

# WEBSITE TERMS OF USE

Last updated May 2023

Welcome! These terms and conditions (“**Ts&Cs**”) are important - please read them carefully before you start using our website (“**Website**”).

These Ts&Cs, our Privacy Policy and any other rules or guidelines that are posted onto the Website from time to time (together, the “**Terms**”) are entered into between “**you**”, the user, and **ThermaLife Australia** (ABN 79 706 764 616) (“**we**”, “**us**”, “**our**”).

By viewing and using our Website you are considered to agree to these Terms without qualification. If you do not agree with any of the Terms, you must stop accessing and using our Website. We reserve the right to change these Terms at any time by notifying users of the existence of the amended terms and conditions through our Website. By continuing to access our Website, you agree to be bound by the amended terms and conditions.

## 1. LICENCE TO USE THE SITE

- 1.1 Our licence to you. We hereby grant you a non-exclusive, non-transferable licence to use the Website in accordance with the Terms.
- 1.2 Nature of the service. You acknowledge and agree that: (a) we may, at any time in our sole discretion and without prior notice, alter, amend, interrupt, reschedule, modify, or cease the operation of all or any part or any feature of the Website; and (b) the Website may not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes).

## 2. YOUR RESPONSIBILITIES

- 2.1 Age. Any persons using this Website for the purpose of purchasing any services or products offered on it at any time must be at least 18 years of age or accompanied by a parent or legal guardian.
- 2.2 What you must do. In accessing and/or using the Website, you must:
  - (a) Comply with all applicable laws and you must not use the Website for any purpose that is unlawful or in breach of the Terms;
  - (b) Not alter or modify any part of the Website;
  - (c) Not attempt to "hack", decompile, disassemble, or reverse engineer any software deployed in connection with the Website. This includes "phishing", "mining", accessing "hidden" URLs, trying to guess users' passwords, attempting to trigger remote code for the purpose of accessing data or material you would not otherwise have access to;
  - (d) Not knowingly transmit any virus, corrupt files or any other software or function that may damage the operation of the Website or other disabling feature to the Website, or which is designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment or to diminish the quality of, interfere with the performance of, or impair the functionality of any part of the Website;
  - (e) Not use or launch any automated system, including "robots," "spiders," or "offline readers," that accesses the Website in a manner that sends more request messages to our servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser;
  - (f) Not circumvent, disable, or otherwise interfere with security-related features of the

Website;

- (g) Not alter or remove any copyright statement or other notice of ownership of Intellectual Property Rights which accompany the Website.

2.3 Take your own precautions. You must take your own precautions to ensure that your process for accessing the Website does not expose you to risk of viruses, malicious computer code or other forms of interference which may damage your computer system.

2.4 Users outside Australia. Our Website is operated by us from Australia. The information on our Website may not be appropriate or available for use in other jurisdictions. If you choose to access our Website from a jurisdiction other than Australia, you do so on your own initiative and you are responsible for compliance with any applicable laws of that jurisdiction.

### **3. WARRANTIES**

3.1 Warranty. The Website is provided “as is” and “as available”. To the extent permitted by law we do not warrant that the operation of the Website will be secure, confidential, uninterrupted, or error-free and we exclude all representations and warranties (in each case, whether express or implied) in respect of the completeness, accuracy, reliability, suitability, or availability with respect to the Website and the information contained on any part of the Website for any purpose.

3.2 Exclusion of liability. To the fullest extent permitted by law, we exclude all liability for any loss or damage that results from your use of our Website, including from all express and implied warranties and representations. We will not be responsible for errors or misstatements or be liable, whether in contract, tort (including negligence) or otherwise, for any loss or damage however caused (including Consequential Loss). If you are a consumer using our Website for non-business activities, then nothing in these terms and conditions is intended to abrogate any rights you might have under Australian Consumer Law (if any).

3.3 Your liability if you breach these Terms. You agree that if you breach these Terms, or any liabilities are incurred arising out of your use of the Website, you will be responsible for the costs and expenses that we and any of our Associates incur as a result of the breach, including reasonable legal fees (if applicable). You will remain liable if someone else uses your personal information unless you can prove that such use was fraudulent. You will take all necessary action to defend and indemnify us and our directors, employees and agents against all costs, expenses and damages incurred in connection with any claim brought by a third party against us that arise from a breach by you of any of these terms and conditions.

### **4. COPYRIGHT AND TRADEMARKS**

4.1 We or our suppliers own copyright in the contents of our Website. No part of our Website may be distributed or copied for any commercial purpose, and you are not permitted to incorporate the material or any part of it in any other work or publication (whether in hard copy, electronic or any other form) without our prior written consent. You may not frame any part of our Website material by including advertising or other revenue generating material. Further, you may not remove or alter any trademarks or logos that appear on any material on our Website.

### **5. COOKIES & LINKING**

5.1 Cookies. Our Website may use cookies to monitor browsing preferences. By using our Website, you consent to our use of cookies in accordance with the terms of our Privacy Policy .

