

***Baiclo Pty Ltd (ACN 76 666 718 494) (hereinafter "Seller")***

***www.theacupressurepillow.com.au***

## **TERMS AND CONDITIONS FOR SALE OF GOODS**

*Please read the following important terms and conditions ("Terms") before you buy anything on our website and check that they contain everything which you want and nothing that you are not willing to agree to. By making a purchase on our Website, you agree to be bound by these Terms.*

*These Terms set out your legal rights and responsibilities; our legal rights and responsibilities; and certain key information required by law.*

### **(1) DEFINITIONS**

In these Terms, the following definitions apply:

*"ACL" means the Australian Consumer Law which is contained in the Competition and Consumer Act 2010 (Commonwealth).*

*"Business Day" means a day which is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.*

*"Buyer", "you" or "your" means you, the person or organisation that is purchasing the Products through our Website.*

*"Confirmation" means an email which we send you to confirm that we have accepted your order, in accordance with the "Ordering From Us" clause of these Terms.*

*"Delivery Date" means any estimated date for delivery of your Products, as stated on our Website or otherwise communicated to you at the time of your purchase.*

*"Goods and Services Tax" means Goods and Services Tax imposed on a supply of goods or services in Australia, pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) or any other applicable law.*

*"Party" means either the Buyer or the Seller.*

*"Parties" means the Buyer and the Seller collectively.*

*"Price"* means the price of our Products as published on our Website at the time that you make your purchase.

*"Products"* means the products that you are choosing to purchase through our Website which may include but is not limited to goods.

*"Seller", "we", "us" or "our"* means us, Baiclo Pty Ltd (ACN 76 666 718 494)

*"Terms"* means these terms and conditions as updated from time to time.

*"Website"* means our website located at [www.theacupressurepillow.com.au](http://www.theacupressurepillow.com.au) together with any affiliated websites or pages.

## **(2) INTERPRETATION**

In these Terms, unless the context otherwise requires, the following rules of interpretation shall apply:

(2.1) Words referring to one gender include every other gender.

(2.2) Words referring to a singular number include the plural, and words referring to a plural include the singular.

(2.3) If a word or phrase is defined in these Terms then any grammatical variations of that word or phrase have a corresponding meaning.

(2.4) Words referring to a person or persons include firms, corporations, associations, partnerships, joint ventures, authorities, government bodies, organisations and other legal entities, and vice versa.

(2.5) Any reference to time is a reference to time in New South Wales.

(2.6) In the event that something must be done under these Terms on or before a particular date, if that date falls on a day which is not a business day, then that thing must be done on or before the next business day.

(2.7) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

(2.8) Headings and titles are included in these Terms for convenience only and shall not affect the interpretation of these Terms.

(2.9) Each Party must, at its own expense, take all reasonable steps and do all that is reasonably necessary to give full effect to these Terms and the events contemplated by it.

(2.10) A reference to legislation or any part or provision of that legislation includes any subordinate legislation, any amended legislation, and any substituted legislation issued under that legislation.

(2.11) A reference to an agreement or document is a reference to that agreement or document as amended, replaced, supplemented or novated from time to time.

(2.12) A reference to a Party also includes that Party's successors, assigns, legal personal representatives and/or any person that is substituted by way of novation.

(2.13) Any reference to money or currency, unless otherwise specified, is a reference to Australian dollars.

### **(3) SALE**

By making a purchase through our Website, you are buying the Products subject to these Terms and you agree to be legally bound by these Terms.

### **(4) ORDERING FROM US**

(4.1) Here we set out how a legally binding contract between you and us is made.

(4.2) You place an order on our site by doing the following:

selecting the shop front on the website and add to cart then click purchase.

(4.3) Please read and check your order carefully before submitting it. However, if you need to correct any errors you can do so before submitting it to us.

(4.4) When you place your order at the end of the online checkout process (e.g. when you confirm payment), we will acknowledge it by email. This acknowledgement does not, however, mean that your order has been accepted.

