

**TERMS AND CONDITIONS****1. ACCEPTANCE**

- 1.1 These Terms are between Physioward Pty Ltd (ACN 617 015 344) t/a PhysioWard Online, its successors and assignees (referred to as “we”, “us” or “our”) and you, the person, organisation or entity that purchases Services from us (referred to as “you” or “your”), and collectively the Parties. These Terms apply to all sales made by us to you.
- 1.2 You have requested the Services, described on and able to be ordered via our Site. You accept these Terms by:
- ticking the online acceptance box;
  - confirming by email that you accept the Terms;
  - instructing us to proceed with the Services; or
  - paying any Deposit required, or making part or full payment for the Services, set out in our tax invoice to you (**Invoice**).
- 1.4 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Services indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.
- 2.3 We will not commence performing the Services until you have paid the Deposit or first instalment of our Fee.

**2. SERVICES**

- 2.1 Access to some of our Services will require you to register for an account. It is your responsibility to keep the details of your account, including username and password, confidential. You are liable for all activity on your account, including any purchases made using your account details.
- 2.2 We agree to perform the Services with due care and skill.
- 2.3 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.
- 2.4 The estimated period for us to perform the Services is set out on our Site, subject to our availability.
- 2.5 We may provide the Services to you using our employees, contractors and third party

providers, including PhysiTrack, PhysiApp and Zendesk Chat, and they are included in these Terms.

- 2.6 Third parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third parties.
- 2.7 If you request Variations, we have discretion as to whether we accept them and whether an adjustment to the Fee may be required. If we are unable to accommodate the Variation, we may request that we be paid for Services performed to date and terminate these Terms.
- 2.8 If we agree to perform a Variation, we will inform you of any Variation Fee. You must pay the Variation Fee before we commence the Variation. We will invoice you accordingly for the Variation.

**3. FEE, INVOICING AND PAYMENT**

- 3.1 You agree to pay us the amounts set out on our Site, including any Deposit required. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable). Payment may be made by way of credit card, PayPal or other payment methods as set out on the Site when purchasing our Services.
- 3.2 You agree to pay our Invoices by the payment date set out on the Invoice. If you do not pay by the payment date, we may cease to provide the Services to you until we receive payment.
- 3.3 We may charge interest at a rate equal to the Reserve Bank of Australia’s cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
- 3.4 If Invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.5 In the event that access to our Services requires subscribing to our Services, you agree to pay us the applicable Subscription Fees as set out on the Site. The Subscription Fee for the first month (as applicable) shall be paid at the time you subscribe for the Services. Future Subscription Fees shall automatically be charged to your credit card (details of which you provide upon subscription) on a weekly basis depending on the type of subscription you purchase. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable).
- 3.6 If we do not receive a Subscription Fee in full within 3 Business Days of its due date for any reason, we will stop providing you with the Services.

3.7 You may cancel the Services in accordance with clause 9. If you do so, you may not receive a refund of any Subscription Fees which you have paid up to the date of cancellation but we will not charge any further Subscription Fees to your credit card.

3.8 We reserve the right to report bad debts to independent credit data agencies.

3.9 Our pricing structure, payment methods and these Terms may be amended from time to time at our discretion. The changes will apply to you for Services provided to you after the date of the change, and in any event no earlier than the date that the amended or new Terms are provided to you. After a pricing change, you have the choice to continue using the Services, or to cease to use the Services without penalty.

#### 4. YOUR OBLIGATIONS AND WARRANTIES

4.1 You warrant that you will not employ, canvass, solicit, entice, induce or attempt to employ any employee or contractor that was employed by or contracted to us during the time that we provide Services to you or the 12 month period prior to that time.

4.2 You warrant that throughout the term of these Terms that:

- (a) there are no legal restrictions preventing you from agreeing to these Terms;
- (b) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
- (c) you will provide us with an accurate and up to date medical history;
- (d) you will use the PhysiApp software, if required by us, to enable us to provide the Services to you;
- (e) the information you provide to us is true, correct and complete;
- (f) you will not infringe any third party rights in working with us and receiving the Services;
- (g) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (h) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (i) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;

(j) if applicable, you hold a valid ABN which has been advised to us; and

(k) if applicable, you are registered for GST purposes.

#### 5. OUR INTELLECTUAL PROPERTY

5.1 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.

5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.

5.3 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.

5.4 You must not breach our Intellectual Property rights by, including but not limited to:

- (a) altering or modifying any of the Materials;
- (b) creating derivative works from the Materials; or
- (c) using our Materials for commercial purposes such as onsale to third parties.

5.5 We will license the Licensed Material to you upon your payment for our Services pursuant to clause 3.

5.6 We grant you a royalty-free, perpetual, exclusive, revocable, Australia-wide and non-transferable licence to use the Licensed Material for personal purposes only, and not to sell, distribute or circulate the Licensed Material to third parties.

5.7 This clause will survive the termination of these Terms.

#### 6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

6.1 You agree to provide information including any Intellectual Property to us to enable us to provide the Services. You:

- (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
- (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
- (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.

6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:

- (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us;
- (b) irrevocably consent to us using or applying the Intellectual Property without any attribution of authorship;
- (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
- (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.

6.3 This clause will survive the termination of these Terms.

## 7. CONFIDENTIAL INFORMATION

7.1 We, including our employees and contractors, agree not to disclose your Confidential Information to any third party (other than, where necessary, to third party suppliers, as required by law or as set out in our Privacy Policy, which is available on the Site); to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you to provide better quality services to you and not for any other purpose.

7.2 You, including your employees and contractors, agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use the Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.

