Peninsula Sleep Clinic

www.peninsulasleepclinic.com.au

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Forest Central Business Park
Suite 3, Level 2, Building 1,
49 Frenchs Forest Road East,
Frenchs Forest NSW 2086

Disclosure of Key Terms relating to the supply of goods or services to consumers

Section 47A Fair Trading Act 1987 (NSW) ("the Act")

Pursuant to section 47A of the Act, a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

The following contains a summary of key terms in the attached Trading Terms between Peninsula Health Care Pty. Limited ACN 082 322 843 (**Us, We, Our**) and the Customer (**You**), which You should be made aware of as per the requirements of the Act.

Words not defined in this summary have the same meaning as set out in the Terms:

1) Clause 4.3 - Exclusion of Warranties

This clause excludes all warranties not set out in the Terms or any other warranty document (to the extent possible) and makes clear that We are not liable to compensate you for:

(i) Any increased costs or expenses you may incur;
(ii) Any loss of profit, revenue, business, contract or anticipated savings;
(iii) Any loss or expense resulting from a claim by a third party; or
(iv) Any special, indirect or Consequential Loss or damage of any nature.

2) Clause 5 – Limitation of Liability

This clause limits the remedies available to You if the Goods or services provided by Us are faulty, for example we may replace the Goods or provide a refund at our election.

This clause also seeks to limit the timeframe for any claim by You relating to the short delivery of Goods.

3) Clause 12 – Indemnity

This clause requires You to indemnify Us against any loss or damage We may suffer as a result of your breach of our Trading Terms, which means You will pay us any loss or damage We suffer.

4) Clause 6 - Repair Notice

In the event that You require a repair of your Goods, this clause constitute a repair notice as required under the Australian Consumer Law, set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (ACL) where You are a consumer under the ACL. Please see clause 6 for further details.

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('Company')

Trading Terms and Conditions
For Sale of Goods

These Trading Terms & Conditions ("Terms") apply (unless otherwise previously agreed in writing) to the supply of Goods by the Company to a Customer from time to time. Any supply of Goods by the Company to the Customer made after the date of acceptance of these Terms is a supply pursuant to the supply agreement constituted by these Terms and the relevant order accepted by the Company ('Agreement') and any such supply does not give rise to a new or separate agreement.

1 Interpretation

In these Terms unless the contrary intention appears:

Additional Charges includes all delivery, handling and storage charges, goods and services tax, stamp duty, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money, other than the Purchase Price, payable by the Customer to the Company arising out of the sale of the Goods.

Consequential Loss means increased costs or expenses; loss of revenue; loss of profit or anticipated profit; loss of business; loss of business reputation; loss of opportunities; loss of anticipated savings; loss of goodwill; loss or expense resulting from a claim by a third party; special or indirect loss or damage of any nature whatsoever caused by the Company's failure to complete or delay in completing the order to deliver the Goods; and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means the person to or for whom the Goods are to be supplied by the Company.

Force Majeure Event means any event outside the reasonable control of the Company including acts of God, war, riots, strikes, lock outs, trade disputes, break downs, mechanical failures, interruptions of transport, government action, pandemic, epidemic or any other cause whatsoever, whether or not of a like nature to those specified herein.

Goods means the goods sold to the Customer by the Company and includes any services provided by the Company to the Customer including training, education and maintenance.

Intellectual Property Right means any patent, registered design, patent, trademark, copy-right, trade secret or any other proprietary right of a third party or parties, registered or unregistered, in any country.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Purchase Price means the list price for the goods as charged by the Company at the date of delivery of the Goods including the Services or such other price as may be agreed by the Company and the Customer prior to delivery of the Goods.

Site means our website of https://peninsulasleepclinic.com.au/.

2 Order for Goods

2.1 An order given to the Company is binding on Company and the Customer, if:

2.1.1 a written acceptance is signed for or on behalf of the Company; or

2.1.2 the Goods are supplied by the Company in accordance with the order.

2.2 An acceptance of the order by the Company is then to be an acceptance of these Terms by the Company and the Customer and these Terms will override any conditions contained in the Customer's order. The Company reserves the right to accept a part only of any order by notifying the Customer in writing or by delivering the Goods to the Customer. No order is binding on the Company until accepted by it.

2.3 An order which has been accepted in whole or in part by the Company cannot be cancelled by the Customer without obtaining the prior written approval of the Company, which it may refuse in its absolute discretion.

2.4 The Customer warrants that:

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2.4.1 any information provided by it in or with an order, including their name, address, phone number and email address is accurate and current; and

2.4.2 the Customer is at least 18 years old and has the capacity to enter into a legally binding agreement with the Company.

