

## TERMS AND CONDITIONS OF SALE

Last updated October 2022

These terms and conditions (“**Ts&Cs**”) are a contract between you and the person identified as “We, us, our” in the Schedule (“**we**”, “**us**”, “**our**”). If you are under the age of 18, a parent or guardian must read and agree to these Ts&Cs for you and a reference to “you” means you and your parent/guardian, as applicable.

These Ts&Cs apply when you buy products and/or services from us. Please read them carefully together with any other rules or guidelines that are posted onto our Website or otherwise notified to you from time to time. These Ts&Cs and the rules/guidelines are together referred to as the “**Terms**”.

### 1. YOUR RESPONSIBILITIES

1.1 What you must do: We require you to:

- (a) be on time for your consultations;
- (b) be courteous and respectful to our practitioners and staff, and clinic guests at all times;
- (c) complete any intake and follow up documentation we require and provide accurate and complete information about yourself (or your child if you are a parent or legal guardian completing information on behalf of your child) and update that information as required, in particular ensure you advise us of all current medical conditions, any known allergies, food intolerances, any medications or supplements you are currently taking and any change in dosage during the period you receive products and services from us, if you have recently received a vaccine or booster, if you are vegan or vegetarian (as some products are derived from animal origins), if you are pregnant, breastfeeding or trying to conceive and anything else that may be relevant for us to know when providing Products and Services to you;
- (d) comply with any health and safety rules and guidelines required by us from time to time;
- (e) deal with us in good faith;
- (f) comply with all applicable laws and these Terms.

1.2 Where you are based overseas. Where you are based outside of Australia, it is your responsibility to ensure that the Products and Services ordered by you can be ordered, imported and used in the territory where you are based. We will not be responsible for any orders being confiscated or otherwise not being permitted to be provided to you as a result of the local laws in your area.

1.3 Refusal to service. If you don't comply with these Terms, we may at our sole discretion, cease providing Products and Services to you.

### 2. FEES AND PAYMENT TERMS

2.1 Orders subject to availability. All orders placed are subject to our acceptance and product availability. A contract for sale is only formed once we accept your order.

2.2 Orders placed with third party suppliers. We are not responsible for any orders placed with third party suppliers e.g., vital.ly, Ariya, Osborne Health Suppliers etc. If you purchase from third party suppliers, you agree to comply with any terms and conditions of those parties and the applicable laws.

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2.3 Fees. The fees for our Products and Services are as set out on the Website (if applicable) or otherwise provided by us in writing from time to time. All fees are quoted in Australian dollars. Where GST is payable, it will be added to the applicable fee. We reserve the right to change our fees at any time upon notice to you. If you are based outside of Australia, you are responsible for all customs and import taxes and duties imposed on your orders.

2.4 Payment. Our payment terms vary, depending on the Products or Services that you buy. You agree to pay for the Products and Services in accordance with the relevant payment terms notified to you from time to time.

### 3. WARRANTIES

3.1 Notification of issues with Products. If there are any issues with your order (e.g. shortages, damage or wrong products have been delivered):

(a) Products purchased from us. You must notify us within 7 (seven) days of delivery. You can notify us at the address or by the method set out in the Schedule. Please include (i) proof of purchase; (ii) full details of the issue, and any other relevant documentation reasonably requested by us. If Products need to be returned, you will pay the cost of transport and insurance of the products to and from us.

(b) Products purchased from a third party. You should contact the third party directly.

3.2 No limitation on your statutory rights. Subject to clause 3.3 (*Consumer Guarantees*), we make no express warranties or representations other than as set out in this clause 3 and we exclude all liability to you. Nothing in the Terms excludes, restricts or modifies any terms, conditions or warranties that are imposed or implied by law. Limitations and exclusions are made only to the extent that we may legally do so.

3.3 Delivery and risk. Delivery of the Products to a carrier is deemed to be delivery of the Products to you. Risk in the Products transfer to you once we deliver the Products to the carrier.

