

Terms Of Use

About the Website

Welcome to www.midmed.com.au (the 'Website'). The Website provides you with an opportunity to browse and obtain information on the various products that have been listed through the Website (the 'Products'). The Website provides this service by way of granting you access to the content on the Website (the 'Purchase Services').

The Website is operated by Midmed Pty Ltd PTY. LTD. (ABN 98 066 671 743). Access to and use of the Website, Products, and the Purchase Services, is provided by Midmed Pty Ltd subject to these Terms. Please read these terms and conditions (the 'Terms') carefully. By using, browsing and/or reading the Website, you agree to the Terms. If you do not agree with the Terms, you must stop using the Website and the Purchase Services, immediately. You will also accept the Terms by clicking to accept or agree to the Terms where this option is made available to you by Midmed Pty Ltd in the user interface.

These Terms are subject to change from time to time. Midmed Pty Ltd will endeavour to post a notice of any changes to these Terms for a period of 30 days following any such change. Therefore, you are advised to review these Terms occasionally, or at least every 30 days. Your continued use of this Website subsequent to Midmed Pty Ltd's notice of change of these Terms will constitute your acceptance of the changed Terms.

Pricing

All prices and offers are in Australian dollars unless otherwise stated and are subject to availability and may change before (but not after) Midmed Pty Ltd accepts your order.

Prices available on the Website are only applicable for purchases made online through the Website. If there are separate charges for packing, carriage or other relevant charges, the appropriate rates will be clearly specified on your online order when you proceed through the online checkout process.

Unless otherwise stated, all prices referred to on the Website are inclusive of GST or any other value added or withholding taxes. In relation to any GST payable for a taxable supply (under GST Law) by a party, the recipient of the supply will pay the GST subject to the supplier providing a tax invoice (as defined under GST Law). Terms used in this clause which are defined in the GST Act have the same meaning as in the GST Act. For the purpose of this clause "GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth) as amended from time to time.

Australian Consumer Law

Nothing in these Terms is intended to limit any right you or your customers may have under any laws in any jurisdiction relating to protection of consumers, including the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* ('Consumer Law'). If Consumer Law, or other law, states there is a guarantee in relation to any goods or services supplied by Midmed Pty Ltd, and Midmed Pty Ltd's liability for failing to comply with that guarantee cannot be excluded, but may be limited, then to the extent permitted by law, Midmed Pty Ltd's liability for breach of a condition or warranty under any legislation is limited to the following remedies (in its absolute discretion):

- in the case of goods, any one or more of the following:
 - the replacement of the goods or supply of equivalent goods;
 - the repair of the goods;
 - the payment of the costs of replacing the goods or of acquiring equivalent goods; or

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- the payment of the costs of having the goods repaired; and
 - in the case of services:
 - supply of the services again; or
 - the payment of the cost of having the services supplied again.

Warranty

Midmed Pty Ltd's goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- to cancel your service contract with Midmed Pty Ltd; and
- to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service'.

Without limiting and in addition to your rights under Consumer Law, you may make a claim under this clause for material defects in the Products (the 'Warranty Claim') within 12 months from the date of purchase (the 'Warranty Period').

In order to make a Warranty Claim during the Warranty Period, you must provide proof of purchase to Midmed Pty Ltd showing the date of purchase of the Products, provide a description of the Products and the price paid for the Products by sending written notice to Midmed Pty Ltd at Unit 4, 62 Borthwick Avenue, Murarrie, Queensland, 4172 or by email at customerservice@midmed.com.au. Midmed Pty Ltd's phone number is 1300 643 633.

Where the Warranty Claim is accepted then Midmed Pty Ltd will, at its sole discretion, either repair or replace any materially defective Products or its parts with a new or remanufactured equivalent during the Warranty Period at no charge to you for parts or labour. You acknowledge and agree that you will be solely liable for any postage or shipping costs incurred in facilitating the Warranty Claim.

Subject to Consumer Law, a Warranty Claim is the only warranty granted by Midmed Pty Ltd.

The Warranty does not apply to Products where the exterior of which has been damaged or defaced, or which has been subjected to misuse, abnormal service or handling, service or use not otherwise in accordance with the Product's instructions, or which has been altered or modified in design or construction.

Copyright and Intellectual Property

In these Terms, 'Intellectual Property' means: business names, trade marks, trade mark applications, patents, patent applications, copyrighted materials, designs (registered or unregistered), technologies, trade secrets, products, processes or other proprietary rights.

Midmed Pty Ltd or third parties, own Intellectual Property that subsists in:

- the Website; and
- the Website's content and compilation of the Website (including text, graphics, logos, button icons, video images, audio clips and software) (the 'Content'); and
- the Products.

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Subject to these Terms, Midmed Pty Ltd grants you a non-exclusive, non-transferable, and revocable limited licence to:

- view and download information directly accessible from the Website; and
- use the Products for the purpose that the Product is designed for and/or notified to you (including in any instruction manual or on the Website)('Permitted Purpose').

Subject to your use of the Website and Products in accordance with the limited licence granted to you, you must not:

- infringe our rights, or the rights of third parties, in any Intellectual Property subsisting in the Website, Content, or the Products; and
- modify, copy, republish, frame, distribute or communicate any part of the Website or Content or otherwise use them in a way which will infringe our or a third parties' Intellectual Property or other property rights; and
- use the Product other than for the Permitted Purpose.

Midmed Pty Ltd may, by notice to you, revoke or suspend your license in its discretion (acting reasonably), including for any breach by you of these Terms.

Midmed Pty Ltd retains all rights, title and interest in and to the Website and all Content. Other than as set out in these Terms, nothing you do on or in relation to the Website, Content or Products gives you any interest in, or right to use or exploit Midmed Pty Ltd's:

- Intellectual Property; or
- systems or processes that are the subject of a patent, registered design or copyright (or an adaptation or modification of such a system or process).