(4.5) We may contact you to say that we do not accept your order. This is typically for the following reasons:

(4.5.1) the Product(s) are unavailable;

(4.5.2) we cannot authorise your payment;

(4.5.3) you are not allowed to buy the Product(s) from us;

(4.5.4) we are not allowed to sell the Product(s) to you;

(4.5.5) the number of Product(s) you have ordered is too large; or

(4.5.6) there has been a mistake on the pricing or description of the Product(s).

(4.6) We will only accept your order when we send you an email to confirm this ("Confirmation"). At this point:

(4.6.1) a legally binding contract will be in place between you and us; and

(4.6.2) your order will be fulfilled

(4.7) If you are under the age of 18 you may buy Products from our site. However, in some cases you may not be able to buy certain Products because you are too young. If so this will be set out on the relevant webpage for the Products concerned.

## **(5) DELIVERY OF PHYSICAL PRODUCTS**

(5.1) This clause applies if you purchase physical Products from us.

(5.2) We use the following delivery services to deliver our physical Products:

Australia Post

(5.3) The estimated date and time window for delivery of the Products is set out in the Confirmation.

(5.4) If something happens which:

(5.4.1) is outside of our control; and

(5.4.2) affects the estimated date of delivery;

then we will let you have a revised estimated date for delivery of the Products.

(5.5) Delivery of the Products will take place when we deliver them to the address that you gave to us.

(5.6) We may be unable to deliver the Products if we are unable to properly identify you. Please be prepared to provide a form of ID (passport or driving licence) on delivery of Products.

(5.7) Unless you and we agree otherwise, if we cannot deliver your Products within 30 days, we will:

(5.7.1) let you know;

(5.7.2) cancel your order; and

(5.7.3) give you a refund.

(5.8) If nobody is available to take delivery, please contact us using the contact details below.

(5.9) You are responsible for the Products when delivery has taken place. In other words, the risk in the Products passes to you when you take possession of the Products.

(5.10) We may deliver your Products in instalments. To check if your Products may be delivered in this way, click on the check the delivery details during the online checkout process.

## **(6) PAYMENT**

(6.1) We accept the following means of payment:

Paypal

Stripe

(6.2) We will do all that we reasonably can to ensure that all of the information you give us when paying for the Products is secure by using an encrypted and secure payment mechanism. However, in the absence of negligence on our part we will not be legally responsible to you for any loss that you may suffer if a third party gains unauthorised access to any information that you give us.

(6.3) Your credit card or debit card will only be charged when you confirm your order.

(6.4) All payments by credit card or debit card need to be authorised by the relevant card issuer. From time to time we may also use extra security steps via Verified by Visa, Mastercard®SecureCode™ or equivalent services.

(6.5) If your payment is not received by us and you have already received any Products, you:

(6.5.1) must pay for such Products within 30 days; or

(6.5.2) must return them to us as soon as possible. If so, you must keep the Products in your possession, take reasonable care of them (including ensuring that you follow any instructions or manuals given with the Products) and not use them before you return them to us.

(6.6) If you do not return any Products (such as where you have not paid for them) we may collect the Products from you at your expense. We will try to contact you to let you know if we intend to do this.

(6.7) The price of the Products:

(6.7.1) is in Australian dollars (\$AUD);

(6.7.2) includes GST at the applicable rate; and

(6.7.3) does not include the cost of delivering the Products (delivery options and costs will be provided before you place your order).

## **(7) PRICES**

(7.1) The Prices for our Products may be updated from time to time.

(7.2) Up to date Prices for our Products are published on our Website.

(7.3) By making a purchase on our Website, you agree to the up to date Price(s) for your selected Products, as published on our Website at the time of your purchase.