3.4 Consumer guarantees. Our Products and Services come with guarantees that cannot be excluded under the ACL. For major failures, you are entitled: (a) to cancel your service contract with us; and (b) 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 the Products. If a failure with the Products 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 Products 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 Products or Service. The benefits of this warranty are in addition to any rights and remedies available at law. Our liability to you is limited to the options set out in this clause 3.

3.5 Refunds. We will only refund an order placed if we can't fill it, if we think it's reasonable to do so, or otherwise as agreed in writing. Please choose carefully, as refunds are not available if you simply change your mind.

3.6 Warranty. Subject to clauses 3.2 (*No limitation on your statutory rights*), 3.3 (*Consumer guarantees*) and 3.6 (*Limitation of liability*) we warrant that the Services will be free from defects in materials and workmanship under normal use and, in the case of Products, up to the expiry or best before date indicated on such goods (if any) ("**Warranty Period**").

3.7 No liability for allergies and reactions. Some of the Products may contain ingredients that are derived directly from nuts or otherwise contain potential allergens or ingredients that you may react to (e.g. gluten, dairy etc). Some herbs or other ingredients may be contraindicated with certain conditions including during pregnancy. It is your responsibility to read through the ingredients list prior to purchase of the Product and to contact us if you are unsure whether a Product is right for you. If you buy a Product and have a reaction to it, please discontinue use and contact us. You agree that we will not be held liable for allergic or adverse reactions and that we do not exchange or refund on the basis of allergic or adverse reactions to Products.

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- 3.8 Limitation of liability. If our Products and Services fail to comply with the warranties set out in this clause 3 and where this is with respect to any goods and a warranty claim is made within the Warranty Period, our liability is limited to (at our sole discretion): (a) in the case of goods, replacing the goods or supplying equivalent goods; (b) in the case of services, supplying the services again or paying the cost of supplying the services again.
- 3.9 When we will not accept returns. Subject to clause 3.2 (*No limitation on your statutory rights*), this warranty will not apply and we will not accept goods for return: (i) where the goods have not been stored or used in an appropriate manner; (ii) where the goods have been altered in any way; (iii) where the goods are not in their original condition and packaging; (iv) where you have failed to follow any instructions or guidelines provided by us or on the packaging; (v) if the goods have continued to be used after any defect becomes apparent or would have become apparent to a reasonably prudent user; or (vi) due to any accident or Force Majeure.
- 3.10 Product descriptions are not warranties. Product descriptions are for the sole purpose of identifying products. They do not constitute a warranty.
- 3.11 No guarantee of outcomes. Health and wellness results vary depending on your personal health situation, your environment and other factors. Therefore, we do not make any representations or warranties as to results or outcomes (including, for example, cure of a particular disease or resolution of any symptom or condition etc.) as a result of using our Products and Services and/or following our advice or recommendations.
- 3.12 Consequential Loss. We are not liable for any Consequential Loss suffered by any person.
- 3.13 Your liability. You agree that if you breach these Terms, or any liabilities are incurred by us arising out of your use of the Products and Services, you will be responsible for the costs and expenses that we and our Associates incur as a result of the breach, including reasonable legal fees (if applicable). Furthermore, we are not liable for any information, on our Website or elsewhere, being inaccurate, incomplete or not up-to-date; any breach by you of these Terms; any misuse of the Products or Services or any breach of other laws by you.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

- 4.1 Intellectual Property. Unless otherwise indicated, as between you and us, we own all right, title and interest (including Intellectual Property Rights) in any information provided to you in the delivery of our Products and Services. Your use of our Products and Services, and your submission of personal information to us, including your health information, does not grant or transfer to you any rights in our Products or Services.

#### **5. CONFIDENTIALITY**

- 5.1 Confidentiality. Your use of the Products and Services is for personal purposes only. You agree not to distribute, publish, duplicate, copy, create, sell or share portions of the Products or Services, use the Products or Services for any commercial purposes or for your own financial gain. You also understand that certain Products and Services (for example e-books or other educational materials written by us) may contain information deemed as confidential by us and you agree to not disclose this information without our permission and written consent (which may be withheld in our absolute discretion). We note, this limitation does not include sharing details of our Products and Services, recommendations or test results with your primary care physician or other relevant healthcare providers, which we recommend that you do.

