

PeriCoach Website terms and conditions

Background

- A The Customer wishes to place an order to purchase Products.
- B The Customer agrees to download the Software to be used in connection with the Products.
- C If the Supplier accepts an order to purchase Products, the Supplier agrees to supply those Products to the Customer on the terms of this agreement.

Operative provisions

1 Ordering

- 1.1 The Customer may place an order for one of the Products on the Website.
- 1.2 If the Supplier notifies the Customer that the Supplier accepts an order made in accordance with clause 1.1, then:
 - (a) subject to payment of the Purchase Price, the Supplier sells to the Customer the Products contemplated by that order; and
 - (b) the Customer buys the Products contemplated by that order for the Purchase Price.
- 1.3 For clarity, the Supplier may elect not to accept an order made under clause 1.1.

2 Fees, title and risk

- 2.1 Title to the Products passes from the Supplier to the Customer on the Customer paying the Purchase Price for those Products in full to the Supplier.
- 2.2 The Customer bears the risk relating to the Products from the time those Products are dispatched by or at the request of the Supplier.
- 2.3 The Customer must pay the Purchase Price for the Products at the time the relevant order is made under clause 1.1.
- 2.4 If the Supplier elects not to accept an order and the Customer has paid the Purchase Price for the particular Products, then the Supplier must at its election either:
 - (a) supply equivalent goods to the Customer to those Products; or
 - (b) refund to the Customer any amounts paid by the Customer for that order.
- 2.5 Subject to clause 2.2, the Supplier must endeavour to deliver the Products to the address in the order accepted under clause 1.2 or request a third party to do so.
- 2.6 The Customer acknowledges that any delivery dates nominated or agreed to by the Supplier are indicative only, and are not binding on the Supplier.

3 Products

- 3.1 The Customer must only use the Products in accordance with the applicable Instructions for Use as provided by the Supplier from time to time.
- 3.2 Prior to using the Product, the Customer must download the applicable Software and comply with the Terms of Use for the Software.
- 3.3 The Customer agrees and acknowledges that:
 - (a) the colour of the Products as pictured on the Website may vary **depending on the Customer's computer monitor**;
 - (b) the Products as pictured on the Website are for illustrative purposes only;
 - (c) subject to clause 7.4, the Supplier gives no representations or warranties about the Products; and
 - (d) without limiting clause 3.3(c), the Supplier makes no representation and gives no warranty that use of the Products by the Customer or any third party will not infringe the intellectual property rights (including copyright, trade marks, patents and designs) or other rights of any third party.

4 Privacy

- 4.1 **The Supplier collects, uses and discloses the Customer's Personal Information and Sensitive Information in accordance with the Supplier's privacy policy, which is available by contacting the Supplier or by visiting the Supplier's website.**

5 Resupply

- 5.1 The Customer must not resupply or attempt to resupply Products, or products in the nature of the Products, to any third party.

6 Return of Products

- 6.1 The Customer must immediately notify the Supplier if the Customer believes that a Product is defective.
- 6.2 Without limiting clause 7, if the Supplier determines that the Product is defective, the Customer may request replacement of or a refund of the Product by contacting the Supplier within 28 days of the date the relevant order is made under clause 1.1.
- 6.3 If the Customer makes a request contemplated by clause 6.1 then the Supplier may arrange for collection of the relevant Product from the address nominated by the Customer at the time the relevant order is made under clause 1.1 and either (at the election of the Supplier):
 - (a) replace the Product; or
 - (b) provide the Customer with a refund of the Purchase Price for the Product.

7 Liability

- 7.1 Subject to clauses 7.3 and 7.4, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered by the Customer in connection with a Product is limited to the lesser of:
 - (a) the Purchase Price paid by the Customer to the Supplier for that Product; and
 - (b) \$100.
- 7.2 The limitation set out in this clause 7 is an aggregate limit for all claims, whenever made.