5.2 Linking. The contents of our Website may include links to third party materials. We will not be responsible for the content of any linked sites or liable for any direct or indirect loss or damage suffered by you from accessing, using, relying on, or trading with third parties. The linked sites are provided to you only as a convenience, and the inclusion of any linked site does not imply any endorsement of it by us or any association with its operators. We reserve the right to prohibit links to our Website and you agree to remove or cease any link on our request.

## 6. INFORMATION AND MATERIAL

- 6.1 The content on this Website is not comprehensive and is provided for general information and education only. It does not consider your individual or specific needs, objectives or circumstances, and it is not professional advice. You should obtain professional or specialist advice before taking or refraining from any action on the basis of any information on this site. Before selecting any product or service or acting on any information contained on our Site, you should consider the appropriateness of the information, product or service, having regard to your personal circumstances, goals and needs.

## 7. SUSPENSION AND TERMINATION OF USER ACCESS

- 7.1 Our reserved rights to determine access. We reserve the right, in our sole discretion, to decide whether user activity or behaviour within the Website violates the Terms (including copyright).
- 7.2 Suspension or termination of your access. We may at any time, without prior notice suspend or terminate your access and/or use of all or any part of the Website, if, in our sole discretion, we believe that: you have breached these Terms in any way; your access or use of any part of the Website may be directly or indirectly harmful to others or may otherwise violate any laws; we cease to operate the Website, or for any other reason.
- 7.3 What happens if we suspend or terminate your access? If we suspend or terminate your access or use of the Website, you are prohibited from continuing to access and use any part of the Website regardless of whether you can continue to do so.

## 8. GENERAL

- 8.1 Medical disclaimer. Nothing in this disclaimer will limit or exclude any liability that may not be limited or excluded by applicable law. Any information on this Website is given within the scope of our expertise and is not a substitute for the consultation, diagnosis, and/or medical treatment of your doctor. We expressly disclaim all responsibility and will have no liability for any damages, loss, injury, or liability whatsoever suffered by you or any third party because of your reliance on any information contained on our Website. If you have any specific questions or concerns about any medical matter, you should consult your doctor as soon as possible. If you think you may be suffering from any medical condition, you should seek immediate medical attention from your doctor. You are strongly advised not to delay seeking medical advice, disregard medical advice or discontinue medical treatment because of the information on our Website.
- 8.2 Waivers. If a Party does not exercise a right or remedy fully or at a given time, the Party may still exercise it later. A waiver by either Party in respect of a breach of a provision of the Terms by the other Party will not be deemed to be a waiver in respect of any other breach and the failure of a Party to enforce at any time any of the provisions of the Terms will in no way be interpreted as a waiver of such provision.
- 8.3 Entire agreement. The Terms contain the entire understanding between the Parties concerning our Website.
- 8.4 Prohibition and enforceability. If any term or provision of the Terms is held illegal, invalid, or unenforceable under any applicable law, that term or provision will be severed, and the remaining terms and conditions will be unaffected.
- 8.5 Survival. Clauses 3 (*Warranties*) and 4 (*Copyright and Trademark*) together with any other clauses which contemplate that a Party has any rights or obligations after the Terms expire or terminate, survive the expiry or termination of the Terms.
- 8.6 Governing law. These Terms are governed by and will be construed in accordance with the laws of South Australia, Australia, and you submit to the non-exclusive jurisdiction of the courts of South Australia, Australia.

## 9. DEFINITIONS

- 9.1 Definitions In these Terms:

**Associate** in relation to a Party, means the employees, officers, directors, contractors, and

agents of that Party.

**Business Day** means a day other than a Saturday, Sunday, or a public holiday in South Australia, Australia.

**Consequential Loss** means, without limitation, indirect, consequential, or remote loss or damage; special, punitive, or exemplary damages, loss of profit, revenue, business opportunity, goodwill or reputation and any other special loss or damage.

**Intellectual Property Rights** means all intellectual and industrial property or protected rights, including copyright, moral rights, patents, trademarks, trade names, confidential information, know-how, trade secrets, registered or unregistered designs, database rights and domain names, whether or not any of them is registered and including applications for registration of any such thing now or in the future in force and effect worldwide.

**Privacy Policy** means our privacy policy from time to time.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Website** has the meaning given at the beginning of these Ts & Cs.

- 9.2 Interpretation. In these Terms, unless the context requires otherwise: (a) a word that is derived from a defined word has a corresponding meaning; (b) neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for drafting it; (c) a reference to these Terms or any other agreement includes any variation, novation, supplementation or replacement of it; (d) headings are for convenience only; (e) the phrase include or similar phrases does not limit what else might be included; (f) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it from time to time; (g) a reference to “**law**” means all laws in force from time to time; (h) a reference to dollars or \$ is to an amount in Australian currency; (i) the singular includes the plural and vice versa; (k) “**in writing**” includes any modes of reproducing words in legible and non-transitory form including by email and other electronic means.