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## 6. DISPUTE RESOLUTION

- 6.1 Disputes. 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 our Products and Services including disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

## 7. GENERAL

- 7.1 Disclaimer. Nothing in this disclaimer will limit or exclude any liability that may not be limited or excluded by applicable law. Any information or guidance provided by us is given within the scope of our expertise and is not intended to be a substitute for the consultation, diagnosis, and/or medical treatment of your doctor. You are strongly advised not to delay seeking medical advice, disregard medical advice or discontinue medical treatment because of the information or guidance we provide you with. We encourage you to discuss any recommendations or guidance we give you with your doctor and any other healthcare professionals you choose to see for your health. Ultimately you are responsible for any decisions you make regarding your health. We therefore 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 or guidance we provide you with. 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.
- 7.2 Privacy. We collect, hold and store your personal information in accordance with our privacy policy. A copy of our privacy policy can be found on our Website or directly from us.
- 7.3 Force majeure. Neither Party will be liable to the other for any failure to perform its obligations under these Terms where such failure or delay is caused by events beyond its reasonable control, including epidemics, pandemic, quarantine, biological contamination, entry and exit restrictions, industrial disputes, strikes, lockouts, lockdowns, acts of god, acts or threats of terrorism or war ("**Force Majeure**") provided such failure or delay could not have been prevented by reasonable precautions or could not have reasonably been circumvented by the non-performing Party by means of alternate sources, workarounds or by using its best endeavours. However, the foregoing does not apply if the Force Majeure event is caused by a breach of the Terms by the non-performing Party. If an event of Force Majeure occurs, we may suspend or terminate an order or booking by written notice to you.
- 7.4 Exclusion of the Vienna Sales Convention. The United Nations Convention on Contracts for the International Sale of Goods concluded in Vienna, Austria on 11 April 1980 does not apply to the Terms or to any individual contract of sale concluded within the framework of the Terms.
- 7.5 Entire agreement. The Terms contain the entire understanding between the Parties concerning its subject matter and supersedes all prior communications.
- 7.6 Governing law. These Terms are governed by, and will be construed in accordance with the laws of state or territory listed in the Schedule. The Parties agree to irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state/territory, and courts hearing appeals from those courts.

## 8. DEFINITIONS

- 8.1 Definitions In these Terms:

**ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth).

**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 the capital city identified in the Schedule.

**Consequential Loss** means, without limitation, indirect, consequential or remote loss or damage; special,

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punitive or exemplary damages, loss of profit, revenue, business opportunity, goodwill or reputation and any other special loss or damage.

**Consumer** has the definition given to it in the ACL.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Fee** means the amount payable by you to us for our Products and Services.

**Force Majeure** has the meaning given in clause 7.1 (*Force Majeure*).

**GST** means the Goods and Services Tax as defined under the *A New Tax system (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all intellectual and industrial property or protected rights, including copyright, moral rights, patents, trade marks, 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.

**Minimum Notice** means a minimum notice required to cancel a consultation booking, as set out in the Schedule.

**Privacy Policy** means our privacy policy set out on our Website from time to time.

**Products** means products made available for purchase by us (whether in our clinic or online) and/or via third party health suppliers such as vital.ly, Osborne Health Supplies, Ariya:

(a) remedies and treatments which may include herbal medicine, practitioner-only supplements, retail supplements, homeopathic preparations, nutraceuticals and tonics;

(b) skincare, beauty products and cosmetics;

(c) baby and pregnancy related goods;

(d) meal plans;

(d) household products and cleaning products;

(e) food and beverage products;

(c) educational products which may include e-books, books, and online courses and programs;

(d) gift cards.

and other associated health and wellness products made available by us from time to time.

**Services** means any health and wellness services provided by us from time to time including consultations with a practitioner, functional and other health and wellness testing, provision of personalized treatment plans, oral and written advice and recommendations, formulation and provision of personalized remedies, provision of health and wellness related courses and programs.

**Warranty Period** has the meaning given in clause 3.3 (*Warranty*).

**Website** means our website, from time to time.

- 8.2 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.