- 7.3 Subject to clause 7.4, the Supplier is not liable for any Consequential Loss however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with a Product.
- 7.4 If the *Competition and Consumer Act 2010* (Cth) or any other legislation states that there is a guarantee in relation to any good or service supplied by the Supplier in connection with this agreement and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 3.3, 7.1, 7.3 and 8 do not apply to that liability and instead the Supplier's liability for such failure is limited to, in the case of a supply of goods, the Supplier replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, the Supplier supplying the services again or paying the cost of having the services supplied again.

8 Indemnity

- 8.1 The Customer is liable for, and indemnifies the Supplier from and against, all loss or damage (including legal costs) incurred or suffered by the Supplier however caused in connection with:
- (a) any breach of this agreement by the Customer;
 - (b) any use of the Products other than in accordance with the Instructions for Use;
 - (c) any claim or threatened claim against the Supplier by the Customer or a third party in connection with this agreement;
 - (d) personal injury or death of any person (including any employee of the Customer) in connection with the use of the Products;
 - (e) damage to property in connection with the use of the Products; or
 - (f) any act or omission of the Customer, its officers, employees or agents, including without limitation any illegal or negligent act or omission of any of them.

9 Intellectual property rights and rebranding

- 9.1 The Customer acknowledges and agrees that nothing in this agreement grants the Customer any intellectual property rights (including copyright, trade marks, patents and designs) of the Supplier.

10 Merger and survival

- 10.1 The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.
- 10.2 Termination of this agreement will not affect clauses 3, 6, 7, 8 and 9 and any other clause of this agreement which is expressly or by implication intended to come into force or continue after termination.

11 Taxes

- 11.1 The Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with this agreement.
- 11.2 Except under clause 11.3, the consideration for a Supply made under or in connection with this agreement does not include GST.
- 11.3 If a Supply made under or in connection with this agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (a) the Recipient must pay the GST Act Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this agreement for that Supply); and
 - (b) the GST Act Supplier must give the Recipient a Tax Invoice for the Supply.
- 11.4 In clause 11.3:

- (a) capitalised terms that are not defined in clause 13.1 have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (b) GST Act Supplier means the entity making the Supply.

12 General

- 12.1 The laws of Queensland, Australia govern this agreement.
- 12.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- 12.3 The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this agreement without the prior written consent of the Supplier.
- 12.4 The Supplier may subcontract its obligations under this agreement.
- 12.5 Where this agreement contemplate that a party may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, that party may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this agreement expressly require otherwise.
- 12.6 Each provision of this agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- 12.7 This agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements, conduct and understandings, whether oral or in writing, relating to its subject matter.
- 12.8 The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.
- 12.9 The Supplier may collect information relating to the Customer (including Personal Information), retain that information in its customer database and use that information (including Personal Information) for purposes associated with the Supplier's business, including marketing of other products of the Supplier, a related entity of the Supplier or an affiliate.

13 Definitions and interpretation

- 13.1 In this agreement:
- Consequential Loss means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
- Customer means you.
- Instructions for Use means the PeriCoach device instruction manual provided by or on behalf of Analytica Ltd.
- Personal Information has the meaning given in the *Privacy Act 1988* (Cth).
- Product means a good ordered by the Customer under clause 1.1 which the Supplier has accepted under clause 1.2.
- Purchase Price in respect of a Product means the purchase price and cost of delivery for that Product specified on the Website.
- Sensitive Information has the meaning given in the *Privacy Act 1988* (Cth).
- Software means the software incorporated in, installed on, or provided by or on behalf of the Supplier for use in connection with, the Product (including any mobile or web-based application for use with the Product) and any part thereof as the meaning requires, including any update.

Supplier means Analytica Ltd ACN 006 464 866.

Terms of Use means the terms of use for the Software.

Website means any site in the pericoach.com domain

13.2 In this agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words **'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what** else might be included;
- (b) no rule of construction applies in the interpretation of this agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- (c) a reference to a party is a reference to the Supplier or the Customer, and a reference to the parties is a reference to both the Supplier and the Customer.