7.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

7.4 This clause will survive termination of these Terms.

## 8. FEEDBACK AND DISPUTE RESOLUTION

8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at the initial meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

## 9. TERMINATION

9.1 Either Party may terminate these Terms without cause by notice per the Notice Period.

9.2 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

9.3 We may terminate these Terms immediately, in our sole discretion, if:

- (a) you commit a non-remediable breach of these Terms;
- (b) we deem that based on our assessment of your medical history and/or medical condition, you are unsuitable to receive our Services;
- (c) you commit a remediable breach of these Terms and do not remedy the breach within 10 days after receiving notice of the breach;
- (d) we consider that a request for the Service is inappropriate, improper or unlawful;
- (e) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (f) we consider that our working relationship has broken down including a loss of confidence and trust;
- (g) you act in a way which we reasonably believe will bring us or our Site into disrepute;
- (h) you provide us with incorrect payment details or any other incorrect information; or
- (i) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe.

- 9.4 On termination of these Terms you agree that any Deposit or payments made may not be refundable to you, and you are to pay for all Services provided prior to termination, including any Services which have been performed and have not yet been invoiced to you.
- 9.5 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.
- 9.6 On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.
- 9.7 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
- 9.8 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 10.2 We guarantee that the Services we supply to you are rendered with due care and skill, fit for the purpose that we advertise, or that you have told us you are acquiring the Services for, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time.
- 10.3 Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 10.4 **Delay:** Where the provision of Services depends on your information or response or your use of PhysiApp, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response; supply of incomplete or incorrect information; or your improper use of PhysiApp. You acknowledge that our provision of the Services to you depends, in part, on the functionality of your computing or smart device system and we give no guarantees that our Services will be compatible with your system.
- 10.5 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 10.6 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.7 **Refund:** In the event that you terminate our Services in accordance with these Terms, we may, in our sole discretion, and based on the extent that we have provided our Services to you, offer you a partial or full refund of payments you have made to us in accordance with clause 3 of these Terms. If you have paid for our Services which have not yet been provided to you and we subsequently deem you unsuitable to receive our services pursuant to clause 9.3 (b), we will offer you a full refund of your payment.
- 10.8 **Availability:** To the extent permitted by law, we exclude all liability for:
- the Services being unavailable; and
  - any Claims (whether direct, indirect, incidental, special, consequential and/or incidental), for personal injury, loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Services, or the late supply of Services, even if we were expressly advised of the likelihood of such loss or damage.
- 10.9 **Not medical advice disclaimer:** We provide qualified physiotherapists to provide the

Services, but such physiotherapists are not medical practitioners. You agree that any information, insights or guidance contained in our Services or Materials is not an attempt to practice medicine or provide medical advice of equal calibre to manual therapy. It is not to be used or relied on for any in-person diagnostic or treatment purposes or manual therapy. Use of our Services or Materials does not establish a doctor-patient relationship. The Materials should not be used as a substitute for professional in-person diagnosis and treatment or manual therapy. Any information in our Materials is provided simply for your convenience and information.

10.10 The Site, Services and Materials may support the relationship between you and your medical practitioner, but are not intended to replace it.

10.11 The results of our Services and the effectiveness of your treatment is entirely dependent on your adherence to the Services we provide to you. We do not guarantee that our Services will be suitable or effective for your particular condition.

10.12 You are solely responsible for determining the suitability of any of the Services, and your reliance on any information that is provided to you through our Services or Materials are at your own risk. It is your responsibility to ensure that you do not exceed your limits while in receipt of our Services and in the event that you become aware of any detriment to your condition, health or welfare, you must immediately cease to use our Site, Services or Materials, contact your medical practitioner and inform us of your experience.

10.13 **Limitation:** To the extent permitted by law, our total liability arising out of or in connection with the Services, however arising, including under contract, tort including negligence, in equity, under statute or otherwise, is limited to us re-supplying the Services to you, or, at our option, us refunding to you the amount you have paid us for the Services to which your claim relates. Our total liability to you for all damages in connection with the Services will not exceed the price paid by you under these Terms for the 12 month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.

10.14 This clause will survive termination of these Terms.

## 11. INDEMNITY

11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and

reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) your breach of these Terms;
- (c) any misuse of the Services, the Site or the Materials by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

11.3 This clause will survive termination of these Terms.

## 12. GENERAL

12.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

12.2 **Publicity:** You consent to us using advertising or publically announcing that we have provided Services to you, including but not limited to mentioning you on our Site and in our promotional material.

12.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

12.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our Invoices or Site (as relevant). You agree to pay the GST amount at the same time as you pay the Fee.

12.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

12.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).

12.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or

invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.

- 12.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.
- 12.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address provided at the time you order our Services. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 12.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 12.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 13. DEFINITIONS**
- 13.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.
- 13.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 13.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective

customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".

- 13.4 **Deposit** means the deposit required for the Services, as set out on our Site or otherwise communicated to you.
- 13.5 **Fees** are our fees for the Services, including any Subscription Fees (as relevant).
- 13.6 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 13.7 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 13.8 **Licensed Material** means the Materials.
- 13.9 **Materials** means work and materials that we provide to you in carrying out the Services.
- 13.10 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 13.11 **Notice Period** is 14 days.
- 13.12 **Services** means the services described on our Site, including but not limited to, providing online physiotherapy consultations via email, webform, messaging, video and via PhysiTrack, PhysiApp and Zendesk software.
- 13.13 **Site** means our website at [www.physiowardonline.com.au](http://www.physiowardonline.com.au).
- 13.14 **Subscription Fees** means weekly subscription fees.
- 13.15 **Terms** means these terms and conditions.
- 13.16 **Variation** means amended or additional services to our Services.
- 13.17 **Variation Fee** means the additional cost for a Variation.

**Contact details:**

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