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## SCHEDULE – KEY DETAILS

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**We, us, our** Name / Company Name: NATALIA KAY, NOURISH BODYWORK & WELLBEING  
ABN: 77 522 009 941  
Address: 21 BARRY COURT, GROVEDALE VIC 3216  
Contact: NATALIA KAY, 0402 738 537, [contact@nourishbodywellbeing.com](mailto:contact@nourishbodywellbeing.com)

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**Contact details for orders and warranty claims** NOURISH BODYWORK & WELLBEING as above

**Clause 3.1**

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**Governing law & jurisdiction** VICTORIA, AUSTRALIA

**Clause 7.6**

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**Business Day** GEELONG OR MELBOURNE, VICTORIA

**Clause 8.1**

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**Minimum Notice** 24 HOURS PRIOR TO APPOINTMENT TIME

**Clause 1(c), Attachment B**

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## ATTACHMENT A – PRODUCTS

The following terms apply to your purchase of our Products:

- (a) Orders. You can order products in person in our clinic, or via an online product ordering system offered by Vital.ly, Osborne, or any other business used by us.
- (b) Practitioner-only products and herbal medicines. In order to access and purchase practitioner-only Products, you will require a Consultation with one of our practitioners prior to purchase.
- (c) Delivery. Products that you order will be delivered to the address you provide in your order.
- (d) Delivery dates are estimates. We rely on third parties to deliver Products to you. This means that any period or date for delivery of the Products by us is an estimate only. We will use our best endeavours to meet any estimated dates for delivery of the Products but will not be liable for any loss or damage suffered by you or any third party for failure to meet such date.
- (e) Product Recalls: In the event that a Product is recalled, you will have a new product issued to you as soon as possible or you will be refunded for that Product. This situation is rare but can happen and we will contact you immediately to cease the consumption of the specific Product.



## ATTACHMENT B – SERVICES

### 1. CONSULTATIONS

The following terms apply when you book a consultation with us:

- (a) Booking a consultation. You can book a consultation with one of our practitioners by calling or emailing us, booking via our Website, or booking in person while attending our clinic. Consultations are available in-person at our clinic, by phone or via a Zoom call and by any other means agreed by us and you.
- (b) Fees. Bookings via the website require a deposit or for short appointments, payment in full. Otherwise all other bookings must be paid in full following the appointment.
- (c) Cancellation by you. We understand things come up and sometimes you need to cancel or reschedule your consultation. Cancellation of consultations made with less than the Minimum Notice, or failure to attend a scheduled Consultation, will result in forfeit of the deposit Fee.
- (d) Cancellations by us. If we are unable to attend a consultation, we will notify you in writing. We will refund any monies paid upfront by you for the consultation, less any accounting fees. We are not liable for any loss or damage whatsoever arising from the cancellation.
- (e) Refunds. We appreciate your consideration of our time and will express the same consideration for yours, so where you cancel a consultation and have given at least the Minimum Notice of we will provide a full refund of any Fees that have been paid upfront for the consultation, less accounting fees

### 2. TESTING

The following terms apply when you order a test with us:

- (a) No liability. You will be advised whether testing will occur onsite at our clinic or off-site by third party providers. We are not responsible for the accuracy of any tests.
- (b) Collection of DNA samples for testing: where you have ordered a test that requires a DNA sample (i.e., hair sample, saliva, or blood), you authorise us, where required, to collect, handle and process those DNA samples for testing including sending to third party laboratories or organisations for testing. You acknowledge that DNA samples will not be returned to you.
- (c) Fees of testing: Some laboratories charge a fee for their testing. This fee is determined by the laboratory and cannot be changed by us. All fees must be paid to the laboratory via us before tests can be processed.

### 3. PACKAGE AND PROGRAMS

The following terms apply when you order a package or program from us:



- (a) Cancellation. Once your order is confirmed and payment is made, packages and programs cannot be cancelled and refunds will not be offered.
- (b) Food items and supplements that have been opened by the client, cannot be returned due to change of mind or cancellation.

#### **4. OTHER SERVICES**

As needed, other terms may apply when you order any other services from us.