-date and the Client or Approved Client should check the accuracy of any such statistical information against its own records;
- (c) in relation to any Supplier Product whatsoever;
- (d) in relation to the accuracy of any Inventory Details;
- (e) that the Supplier will comply with the Supplier's Terms in any way;
- (f) that any Supplier Product is available for sale by the Supplier at the time that the Client or the Approved Client elects to purchase that Supplier Product;
- (g) that the Supplier will sell the Supplier Product to the Client or Approved Client; or
- (h) that the Supplier Product will be of merchantable quality or suitable for the needs of the Client in any way, even if the intended use of the product by the Client is disclosed to YMR, or that the Supplier will provide a guarantee with respect to the Supplier Product.

## **12. Refunds**

The Approved Client acknowledges that all warranty and return policies that apply are those of the Supplier of each product and YMR makes no representation about warranties, fitness for intended purpose, merchantable quality or accuracy of the product's description and has no legal responsibility to that effect.

## **13. Indemnity**

The Client and/or the Approved Client indemnify and keep indemnified YMR, its employees and sub-contractors against any loss, expense, cost, damage (actual and consequential), claim, demand, lawsuit, action, proceeding, judgement, order of a court or tribunal, legal fees (on a solicitor and own Client basis) which YMR pays, suffers or incurs or is liable for of every kind and nature, known and unknown, arising out of or in any way in respect of:

- (a) any act, omission or negligence of the Client or the Approved Client intended or otherwise;
- (b) any act or omission of the Client or the Approved Client which is intended by the Client or the Approved Client to cause damage in any way to YMR;
- (c) any breach by the Client or the Approved Client of these terms and conditions;
- (d) the failure of the Client or the Approved Client to comply with the Supplier's Terms; or
- (e) Any other act or omissions outside of YMR's control.

#### **14. Disclaimer**

- (a) YMR gives no express or implied warranty in relation to the provision and functionality of the Website and the Client and Approved Client acknowledges that it has not relied on any representation or warranty made by or on behalf of YMR in relation to the Website or its contents.
- (b) YMR will use its reasonable endeavours to keep secure any Client Information which the Client or Approved Client provides to YMR, however, the Client and Approved Client acknowledge that YMR has made no representations, nor given any warranties that the Client Information will be secure in any way whatsoever.
- (c) Any warranties or conditions implied by law, either by statutory instrument or otherwise, are expressly excluded to the extent that such warranties and conditions in respect of YMR Services may be lawfully excluded.
- (d) To the extent permitted by law, if YMR is or becomes liable to the Client or Approved Client in any manner whatsoever for breach of warranty or statutory warrant or in relation to the supply of any defective goods or services, then YMR's liability will be limited solely to the price paid by the Client for those goods or services or the cost of their re-supply, whichever YMR determines at its sole discretion. There is no liability for non-consequential loss.
- (e) The Client or Approved Client acknowledges that it has undertaken its own inspections and made its own independent enquiries in reaching its decision to:
  - (i) use the Website;
  - (ii) use the listing and/or referral services supplied by YMR; and
  - (iii) enter into this Agreement.

#### **15. Breach & Termination**

Without limiting other remedies available at law, in equity or these terms and conditions, YMR may, without notice to the Approved Client and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances), issue a warning, restrict activities through the Website, temporarily suspend or terminate the Approved Client's authorisation to use the Website at any time and shall not be obliged to give reasons for the decision if:

- (a) The Approved Client is believed to have, or has, breached these terms and conditions;
- (b) YMR is unable to verify or authenticate any information provided by the Approved Client; or
- (c) The Approved Client's actions may cause loss or damage to or otherwise unlawfully harm itself, our users, third parties or YMR, its related bodies corporate or affiliates, directors, employees or agents.

The obligations of the Client and Approved Client under each of the clauses of these terms and conditions survive the suspension, restriction or termination of the authorisation to use the Website and continue to apply insofar as applicable by law.

#### **16. Costs**

YMR and the Client or Approved Client will each bear their own costs and stamp duties incurred (including fees, charges, registration costs, expenses and legal charges on a solicitor and own Client basis) of and incidental to the preparation and execution, of these terms and conditions.

#### **17. Assignment**

- (a) YMR shall have the right to assign its rights and liabilities arising under these terms and conditions as it so chooses to any extent it sees fit.
- (b) The Client or Approved Client is not entitled to assign or purport to assign any of its rights or liabilities under these terms and conditions without the prior written consent of YMR in its complete discretion.

