

## Trading Terms

### 1. Definitions and Interpretation

1.1. In these Trading Terms, unless the context otherwise requires:

<b>Claim</b>	any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise
<b>Customer</b>	means the person or entity named as the customer on any Order or Tax Invoice
<b>Delivery Date</b>	is the date that the Goods are delivered by the Supplier to the Delivery Point
<b>Delivery Point</b>	is the location to which the Goods will be delivered by the Supplier for collection by the Customer which may be: (a) an address nominated by the Supplier; or (b) an address nominated by the Customer (which may incur delivery fees)
<b>Force Majeure Event</b>	a cause beyond the reasonable control of the Supplier and including but not limited to the following events or occurrences and their effects: acts of God or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, pandemic, war, embargoes, riot or civil disturbances, governmental or governmental agency action and restraints, strikes or other labour disputes which affects the supply of the Goods or Training, sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction, change in Laws applicable to the production of the Goods or delivery of the Training, or any other occurrence which is beyond the control of the Supplier and which the Supplier could not take reasonable measures to prevent or avoid
<b>Goods</b>	means the Bodi Slim Fat Freezing / Cryoipolysis machine described on the Order and supplied by the Supplier
<b>GST</b>	has the meaning it has in the GST Act
<b>GST Act</b>	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Commonwealth)
<b>IP Rights</b>	all rights now or in the future conferred under statute, common law or equity, or in relation to: (a) patents and inventions, designs, trade marks, trade secrets, domain names, copyright and moral rights, all rights to have information (including trade secrets, know-how, operating procedures, technical information, source codes, computer programs, applications, rights in mobile applications and rights in the contents of any website) kept confidential and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967, whether or not those rights are registered or unregistered, the subject of an application for registration, or are registrable or unregistrable; and (b) goodwill, reputation or distinctiveness in connection with the supply of Goods including, business names, trade or brand names, get-up, presentation or appearance (including colours or combination of colours)
<b>Laws</b>	means common law, principles of equity, and laws made by parliament, State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them
<b>Liability</b>	includes all liabilities (whether actual, contingent or prospective), Losses, damages, costs, charges and expenses of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred
<b>Loss</b>	includes any damage, loss, cost, Claim, Liability or expense (including legal costs and expenses) including any consequential or indirect losses or economic losses or loss of profits
<b>Materials</b>	includes any information, documents, manuals, guides or material (in whatever form) provided with the Training or Goods for use and reference by the Customer
<b>Order</b>	means an order placed by the Customer to the Supplier pursuant to clause 3.1 for the supply of Training and or Goods subject to these Trading Terms
<b>Price</b>	means the price fixed by the Supplier from time to time for each type and quantity of Goods
<b>Supplier</b>	means Tanya Louise White trading as Bodi Slim ABN 92 189 870 114
<b>Tax Invoice</b>	means each tax invoice issued by the Supplier to the Customer in accordance with the GST Act
<b>Taxable Supply</b>	has the meaning it has in the GST Act
<b>Trading Terms</b>	means these terms and conditions which form part of each Order
<b>Training</b>	means the training course delivered by the Supplier to educate the Customer on how to use the Goods which includes online learning and one face to face training component
<b>Training Date</b>	is the date that the Training is to be delivered
<b>Training Fee</b>	means the fee charged by the Supplier for providing the Training
<b>Warranty Policy</b>	means the policy updated from time to time by the Supplier describing the warranties and ongoing obligations of the Supplier (and or manufacturer as applicable) with respect to the Goods

1.2. In these Trading Terms, unless the context otherwise requires:

- (a) singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (d) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) other grammatical forms of defined words or expressions have corresponding meanings;
- (f) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (g) a reference to a document includes the document as modified from time to time and any document replacing it;
- (h) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (i) the word "include" or any form of that word, when introducing a list of things, does not limit the meaning of the words to which the list relates to those things or to things of a similar kind;
- (j) examples are descriptive only and not exhaustive; and
- (k) money amounts are stated in Australian currency unless otherwise specified.

### 2. Application

2.1. These Trading Terms will apply to all Training and Goods ordered by the Customer from the Supplier unless waived by the Supplier in writing.

2.2. These Trading Terms may be varied by the Supplier on 30 days' notice to the Customer.

### 3. Orders

#### 3.1. Order Requirements for Goods

In order for an Order for Goods to be valid and complete, it must:

- (a) Be in the form approved by the Supplier;
- (b) Be in writing;
- (c) Be signed by an authorised person for the Customer; and
- (d) Specify the type and quantity of Goods requested.

#### 3.2. Order Requirements for Training

In order for an Order for Training to be valid and complete, it must:

- (a) Be in the form approved by the Supplier;
- (b) Be in writing;
- (c) Be signed by an authorised person for the Customer; and
- (d) Specify the preferred Training Date.