## **(8) TAXES, DUTIES AND OTHER CHARGES**

(8.1) Unless otherwise stated, our Prices do not include Goods and Services Tax, insurance, shipping and/or delivery costs and import charges (such as customs duties or levies) or other applicable taxes or duties.

(8.2) By making a purchase on our Website, you acknowledge that you are responsible for any Goods and Services Tax, insurance, shipping costs and import charges (such as customs duties or levies) or other applicable taxes or duties.

## **(9) SHIPPING AND DELIVERY COSTS**

(9.1) Unless otherwise stated, you agree to pay any applicable shipping and/or delivery costs related to your Products.

(9.2) Shipping and/or delivery costs vary depending on your chosen delivery method and delivery location.

(9.3) Applicable shipping and/or delivery costs are published on our Website at the time of your purchase.

(9.4) By making your purchase, you agree to the applicable shipping and/or delivery costs as published on our Website or communicated to you at the time of your purchase.

## **(10) SOLD "AS IS"**

You agree that the Products are being sold "as is", without any warranty of any kind, either express or implied (except as required by law), regarding the condition of the Products. You expressly disclaim any implied warranties of merchantability or of fitness for a particular purpose.

## **(11) TITLE**

Title to the Products will remain with the us until we have received the Purchase Price in full together with any applicable taxes, duties, shipping or delivery costs or other fees or charges payable to us by you in relation to your Products.

## **(12) LIMITATION OF LIABILITY**

(12.1) The Buyer may have certain rights under the Australian Consumer Law ("ACL"), or under other similar or related consumer protection laws.

(12.2) The ACL may give the Buyer certain rights, warranties, guarantees and remedies regarding the provision of goods or services by the Seller, which cannot be excluded, modified or restricted by the Seller ("Statutory Rights").

(12.3) The Seller's liability to the Buyer is governed solely by the ACL and by these Terms. To the maximum extent permitted by law, and except as otherwise expressly provided in these Terms, the Seller excludes all conditions and warranties implied by custom, law or statute, except for the Buyer's Statutory Rights, and the Seller expressly disclaims all warranties of any kind including but not limited to implied warranties that the Products are fit for a particular purpose.

(12.4) The Buyer hereby agrees that the Buyer is solely responsible for evaluating the Products and for determining whether the Products are fit for the Buyer's purpose.

(12.5) The Buyer hereby agrees that the Seller is not liable for any direct, indirect, consequential or incidental loss or damage which may result from the Buyer's use of the Products. For the sake of clarity, in no event will the Seller be liable for any consequential, indirect, incidental or special damages of any kind including any damages for loss of revenue, profits, interruption of business, or loss of data, even if the possibility of such loss was made known to the Seller.

(12.6) When the Buyer's Statutory Rights apply, to the maximum extent possible, the Seller's liability in respect of any claim is limited to, at the Seller's option:

(12.6.1) A repair of the Products; or

(12.6.2) A replacement of the Products; or

(12.6.3) A refund of the Purchase Price paid by the Buyer.

(12.7) The Seller's failure to exercise or enforce any right or provision of these Terms will not constitute a waiver of such right or provision.

(12.8) Subject to the sub-clauses below titled "Exceptions", we shall not be liable for any of the following (whether direct or indirect):

(12.8.1) loss of profit;

(12.8.2) loss or corruption of data;

(12.8.3) loss of use;

(12.8.4) loss of production;

(12.8.5) loss of contract;

(12.8.6) loss of opportunity;

(12.8.7) loss of savings, discount or rebate (whether actual or anticipated); or

(12.8.8) harm to reputation or loss of goodwill.

(12.9) Exceptions:

(12.9.1) The limitations of liability set out above shall not apply in respect of any indemnities given by either party under these Terms.

(12.9.2) Notwithstanding any other provision of these Terms, the liability of the parties shall not be limited in any way in respect of the following:



(12.9.2.1) death or personal injury caused by negligence;

(12.9.2.2) fraud or fraudulent misrepresentation;

(12.9.2.3) any other losses which cannot be excluded or limited by applicable law;

(12.9.2.4) any losses caused by wilful misconduct.