## 18. GST

- (a) In this clause, the following words have these meanings:
- (i) "GST Act" means A New Tax System (Goods and Services) Tax Act 1999.
  - (ii) The terms "GST", "GST-free", "input taxed" and "value" retain the same meaning as in the GST Act.
  - (iii) "Additional Amount" means, in respect of each Taxable Supply, the amount calculated in accordance with subclause (c).
  - (iv) "Charges" means, in respect of each Taxable Supply, the monies payable by the Client to YMR or by the Client to any third party in respect of that Taxable Supply.
  - (v) "Consideration" means, in respect of each Taxable Supply, the sum of the Charges and the market value of any non-monetary consideration provided by the Client (or its agent) to YMR or to any third party as consideration for that Taxable Supply.
  - (vi) "Cost Savings Percentage" are the percentage reduction in the overall costs of running the business of YMR which are directly related to the introduction of the GST and the removal of any wholesale sales tax.
  - (vii) "Taxable Supply" means any taxable supply (as the term is defined in the GST ACT) which YMR makes to the Client in respect of this Agreement.
- (b) The Client agreed that for each Taxable Supply:
- (i) The Consideration is deemed to be the value of the Taxable Supply and the Client, in addition to the Consideration, will pay the Additional Amount to the Supplier, its agent or the website payment gateway as applicable from time to time.
  - (ii) The Additional Amount will be due and payable at the same time that the Client must pay the Consideration in accordance with this Agreement.
- (c) In respect of each Taxable Supply, the Additional Amount is:
- (i) 10% of the value of the Taxable Supply; or
  - (ii) if that Taxable Supply is GST-free or input taxed, then the Additional Amount is nil.
- (d) The Client acknowledges that Supplier has taken into account the Cost Savings Percentage in setting out the Consideration payable by the Client in respect of each Taxable Supply.
- (e) The Client agrees that it will not dispute any calculation of the Cost Saving Percentage, the Additional Amount and the Consideration and that such calculations are final.

## 19. Governing Law and Submission to Jurisdiction

These terms and conditions and any dealings with YMR are formed in accordance with the laws of the state of Victoria, Australia and will be construed in accordance with those laws. The laws and regulations of Victoria apply to the formation of contract, agreement or otherwise as governed by these terms and conditions and the Website, or any other law in so far as it may apply to YMR, the Approved Client, Supplier or any another associated persons or entities having dealings with or on behalf of the aforementioned. The Client and/or Approved Client agree to irrevocably submit to the non-exclusive jurisdiction of the courts of the state of Victoria and any courts which may hear appeals therefrom.

## 20. Sole Agreement

These terms and conditions, together with the Website Rules and Supplier Terms exclusively and completely state the rights and liabilities of the parties and embody the entire understanding of the parties and there are no promises, terms, conditions or obligations oral or written, express or implied

other than those officially published on the Website. These terms and conditions supersede all other negotiations, representations and prior Agreements, whether written or oral.

**21. Severability**

If any provision in these terms and conditions is held to be invalid or unenforceable in whole or in part, the provision is ineffective only to the extent of the invalidity or unenforceability of such provision and that ineffective part shall be severed from these terms and conditions and the validity of any other provision in these terms and conditions, or of the remainder of the provision being severed shall not be affected.

**22. General**

- (a) Each party warrants by executing or agreeing to abide by these terms and conditions that they have obtained or had the opportunity to obtain independent legal and financial advice on these terms and conditions.
- (b) An obligation imposed on two or more persons binds each of them jointly and severally.
- (c) Each of the obligations of the Client or Approved Client under these terms and conditions is unconditional and irrevocable and continues without limitation.
- (d) A party may validly give notice to another party only by:
  - (i) personally serving the notice on the other party (the notice is treated as received at the time of service of the notice);
  - (ii) leaving the notice at the address for the party specified in these terms and conditions or as otherwise notified in writing by that party to the sending party at any time (the notice is treated as received at the time the notice is left at the relevant address);
  - (iii) emailing the notice to the email address of the other party and the email will be deemed to have been received within 24 hours of the time the email is sent;
  - (iv) posting the notice by prepaid post to the address of that party as specified in these terms and conditions or as otherwise notified in writing by that party to the sending party from time to time (the notice is treated as received 5 days after the date on which it is posted); and
  - (v) sending the notice by facsimile, without transmission error (the notice is treated as received on production of a “successful transmission” notice) to the facsimile number of the party.
- (e) The Client and Approved Client is bound under these terms and conditions not only in its own capacity but also in its capacity as trustee of each trust of which it is trustee, as a company director in each company it operates or any other legal capacity which may apply.
- (f) YMR and the Client and Approved Client agree to do all acts, matter and things, including the execution of all documents required for the purposes of enforcing and applying these terms and conditions.
- (g) Waiver by YMR of a breach of, or default under, these terms and conditions by the Client of any right, power, authority, discretion or remedy created or arising upon a breach of, or default under, these terms and conditions:
  - (i) is not waived by any failure to exercise or delay in exercising or partial exercise of any right, power, authority, discretion or remedy under these terms and conditions by YMR; and
  - (ii) must be in writing and signed by the party granting the waiver.

The covenants, conditions, provisions and warranties contained in these terms and conditions will not merge or terminate upon completion of the transactions contemplated by these terms and conditions, but to the extent that they have not been fulfilled and satisfied or are incapable of having effect will remain in full force and effect.