

## ASTHMA AUSTRALIA LTD– TERMS AND CONDITIONS

### Our Disclosures:

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- Our liability under these terms is limited as set out in clause 8.
- We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Site or for featuring certain products or services on the Site.

Nothing in these terms limit your rights under the Australian Consumer Law.

### 1 Introduction

- (a) This website (**Site**) is operated by ASTHMA AUSTRALIA LTD (ACN 609 156 630) (**we, our or us**). These terms and conditions (**Terms**) are between us and **you**, the person placing an order for products through the Site.

### 2 Use of the Site

- (a) You accept these Terms by placing an order via the Site.
- (b) You must not use the Site and/or place an order for products through the Site unless you are at least 18 years old.
- (c) When using the Site, you must not do or attempt to do anything that is unlawful or inappropriate, including:
- (1) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
  - (2) using the Site to defame, harass, threaten, menace or offend any person;
  - (3) using the Site for unlawful purposes;
  - (4) interfering with any user of the Site;
  - (5) tampering with or modifying the Site (including by transmitting viruses and using trojan horses);
  - (6) using the Site to send unsolicited electronic messages;
  - (7) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Site; or
  - (8) facilitating or assisting a third party to do any of the above acts.

### 3 Accounts

- (a) You may purchase products through an account with us and we may allow you to register for an account using a social media account. If you log in through your social media account, you authorise us to access certain basic information in accordance with your privacy settings within your social media account.
- (b) You must ensure that any personal information you give to us when creating an account is accurate and up-to-date. All personal information that you give to us will be treated in accordance with our Privacy Policy.
- (c) It is your responsibility to keep your account details confidential. You are responsible for all activity on your account, including purchases made using your account details.

### 4 Orders

- (a) You may order products from us as set out on the Site. If you place an order for products on our Site, you are making an order to purchase the product(s) for the price listed on the Site (including the delivery fees or other applicable charges and taxes).
- (b) We may, at our absolute discretion, accept or reject an order. If we need to reject your order, we will notify you within a reasonable time after your order is placed. Once we accept an order, a binding agreement is formed for the supply of products to you in accordance with these Terms.
- (c) It is your responsibility to check the order details, including selected products, delivery details and pricing, before you submit your order through the Site.
- (d) All purchases made through the Site are subject to availability. We do our best to keep products in stock and to keep the Site up to date with the availability of products.
- (e) If a product is available for pre-order only (it is not currently in stock), this will be clearly indicated on our Site. We may display the date that the product is expected to be available for dispatch to you. These dates are an approximation only, and we will not be liable for any delay in the product being available for dispatch or the inaccuracy of the date.
- (f) We may cancel, at any time before delivery and for whatever reason, an order that we have previously accepted, including where there is a considerable delay in dispatching your order, if for any reason we cannot supply the products you order (for example for an event beyond our reasonable control) or if products ordered were subject to an error on

our Site (for example in relation to a description, price or image). We will contact you using the details you provided when you placed your order.

## 5 Price and payments

- (a) You must pay us the purchase price of each product you order, plus any applicable delivery costs as set out on the Site (the **Price**) in accordance with this clause. All amounts are stated in Australian dollars and Australian GST (where applicable) will be set out separately. You must pay any customs duties or taxes charged on the Price.
- (b) You must pay the Price upfront using one of the methods set out on the Site.
- (c) You must not pay, or attempt to pay, the Price by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- (d) The payment methods we offer are set out on the Site. We may offer payment through a third-party provider. You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions.
- (e) We may from time to time issue promotional discount codes for certain products on the Site.
- (f) To claim the discount, you must enter the promotional discount code at the time of submitting your order through the Site.
- (g) The conditions of use relating to promotional discount codes will be set out on the Site. We may also from time to time run competitions on the Site or on social media. These competitions are subject to terms and conditions which will be made available on the Site at the time of the competition.

## 6 Delivery, title and risk

- (a) If possible we will deliver the products to the delivery address you provide when making your order. We currently deliver to areas as set out on the Site. Please refer to the delivery information on the Site to ensure you are in our delivery area. If you are not in our delivery area please contact us to discuss delivery options.
- (b) Any delivery periods displayed on the Site are estimates only, based on the information provided by the delivery company.
- (c) We deliver the products using a range of delivery methods. You may need to sign for some deliveries and you may have the choice for our delivery partner to leave the products in a safe place or to leave the products at your nearest post office for pick up.
- (d) Title to the products will remain with us until you have paid the Price in full for the products. Until title passes, you must not do anything which seeks to create an encumbrance, lien, charge or other interest in or over the products.
- (e) Risk in the products will pass to you as soon as they are delivered to the delivery address you provided in your order.