(12.10) This clause will survive the termination or expiration of these Terms.

### **(13) CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

(13.1) For the purpose of this clause, "Intellectual Property" may include but is not limited to:

any and all inventions, patents, utility models, design rights, copyright, know how, trade secrets, trade marks, trade names, confidential information, service marks and goodwill subsisting in, resulting from or relating to the Products, or any documents, drawings, specifications and/or patterns relating thereto either:

(13.1.1) supplied by us to you in connection with the Products, or

(13.1.2) supplied by us to you or disclosed to or obtained by you pursuant to or as a result of these Terms, or

(13.1.3) resulting from the Products, unless otherwise expressly agreed by the Seller in writing.

(13.2) You shall not, under any circumstances acquire any right in or to any Intellectual Property.

(13.3) We shall have the right to apply any trade marks, trade names and/or service marks to the Products. You acknowledges that no rights are granted to you by the use by you of such trade marks, trade names and/or service marks. You shall not deface, remove or obliterate any trade marks, trade names or logos applied by the Seller on or in relation to the Products.

(13.4) If you shall in any way acquire any such rights in any Intellectual Property then you shall immediately inform us and shall forthwith take such steps as may be required by the Seller to assign such rights or vest such title in us.

(13.5) The Parties each respectively acknowledge and agree that unless otherwise expressly agreed between the Parties, the terms of these Terms, and

the fact that these Terms exists, are confidential.

(13.6) You shall keep confidential and not use, without the prior written consent of us, all or any information including without limit, that information supplied by us to you or disclosed to or obtained by you pursuant to or as a result of these Terms, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of yours, or disclosure of the same is required by law or by any other governmental or other regulatory body.

(13.7) This clause will survive the termination or expiration of these Terms.

#### **(14) INDEMNITY AND INSURANCE**

(14.1) You shall indemnify us, and keep us indemnified, from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by us as a result of or in connection with your breach of any of your obligations under these Terms.

(14.2) You shall have in place contracts of insurance with reputable insurers incorporated in Australia to cover your obligations under these Terms. On request, you shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

#### **(15) RIGHTS OF THIRD PARTIES**

No one other than a party to these Terms has any right to enforce any of these Terms.

#### **(16) TERMINATION**

(16.1) In addition to any other rights that are set out in these Terms, if either Party defaults in its obligations under these Terms ("Defaulting Party"), the other Party can terminate the contract created between us under these Terms by providing written notice to the Defaulting Party.

(16.2) If the contract that is created between us under these Terms is ended it will not affect our right to receive any money which you owe to us under this Terms.

#### **(17) WARRANTIES REGARDING LEGAL ADVICE**

(17.1) Each Party, (which for the purposes of this clause shall be referred to as the "Warranting Party" as the context requires) hereby respectively warrants:

(17.1.1) that the Warranting Party fully understands the terms of these Terms.

(17.1.2) that the Warranting Party has had the opportunity to obtain independent legal advice in relation to the matters addressed by these Terms and the Warranting Party has either:

(17.1.2.1) taken such independent legal advice; or

(17.1.2.2) elected not to take such independent legal advice.

(17.1.3) that the Warranting Party has not been induced to enter these Terms by any representation(s) made by the other Party or by any officer, employee, director, agent, contractor, assignee, successor or other representative of the other Party, except as provided in these Terms.

(17.2) This clause will survive the termination or expiration of these Terms.

## **(18) DISPUTES**

(18.1) We will try to resolve any disputes with you quickly and efficiently.

(18.2) If you are unhappy with:

(18.2.1) the Product(s);

(18.2.2) our service to you; or

(18.2.3) any other matter;

please contact us as soon as possible using the details provided in the "Contact Us" clause, below.