You must not, without the prior written permission of Midmed Pty Ltd and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Content or third party content for any purpose. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

User Content

Subject to Midmed Pty Ltd's Privacy Policy, any content that you submit to the Website or Midmed Pty Ltd, whether directly or through a third-party website ('User Content') will be deemed to be non-confidential and may be disclosed to unknown persons on a worldwide basis without control by Midmed Pty Ltd, including for browsing, downloading, printing and other uses by such other persons or entities.

You agree not to submit User Content to this Website or Midmed Pty Ltd except for User Content that is fully authorised for purposes of this Website and these Terms, and by posting User Content on this Website, you warrant and represent that you own the rights to the User Content or are otherwise authorized to post, distribute, display, perform, transmit or otherwise distribute User Content. It is your obligation to determine the extent to which User Content you submit is protected by applicable intellectual property laws.

Privacy

Midmed Pty Ltd takes your privacy seriously and any information provided through your use of the Website and/or the Purchase Services are subject to Midmed Pty Ltd's Privacy Policy, which is available on the Website.

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General Disclaimer

Subject to Consumer Law, you acknowledge that Midmed Pty Ltd does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Products other than provided for pursuant to these Terms.

Midmed Pty Ltd will make every effort to ensure a Product is accurately depicted on the Website, however, you acknowledge that sizes, colours and packaging may differ from what is displayed on the Website.

Subject to this clause, Consumer Law, and to the extent permitted by law:

- All terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and
- Midmed Pty Ltd will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from Midmed Pty Ltd's failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Purchase Services or these Terms (including as a result of not being able to use the Purchase), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

Use of the Website and any contained Product Information, is at your own risk. Everything on the Website and the Products, are provided to you on an "as is" and "as available" basis, without warranty or condition of any kind (subject to Consumer Law). None of the affiliates, directors, officers, employees, agents, contributors, third party content providers or licensors of Midmed Pty Ltd make any express or implied representation or warranty about the Content and Products (subject to Consumer Law). This includes (but is not limited to) and you indemnify Midmed Pty Ltd against, Loss you might suffer in connection with any of the following:

- Failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- The accuracy, suitability or currency of any information on the Website, the Purchase Services, or any of the Content (including third party material and advertisements on the Website);
- Costs incurred by you, or any Claim brought by or made against you in connection with the Website or any of the Products;
- The Content or operation in respect to links which are provided for your convenience; or
- Any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

No interference with Website

You agree and acknowledge that:

- you will not use any device, software or other instrumentality to interfere or attempt to interfere with the proper working of the Website including, without limitation, through the use of any malicious or unauthorised code, virus, worm, trojan horse, malware, or program;
- you will not take any action that imposes an unreasonable or disproportionately large load on the Website, server and system;
- you are prohibited from using the Website in any threatening, libellous, slanderous, defamatory, obscene, inflammatory, pornographic, discriminatory, or otherwise offensive manner; and
- Midmed Pty Ltd may in its absolute discretion, revoke or deny your access to the Website.

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Termination of Contract

The Terms will continue to apply until terminated by either you or by Midmed Pty Ltd as set out below.

If you want to terminate the Terms, you may do so by:

- Notifying Midmed Pty Ltd at any time; and

Your notice must be sent, in writing, to Midmed Pty Ltd via the 'Contact Us' link on the Website homepage.

Midmed Pty Ltd may at any time, terminate the Terms with you if:

- You have breached any provision of the Terms or Midmed Pty Ltd believes you intend to breach any provision;
- Midmed Pty Ltd is required to do so by law;

When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Midmed Pty Ltd have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, will be unaffected and continue.

Indemnity

You agree to indemnify Midmed Pty Ltd, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- All Claims and Loss (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your use of the Website or reliance on any Content ;
- Any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so and any breach by you or your agents of these Terms; and
- Any breach of these Terms;
- personal injury or death of any person in connection with use of the Products.

In these Terms:

- 'Claims' means any claim, action, cause of action, demand or proceeding however arising and whether present or future, known or unknown, actual or contingent.
- 'Loss': means direct, incidental, consequential or indirect loss or damages, damage, expense loss or corruption of data, loss of profits, goodwill, bargain or opportunity, loss of anticipated savings or any other similar or analogous loss, whether present or future, known or unknown, actual or contingent.

Dispute Resolution

With respect to any and all disputes arising out of or in connection with the Website or these Terms (including without limitation Midmed Pty Ltd's Privacy Policy), Midmed Pty Ltd and you agree to negotiate in good faith and undertake reasonable efforts to cooperate with one another in order to achieve a mutually satisfactory resolution.

Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or

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Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

Notice:

A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the Dispute, the desired outcome and the action required to settle the Dispute.

Resolution:

On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:

- Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;
- The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- The mediation will be held in Brisbane, Australia.

Confidential:

All communications concerning negotiations made by the Parties arising out of and 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 laws of evidence.

Termination of Mediation:

If 2 weeks have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

Venue and Jurisdiction

The Products offered by Midmed Pty Ltd is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any Dispute will be in the courts of Queensland, Australia.

Governing Law

The Terms are governed by the laws of Queensland, Australia. Any Dispute, controversy, proceeding or Claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby will be governed, interpreted and construed by, under and pursuant to the laws of Queensland, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms are binding to the benefit of the parties hereto and their successors and assigns.

Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part will be severed and the rest of the Terms remain in force.

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Force Majeure

Midmed Pty Ltd is not liable for any delay or failure to perform under these Terms if such delay is due to any circumstance beyond Midmed Pty Ltd's reasonable control.



Rob Muller
Managing Director
11th September 2020

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