



Terms and Conditions

1. General

- (a) This website is operated by The Earth Element Group Pty Ltd. (ACN 644 319 157) (**we, us, or our**).
 - (b) These terms, our Privacy Policy and any documents referenced in these terms (together, **Terms**) govern your use of our products, services and website (together, **Site**).
 - (c) The term **you** refers to the person accessing, using or relying upon the Site.
 - (d) By using, browsing or accessing the Site, you indicate that you have read, understood and accept the Terms and agree to abide by them.
 - (e) We encourage you to read the Terms before you start using the Site.
 - (f) If you do not agree to the Terms, you should not access or use the Site and its contents.
 - (g) If you have any questions about the Terms, you can contact us at info@theearthelement.com.au.
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2. Accessing the Site

- (a) We will not be liable if, for any reason, the Site is unavailable (wholly or partly) at any time or for any period.
- (b) Access to the Site is permitted on a temporary basis.
- (c) We reserve the right to withdraw or amend the products, services and content we provide on or via the Site without notice.
- (d) From time to time, we may restrict access to some parts of the Site (wholly or partly).
- (e) You are responsible for:
 - (i) making all arrangements necessary for you to use and access the Site; and
 - (ii) ensuring that anyone who accesses the Site through your internet connection, mobile device, or otherwise, is aware of the Terms and comply with them.
- (f) When accessing and using the Site, you must not:
 - (i) attempt to undermine the security or integrity of:
 - (A) our computing systems or networks;
 - (B) a third party's computing systems and networks where the Site is hosted;
 - (ii) use or misuse the Site in any way that may impair the:
 - (A) functionality of the Site or other systems used in the course of delivering the Site;

- (B) ability of any other user to use the Site;
 - (iii) attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access, or to the computer system on which the Site is hosted;
 - (iv) transmit content or data that may be offensive or in breach of any law;
 - (v) input into the Site any files that may damage any other person's computing devices or software; or
 - (vi) attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer, any computer programs used to deliver the Site.
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3. Orders of products

- (a) By submitting an order for products via the Site (**Order**), you are making an offer to purchase the products under the Terms.
 - (b) We will accept your Order by (whichever is earlier):
 - (i) dispatching the products in your Order; or
 - (ii) sending you an invoice for your Order.
 - (c) You may not cancel an Order after it is dispatched.
 - (d) We will only dispatch products in an Order if we have received full payment.
 - (e) We reserve the right not to supply products, for any reason, including where they are not available.
 - (f) Some products displayed on the Site may be unavailable, out of stock or only offered for a limited time. We make no representation as to the continued availability of such products. We will not be liable to you for any loss or damage you suffer due to us not supplying the products.
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4. Service and appointment bookings

- (a) Bookings can be made via our [Book Now](#) page.
- (b) Cancellation of a booking within 24 hours before the booking may result in charges to you.
- (c) You may pay for our services at the completion of the services.
- (d) We reserve the right not to supply services, for any reason.
- (e) Some services displayed on the Site may be unavailable or only offered for a limited time. We make no representation as to the continued availability of such services. We will not be liable to you for any loss or damage you suffer due to us not providing the services.

5. Account registration

- (a) You may create an account on the Site, including to book appointments and submit and review Orders.
- (b) You are solely responsible for the activity conducted on your account.
- (c) We may request that you verify your identity at any time.
- (d) You undertake that you will:
 - (i) only create 1 account on the Site;
 - (ii) not disclose your account password to anyone, and immediately notify us if you become aware that your account is being used without your authorisation or of any other security breach relating to your account;
 - (iii) provide only accurate, current and complete registration information and update that information if it changes; and
 - (iv) not impersonate another account holder, noting the personal and sensitive information that may be accessed via an account.

6. Prices and GST

- (a) Unless otherwise stated, all prices on the Site and provided by us are inclusive of GST.
- (b) We reserve the right to change the prices of goods and services displayed via the Site at any time.
- (c) You are responsible for paying GST.

7. Risk

All risk in products, including the risk of damage to, or loss of, the products passes to you on Delivery (as defined in paragraph 8 below).

8. Delivery

- (a) Delivery of the products is taken to occur at the time the products are unloaded at your delivery address even if you are not present at the address (**Delivery**).
- (b) We only deliver to Australian addresses and are unable to deliver to PO Box or Locker addresses.
- (c) Any Delivery time that we provide is an estimate only.
- (d) You must take Delivery. We will pass on any additional courier, storage or other charges to you if you do not take Delivery.
- (e) We may Deliver the products in an Order in separate consignments.

- (f) We, and our Delivery contractors, are not responsible for any loss or damage resulting from Delivery being after the estimated Delivery time, or an 'authority to leave' request.
 - (g) You release us from and against all claims, demands, liabilities, losses and costs made, suffered or incurred by you or any other person as a result of an 'authority to leave' request.
 - (h) Backorders will be shipped as soon as they are available.
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9. Returns

All returns are subject to our Returns Policy.

10. Personal information

- (a) We process personal information you provide in accordance with our Privacy Policy.
 - (b) By using the Site and providing personal information to us, you consent to such processing and warrant that all information you provide is true and accurate.
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11. Site changes

We may update any part of the Site, and suspend or cease access to the Site or our social media pages.

12. Third Party Sites

- (a) The Site may link to other websites, services, products or resources (together, **Third Party Sites**) for your information and convenience, and other Third Party Sites may contain links to the Site.
- (b) We do not control or maintain Third Party Sites, and are not responsible for the content of those Third Party Sites, including any loss or damage that may arise from your use of those Third Party Sites.
- (c) Links to Third Party Sites on or via our Site do not imply that we endorse them or have any association with their owners, operators or advertising material.
- (d) You use those Third Party Sites at your own risk. You should carefully review the terms and conditions and privacy policies of Third Party Sites that you visit.
- (e) We may use third party platforms on our Site (such as the Cliniko booking system) to facilitate our business purposes. Your use of such platforms will be subject to the platform provider's own terms and conditions and policies. Visit Cliniko's [Terms and conditions](#) and [Privacy Policy](#) for more information.