## **(19) UPDATES TO THESE TERMS**

(19.1) These Terms may be updated from time to time.

(19.2) The latest version of these Terms is displayed on our Website and/or at the bottom of these Terms.

(19.3) By making a purchase on our Website, you agree to these Terms,

including any updates, as published on the Website at the time of your purchase.

## **(20) GENERAL PROVISIONS**

(21) GOVERNING LAW: these Terms shall be governed in all respects by the laws of New South Wales and any applicable federal law. Both Parties consent to jurisdiction under the state and federal courts within New South Wales.

(22) LANGUAGE: All communications made or notices given pursuant to these Terms shall be in the English language.

(23) ASSIGNMENT: these Terms, or the rights granted hereunder, may not be assigned, sold, leased or otherwise transferred in whole or part by either Party except with the other Party's prior written consent.

(24) AMENDMENTS: these Terms may only be amended in writing signed by both Parties.

(25) RIGHTS, REMEDIES AND POWERS: Unless expressly provided in these Terms, any rights, remedies or powers which a Party acquires under these Terms are cumulative and apply in addition to any rights, remedies or powers which that Party may otherwise have. Unless expressly provided in these Terms, nothing in these Terms shall in any way reduce, extinguish, postpone or otherwise limit any right, remedy or power which that Party may have.

(26) SURVIVAL OF OBLIGATIONS: At the termination or expiration of these Terms, any provisions of these Terms which would by their nature be expected to survive termination or expiration shall remain in full force and effect, including but not limited to any provisions which are explicitly stated to survive termination and/or expiration.

(27) NO WAIVER: None of the terms of these Terms shall be deemed to have been waived by any act or acquiescence of either Party. Only an additional written agreement can constitute waiver of any of the terms of these Terms between the Parties. No waiver of any term or provision of these Terms shall constitute a waiver of any other term or provision or of the same provision on a future date. Failure of either Party to enforce any term of these Terms shall not constitute waiver of such term or any other term.

(28) SEVERABILITY: If any provision or term of these Terms is held to be unenforceable, then these Terms will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Terms, valid and enforceable. If a court declines to amend these Terms as provided herein, the invalidity or unenforceability of any provision of these Terms

shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in these Terms.

(29) ENTIRE AGREEMENT: In relation to the subject matter of these Terms, these Terms constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous understandings, whether written or oral.

(30) COUNTERPARTS: these Terms may be executed in counterparts, all of which shall constitute a single agreement. If the dates set forth at the end of this document are different, these Terms is to be considered effective as of the date that both Parties have signed the agreement, which may be the later date.

(31) FURTHER ACTS: Each Party must, and must ensure that its employees, agents and representatives, do all things and sign, execute and deliver all documents, agreements and instruments as reasonably required in order to give effect to these Terms and to the rights and obligations of the Parties created under these Terms.

(32) FORCE MAJEURE/EXCUSE: Neither Party is liable to the other for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, and other acts which may be due to unforeseen circumstances. Seller is not liable for any delivery delay or non-performance caused by labor or transportation disputes or shortage, material delays, or delays or non-performance caused by any of Seller's suppliers. If Seller is unable to perform for any reason within 30 (thirty) days after the expected date of delivery, Seller may terminate these Terms in full and provide a complete and total refund to Buyer of any fees paid.

### **(33) CONTACT US**

(33.1) If you do not understand any of these Terms and want to talk to us about it, please contact us by:

email: [theacupressurepillow@gmail.com](mailto:theacupressurepillow@gmail.com), or

telephone: 0427949833. We may record calls for quality and training purposes. Please note that calls will be answered at the following times:

Monday-Friday 9am-5pm

(33.2) If you would like these Terms in another format (e.g. audio, large print,

braille) please contact us using the details stated above.

**(34) LAST UPDATED**

These Terms are current and up to date as of: 9th October 2024

***By making a purchase on our Website, you agree to be bound by these Terms.***