3 Orders placed on the Company's Site

3.1 This clause 3 applies to all orders placed on the Company's Site.

3.2 All prices listed on the Site are subject to change. In the event Goods are listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from the Company's suppliers, the Company will have the right, prior to the acceptance of the Customer's order to refuse or cancel any such orders whether or not the order has been confirmed and the Customer's credit card, debit card or other account charged. If the Customer's credit card, debit card or other account has already been charged for the purchase and the Customer's order is cancelled, the Company shall issue a credit to the Customer's credit card, debit card or other account in the amount of the charge.

3.3 The availability of Goods and other items on the Site may change at any time, without notice.

3.4 Due to photographic and screen limitations associated with the representation of Goods, some Goods may differ to a small extent in visual appearance (for example in colour) from the way they appear on the Site.

3.5 Occasionally there may be information on the Company's Site that contains typographical errors, inaccuracies, or omissions that may relate to descriptions of the Goods, pricing, promotions, offers, and availability. The Company reserves the right to correct any errors, inaccuracies or omissions and to change or update information or cancel orders if any information on the Site is inaccurate at any time without prior notice (including after the Customer has submitted an order). If the Customer's credit card or debit card has already been charged, a credit will be issued.

3.6 The Customer's receipt of an electronic or other form of order confirmation does not signify the Company's acceptance of the Customer's order, nor does it constitute confirmation of the Company's offer to sell. The Company reserves the right at any time after receipt of the Customer's order to accept or decline the Customer's order for any reason. The Company reserves the right at any time after receipt of the Customer's order, without prior notice to the Customer, to supply less than the quantity the Customer ordered of any item. The Company may require additional verifications or information before accepting any order. The Customer's order is not accepted until the Company sends the Customer shipping information for the order (or the accepted portion thereof). Notwithstanding the foregoing, the Customer agrees that, if the Company cancels all or a portion of the Customer's order or if the Company provides the Customer less than the quantity the Customer ordered, the Customer's sole and exclusive remedy will be one of the following:

3.6.1 the Company will issue a credit to the Customer's credit card, debit card or other account in the amount charged for the cancelled portion or the quantity not provided (if the Customer's credit card, debit card or account has already been charged for the order); or

3.6.2 the Company will not charge the Customer for the cancelled portion of the order or the quantity not provided. Any orders placed on the Company's Site will be subject to these Terms.

3.7 Where the Company uses third-party payment processors such as National Australia Bank ("**Payment Processors**") to process the Customer's payments, the processing of payments will be subject to the terms conditions and privacy policies of the Payment Processors in addition to these Terms. The Company is not responsible for any error by the Payment Processors.

3.8 The Payment Processors are regulated and authorised to provide payment services in the countries where they operate. The Company may share the Customer's personal or transactional information with Payment Processors when it's necessary to process payments.

4 Warranties

4.1 To the extent permitted at law, all other warranties whether implied or otherwise, not set out in these Terms or in another warranty document given by the Company are excluded and the Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for:

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4.1.1 any increased costs or expenses;

4.1.2 any loss of profit, revenue, business, contracts or anticipated savings;

4.1.3 any loss or expense resulting from a claim by a third party; or

4.1.4 any special, indirect or Consequential Loss or damage of any nature whatsoever caused by Company's failure to complete or delay in completing the order to deliver the Goods.

5 Limitation of Liability

5.1 The Company's liability is limited, to the extent permissible by law and at the Company's option, to;

5.1.1 in relation to the Goods:

5.1.1.1 the replacement of the products or the supply of equivalent products;

5.1.1.2 the repair of the products;

5.1.1.3 the payment of the cost of replacing the products or of acquiring equivalent products; or

5.1.1.4 The payment of the cost of having the products repaired

5.1.2 Where the Goods are services:

5.1.2.1 the supply of service again; or

5.1.2.2 the payment of the cost of having the services supplied again.

5.2 To the extent permitted at law, any claims to be made against the Company for short delivery of Goods must be lodged with the Company in writing within 14 days of the delivery date.

6 Repair Notice

6.1 Where Goods are repaired by the Company in accordance with clause 5.1.1.2, the Customer acknowledges and agrees:

6.1.1 that the repair of the Goods may result in the loss of any user-generated data and it will ensure that it has made a copy of any data saved on the Goods;

6.1.2 The Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the Goods.

6.2 Clause 6.1 constitutes a repair notice under the Australian Consumer Law, set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)* (ACL) where the Customer is a consumer under the ACL.

7 Delivery

7.1 The times quoted for delivery are estimates only and Company accepts no liability for failure or delay in delivery of Goods. The Customer is not relieved of any obligation to accept or pay for Goods by reason of any delay in delivery. Goods may be delivered by instalments at the discretion of Company.