13. Linking to our Site

- (a) You may only link to our homepage with our prior written consent, which we can withdraw at any time.
 - (b) Your links must not damage, or take advantage of, our reputation, and you must not establish a link to us in such a way as to suggest an association, approval or endorsement from or with us where none exists.
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14. Intellectual property

- (a) The following aspects of the Site and our social media pages are protected by copyright, trade mark and other intellectual property laws: information, text, materials, graphics, logos, button icons, images, video and audio clips, trade marks (whether registered or not), advertisements, layout, arrangement, graphical user interface, look and feel, databases and control features (together, **Content**).
 - (b) Without limiting the foregoing, we own or license all intellectual property rights in the Site and Content.
 - (c) You may only use the Content for personal use. Commercial use of the Content is prohibited.
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15. Disclaimer

- (a) The Content displayed on or via the Site, our social media pages, and Third Party Sites is provided 'as is' and without any guarantees, conditions or warranties as to their accuracy, completeness, timeliness, reliability, currency or fitness for purpose.
 - (b) It is your responsibility to determine that the Site meets your personal needs and is suitable for the purposes for which it is used or accessed.
 - (c) Information on the Site is provided for general informational purposes only. It should not constitute or be treated as medical or health advice or a substitute for medical diagnoses (or any similar advice or function). You should seek advice from your medical or health professional before relying on such information.
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16. Liability

- (a) Nothing in the Terms is intended to exclude, restrict or modify the consumer guarantees under the Australian Consumer Law.
- (b) You acknowledge that descriptions and images on the Site are only indicative of our products and services. Actual colours and characteristics of the products or services may differ depending on the lighting of the images and quality of your device.
- (c) To the extent permitted by law (including the Australian Consumer Law), we and our directors, officers, affiliates, employees, contractors and representatives exclude:

- (i) all conditions, warranties and other terms which might otherwise be implied by statute, common law or the law of equity; and
- (ii) any liability to you or any third person however arising (and whether arising under statute, in tort for negligence or otherwise, breach of contract or otherwise, even if foreseeable) for:
 - (A) any loss of or damage to any property belonging to you or any third person, or personal injury or death to you or any third person;
 - (B) special, indirect or consequential loss or damage; or
 - (C) loss of income, revenue or profits, loss or interruption of business, loss of contracts, loss of anticipated savings, loss or corruption of data, loss of use, loss or privacy, loss of goodwill, wasted management or office time, loss of opportunity or expectation loss, loss of production and for any other loss or damage of any kind,in any way connected with the Site or its Content, or the use or inability to use the Site, our social media pages or Third Party Sites.
- (d) You indemnify us and our directors, officers, affiliates, employees, contractors and representatives from and against all actions, claims, suits, demands, damages, liabilities or costs (including legal costs) arising from, as a result of, or which is directly or indirectly related to:
 - (i) your use of the Site, our social media pages or Third Party Sites;
 - (ii) your breach of the Terms; or
 - (iii) your infringement of any rights of another, including privacy rights or intellectual property rights.

17. Viruses

- (a) You must not:
 - (i) misuse the Site or knowingly introduce viruses, trojans, malware or other malicious or harmful material; or
 - (ii) attempt to gain unauthorised access to the Site, the server on which the Site is stored or any server, computer or database connected to the Site.
- (b) We will not be liable for any loss or damage caused by a virus, trojans, malware, system failures or other harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Site or you downloading any material or content from the Site or Third Party Site.
- (c) We recommend that you have up to date virus checking software.

18. Suspension and termination

- (a) We may, at our discretion and without notice to you, terminate, suspend or block your access to:
 - (i) the Site, our social media pages or any Third Party Sites; and/or

- (ii) any products and services offered on or via the Site, our social media pages, or any Third Party Sites.
 - (b) Cause for suspension or termination includes breach of the Terms, misuse of the Site, legal or regulatory request, discontinuance of the Site, or unexpected technical or security issues or problems.
 - (c) We are not liable to you or any third party for any suspension or termination.
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19. Force majeure

We are not responsible for any delay, suspension or failure to provide the Site (or any Third Party Sites) arising out of any acts, events, omissions, accidents or circumstances outside of our reasonable control, including strikes, lock-outs or other industrial disputes, failure or breakdown of plant, machinery, software, hardware, or communication network, act of God, natural disasters, pandemic, epidemic or other widespread threat to human health (including an outbreak or recurrence), sabotage, war or national emergency, riot, civil commotion, computer hacking, internet interruption or virus, malicious damage, compliance with any law or governmental order, rule, regulation or direction; accident, fire, explosion, flood, storm, default of hosting or data centre providers or other suppliers or sub-contractors, an act or omission of a third party and shortage of suppliers, equipment and materials.

20. Changes to the Terms

- (a) We may change the Terms at any time, which will be effective immediately upon posting to the Site.
 - (b) Using the Site after the updated Terms are posted indicates your acceptance of the updated Terms.
 - (c) You should regularly check the Terms for updates.
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21. General

- (a) Any part of the Terms that is invalid, unlawful or unenforceable will be severed and the remaining parts will continue in force.
- (b) The Terms constitute the entire agreement between the parties, and supersede all previous discussions, correspondence, arrangements and agreements between them relating to the subject matter.
- (c) We may assign, novate or sublicense any of our rights or obligations under the Terms at any time.
- (d) The Terms are governed by the laws of Victoria, Australia. The parties submit to the exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia.

Last updated: 2 October 2020