## 7 Australian Consumer Law

- (a) We do not accept returns for change of mind or other circumstances. However, you may have rights to a repair, replacement or refund under the Australian Consumer Law.
- (b) Nothing in these Terms attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law (**Consumer Law Rights**). In Australia, our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.
- (c) Where you return products to us to seek an Australian Consumer Law remedy, you will need to cover any associated costs (for example delivery costs) of you returning the products to us.
- (d) Where your claim is a valid claim under the Australian Consumer Law, we will refund your return delivery costs and, depending on the failure, either dispatch a new or repaired replacement product or refund you the Price of the relevant product. Please contact us for further information.

## 8 Limitations

Despite anything to the contrary, but subject to your Consumer Law Rights, to the maximum extent permitted by law:

- (1) neither Party will be liable for Consequential Loss;
- (2) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party, including any failure by that Party to mitigate its losses; and

- (3) our aggregate liability for any Liability arising from or in connection with the Terms (including the products and/or the subject matter of the Terms) will be limited to, and must not exceed, the portion of the Price paid by you to us for the products the subject of the relevant claim.

## 9 Intellectual property

- (a) You acknowledge and agree that any intellectual property (including copyright and trademarks) developed, adapted, modified or created by us or our personnel (including in connection with the Terms, any content on the Site, and the products) (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- (b) We authorise you to use Our Intellectual Property solely for your own personal, non-commercial use, and in the manner in which it was intended to be used.
- (c) You must not use Our Intellectual Property for commercial purposes, including, for example, to advertise your own business, for re-sale, or for any other revenue generation activity.
- (d) You must not, without our prior written consent:
  - (1) copy, in whole or in part, any of Our Intellectual Property;
  - (2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or
  - (3) breach any intellectual property rights connected with the Site or the products, including (without limitation) altering or modifying any of Our Intellectual Property; causing any of Our Intellectual Property to be framed or embedded in another website; or creating derivative works from any of Our Intellectual Property.
- (e) Nothing in the above clause restricts your ability to publish, post or repost Our Intellectual Property on your social media page or blog, provided that:
  - (1) you do not assert that you are the owner of Our Intellectual Property;
  - (2) unless explicitly agreed by us in writing, you do not assert that you are endorsed or approved by us;
  - (3) you do not damage or take advantage of our reputation, including in a manner that is illegal, unfair, misleading or deceptive; and
  - (4) you comply with all other terms of these Terms.

## 10 User Content

- (a) You may be permitted to post, upload, publish, submit or transmit relevant information and content (**User Content**) on the Site.
- (b) If you make any User Content available on or through the Site, you grant to us a worldwide, irrevocable, perpetual, non-exclusive, transferable, royalty-free licence to use the User Content, with the right to use, view, copy, adapt, modify, distribute, license, transfer, communicate, publicly display, publicly perform, transmit, stream, broadcast, access, or otherwise exploit such User Content on, through or by means of the Site and our social media platforms.
- (c) You agree that you are solely responsible for all User Content that you make available on or through the Site. You represent and warrant that:
  - (1) you are either the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these Terms); and
  - (2) neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Site (including on social media) will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- (d) We do not endorse or approve, and are not responsible for, any User Content. We may, at any time (at our sole discretion), remove any User Content.

## 11 General

- (a) **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- (b) **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided when you submitted your order or in your account. Any notice may be sent by standard post or email, and 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.

- (c) **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event, provided the Party seeking to rely on the benefit of this clause, as soon as reasonably practical, notified the other Party in writing about the Force Majeure Event and the extent to which it is unable to perform its obligations and uses reasonable endeavours to minimise the duration and adverse consequences of the Force Majeure Event.
- (d) **Feedback and complaints:** We are always looking to improve our services. If you have any feedback or a complaint, please notify us on our contact details below and we will take reasonable steps to address any concerns you have.
- (e) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (f) **Amendment:** We may, at any time and at our discretion, vary these Terms by publishing varied terms on the Site. Prior to placing an order, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. For any order that has been accepted by us, the terms and conditions that apply will be the ones that were in effect (and which you agreed to) when you placed your order.
- (g) **Governing law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- (h) **Third party sites:** The Site may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Site, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Site (Affiliate Link) or for featuring certain products or services on the Site. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Site, or which (if any) third party links are Affiliate Links.

## 12 Definitions

- (a) **Consequential Loss** means, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise; any loss or damage that cannot be considered to arise according to the usual course of things from the relevant breach, act or omission, whether or not such loss or damage may reasonably be supposed to have been in the contemplation of the Parties at the time they entered into these Terms as the probably results of the relevant breach, act or omission, and/or, any real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data. The Parties agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss".
- (b) **Force Majeure Event** means any event or circumstance which is beyond a Party's reasonable control.
- (c) **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgement (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

**For any questions and notices, please contact us at:**

**ASTHMA AUSTRALIA LTD (ACN 609 156 630)**

Email: [info@asthma.org.au](mailto:info@asthma.org.au)

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