7.2 Risk in accepting the Goods passes on delivery to the Customer.

7.3 All Additional Charges are payable by the Customer in addition to the Purchase Price of the Goods.

7.4 Return of Goods will not be accepted by the Company except by prior agreement in writing with the Company and provided it is returned (at the Customer's expense) to the Company within 14 days of delivery.

7.5 At the discretion of the Company, any Goods returned will be subject to a restocking charge of 10% of the Purchase Price of those Goods.

8 Price and Payment

8.1 The Customer must pay the Purchase Price and the Additional Charges to the Company.

8.2 The Customer must pay the full Purchase Price and the Additional Charges at the time that the Customer submits the order (except where there is a specific payment plan in place in relation to a particular Good).

8.3 If the Customer is in default, the Company may at its option withhold any deliveries or cancel a contract without prejudice to any of its existing rights.

8.4 Interest is charged at the rate of 1.5% from the expiry of that period until the date payment is received by Company.

8.5 The Company reserves the right to decline transactions that it believes to be high risk, fraudulent, or in violation of these Terms.

8.6 The Customer undertakes that all details provided to the Company for the purpose of purchasing the Goods from the Company will be correct, that the credit card or debit card, or account or other payment method which the Customer uses is its own and that there are sufficient funds or credit facilities to cover the cost of the Goods. The Company reserves the right to obtain validation of the Customer's payment details before providing the Customer with the Goods.

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8.7 All amounts payable by the Customer under these Terms must be paid without set-off or counter claim of any kind.

8.8 The Company partners with National Australia Bank to facilitate card payments and other payments by you and to disburse funds to you. National Australia Bank is regulated and authorised to provide payment services in the countries where they operate. We may share your personal or transactional information with National Australia Bank and its affiliated entities as our third-party service provider when it's necessary to process payments. Any credit card details that are provided to us for the purposes of payment via our third party provider is not stored with us. By using a third-party service, you may also be subject to an agreement with the third-party. If we receive notice that a transaction violates a third party's service agreement, we may have to take action against your account, such as cancelling a transaction.

9 Intellectual Property

9.1 All Intellectual Property Rights whether registered or unregistered in or relating to the Goods are the exclusive property of the Company and the Customer will have no rights in respect of the said Intellectual Property unless expressly agreed in writing by the Company.

9.2 The Customer must indemnify and keep indemnified the Company against any and all liabilities, expenses, losses and/or damages including attorney's fees whether direct, indirect or consequential, arising from a third party, in respect of an infringement of the Company's Intellectual Property Rights by the Customer.

10 Retention of Title

10.1 Ownership, title and property in the Goods and in the proceeds of sale of those Goods remains with the Company until payment in full for the Goods and all sums due and owing by the Customer to Company on any account has been made. Until the date of payment:

10.1.1 the Customer has the right to sell the Goods in the ordinary course of business;

10.1.2 the Goods are always at the risk of the Customer.

10.2 The Customer is deemed to be in default immediately upon the happening of any of the following events:

10.2.1 if any payment to the Company is not made promptly before the due date for payment;

10.2.2 if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to Company is dishonoured;

10.3 In the event of a default by the Customer, then without prejudice to any other rights which the Company may have at law or under this Agreement:

10.3.1 the Company or its agents may without notice to the Customer enter the Customer's premises or any premises under the control of the Customer for the purposes of recovering the Goods.

10.3.2 the Company may recover and resell the Goods;

10.3.3 if the Goods cannot be distinguished from similar Goods which the Customer has or claims to have paid for in full, the Company may in its absolute discretion seize all goods matching the description of the Goods and hold same for a reasonable period so that the respective claims of the Company and the Customer may be ascertained. The Company must promptly return to the Customer any goods the property of the Customer and the Company is in no way liable or responsible for any loss or damage to the Goods or for any loss, damage or destruction to the Customer's business howsoever arising from the seizure of the Goods.

10.3.4 In the event that the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer must hold such part of the proceeds of sale of such manufacturing or construction process as relates to the Goods in trust for the Company. Such part will be an amount equal in dollar terms to the amount owing by the Customer to the Company at the time of the receipt of such proceeds. The Customer will pay the Company such funds held in trust upon the demand of Company.

10.4 Separately, the Customer hereby charges all its right, title and interest to and in the proceeds of sale of the Collateral (as defined

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25th February 2020

in the PPSA) as original collateral, or any of it, in favour of the Company.

11 PPSA

11.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

11.2 Company and the Customer acknowledge that these Terms constitute a Security Agreement and entitle the Company to claim:

11.2.1 a Purchase Money Security Interest ("PMSI") in favour of the Company over the Collateral supplied or to be supplied to the Customer as Grantor pursuant to these Terms; and

11.2.2 a security interest over the proceeds of sale of the Collateral referred to in (a) as original collateral.

11.3 The goods supplied or to be supplied under these Terms fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms.

11.4 The Proceeds of sale of the Collateral referred to in clause 11.2.1 falls within the PPSA classification of "Account".

11.5 The Company and the Customer acknowledge that the Company, as Secured Party, is entitled to register its Security Interest in the Collateral supplied or to be supplied to Customer pursuant to these Terms and in the relevant Proceeds.

11.6 To the extent permissible at law, the Customer:

11.6.1 waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to a Security Interest granted by the Customer to the Company.

11.6.2 agrees to indemnify the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor / client basis, associated with the;

11.6.2.1 registration or amendment or discharge of any Financing Statement registered by or on behalf of the Company; and

11.6.2.2 enforcement or attempted enforcement of any Security Interest granted to the Company by the Customer;

11.6.3 agrees that nothing in sections 130 and 143 of the PPSA will apply to these Terms or the Security under these Terms;.

11.6.4 agrees to waive its right to do any of the following under the PPSA:

11.6.4.1 receive notice of removal of an Accession under section 95;

11.6.4.2 receive notice of an intention to seize Collateral under section 123;

11.6.4.3 object to the purchase of the Collateral by the Secured Party under section 129;

11.6.4.4 receive notice of disposal of Collateral under section 130;

11.6.4.5 receive a Statement of Account if there is no disposal under section 132(4);

11.6.4.6 receive a Statement of Account under section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged.

11.6.4.7 receive notice of retention of Collateral under section 135;

11.6.4.8 redeem the Collateral under section 142; and

11.6.4.9 reinstate the Security Agreement under section 143.

11.6.5 All payments received from the Customer must be applied in accordance with section 14(6)(c) of the PPSA.

12 On-Sale

The Customer agrees that upon the on-sale of any Goods to third parties, it will:

12.1 inform any third party involved of these Terms;

12.2 inform any third party of the Company's product warranties if any; and

12.3 not make any misrepresentations to third parties about the Goods.

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25th February 2020

13 Trustee Capacity

If Customer is the trustee of a trust (whether disclosed to the Company or not), Customer warrants to Company that:

13.1 Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;

13.2 Customer has the right to be indemnified out of trust assets;

13.3 Customer has the power under the trust deed to enter into this Agreement; and

13.4 Customer will not retire as trustee of the trust or appoint any new or additional trustee without first advising the Company.

14 Indemnity

To the full extent permitted by law, Customer will indemnify the Company and keep Company indemnified from and against any liability and any loss or damage the Company may sustain, as a result of any breach, act or omission, arising directly or indirectly from or in connection with any breach of any of these Terms by Customer or its representatives.

15 Force Majeure

15.1 The Company will not be liable for the consequences of any failure or delay in performing any of its obligations under these Terms to the extent that such failure or delay is due directly or indirectly to any Force Majeure Event.

15.2 If a Force Majeure Event arises, the Company will notify the Customer in writing of the Force Majeure Event and the likely impact it will have on the Company's performance under these Terms. If the Force Majeure Event affects the capacity of the Company to complete its material obligations under these terms in a timely manner, the Company may by notice to the Customer terminate this Agreement without any liability whatsoever on its part arising from that termination.

16 Privacy

16.1 The Company will comply with its obligations under the *Privacy Act 1988* (Cth) and will handle all personal information collected from the Customer in connection with any request for supply of Goods in accordance with its Privacy Policy which can be found here: **https://www.peninsulasleepclinic.com.au/privacy**

17 General

17.1 Neither party excludes or limits the application of any statute (including but not limited to the *Competition and Consumer Act 2010 (Cth)* (**CCA**) as amended from time to time and its schedule 2, the Australian Consumer Law), where to do so would contravene that statute or cause a provision of these Terms to be void. Any stated exclusion or limitation in this Terms is only to the full extent permitted at law.

17.2 These Terms are to be construed in accordance with the laws from time to time in the State of New South Wales and the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and any courts which may hear appeals from those courts in respect to any proceedings in connection with these Terms.

17.3 These Terms contain all of the terms and conditions of the contract between the parties and may only be varied by agreement in writing between the parties.

17.4 Any conditions found to be void, unenforceable or illegal may, to that extent be severed from the Agreement.

17.5 No waiver of any of these Terms or failure to exercise a right or remedy by Company will be considered to imply or constitute a further waiver by Company of the same or any other term, condition, right or remedy.

Signature: _____

Position: _____

Date: _____

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