#### 3.3. Order confirmed

(a) An Order is only confirmed, and the Supplier is only obliged to supply the Goods and or Training once it has:

- (i) Received a valid and complete Order from the Customer; and
- (ii) Provided confirmation to the Customer in writing of its receipt and acceptance of the Order.

(b) The Supplier has the right to reject any Order without assigning any reason therefore.

- 3.4. **Change to an Order for Goods**
- (a) The Supplier is not obliged to consider any request to vary or cancel an Order for Goods where the request is made more than 3 business days after that Order has been accepted.
  - (b) If the Customer:
    - (i) Attempts or seeks to cancel an Order for Goods more than 3 business days after it has been accepted by the Supplier; or
    - (ii) Seeks to vary the quantity or type of Goods on Order, then the Customer will be liable for all costs, expenses and Losses incurred by the Supplier resulting from such cancellation or variation of Order.
  - (c) If the Supplier is unable to deliver the Goods for any reason, the Supplier will offer a refund or exchange for similar Goods that may be available.
- 3.5. **Change to an Order for Training**
- (a) The Supplier is not obliged to consider any request to cancel an Order for Training or to change a Training Date if that request is made less than 2 days prior to the scheduled Training Date (as confirmed in the Order).
  - (b) If the Customer:
    - (i) Attempts or seeks to cancel an Order for Training more than 2 business days prior to the Training Date; or
    - (ii) Seeks to revise the Training Date by providing at least 2 business days notice prior to the Training Date, then the Customer will forfeit 50% of the Training Fee to the Supplier to compensate the Supplier for all costs, expenses and Losses incurred by the Supplier resulting from such cancellation or variation of Order.
  - (c) If the Training ordered relates only to the supply of Materials then the Customer will not be able to cancel the Training after the Materials have been provided by the Supplier.
4. **Charges**
- 4.1. **Price of Goods**
- (a) The Supplier may vary the Price of the Goods from time to time without having to serve any notice on the Customer.
  - (b) An Order for Goods will be supplied at the Price in place at the time of the Order being submitted unless:
    - (i) Additional Goods are sought as a variation to an existing Order; or
    - (ii) The cost of delivering the Goods increases after an Order has been accepted but before the Goods are delivered.
- 4.2. **Training Fee**  
The Customer must pay to the Provider, the Fee for the supply and delivery of the Training.
- 4.3. **Additional charges**  
In addition to the Price and the Training Fee, the Customer agrees to pay to the Supplier:
- (a) All taxes, stamp duty or other statutory charges or levies payable by the Supplier or the Customer in relation to the supply of the Goods and or Training;
  - (b) Storage charges or fees where the Goods are either:
    - (i) not able to be delivered (if delivery was arranged); or
    - (ii) not collected by the Customer on or before the agreed time for collection;
  - (c) Delivery charges (if delivery was arranged as a condition of the Order);
  - (d) All legal costs (on a solicitor/client basis) and disbursements incurred by the Supplier in connection with the supply of the Goods and or Training or enforcement of the Order;
  - (e) All costs and Losses incurred by the Supplier as a result of any request for variation to or cancellation of a confirmed Order;
  - (f) All costs and Losses incurred by the Supplier in relation to the recovery return or repossession of Goods from the Customer.
- 4.4. **Amount due**  
The final amount due in respect of an Order will be the amount shown on the Tax Invoice supplied by the Supplier to the Customer.
5. **Payment terms**
- 5.1. **Training**  
Where the Order relates to Training, the Customer must (unless otherwise agreed) pay the full Training Fee at the time of placing the Order.
- 5.2. **Goods**  
Where the Order relates to Goods, the Customer must (unless otherwise agreed):
- (a) pay a deposit equal to 50% of the Price at the time of placing the Order; and
  - (b) pay the balance of the Price at least 10 business days prior to the Training Date.
- 5.3. **Interest on overdue monies**  
Interest will accrue on any overdue monies in accordance with clause 16.2 of these Trading Terms.
6. **GST**
- 6.1. Except as otherwise provided in the acceptance of an Order, the Price and Training Fee is inclusive of all taxes including impost, levy, deduction, charges, withholding or tax of any kind whatsoever, but excluding GST.
- 6.2. If the supply of Goods and or Training is a Taxable Supply, the Customer must pay, in addition to any consideration payable by the Customer under the Order for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant supply payable by the Customer, provided always that the Supplier issues a valid Tax Invoice to the Customer.
- 6.3. If for any reason the amount recovered from the Customer by the Supplier on account of GST under clause **Error! Reference source not found.** differs from the amount of GST payable at Law by the Supplier in respect of the supply, the amount payable by the Customer will be adjusted accordingly.
7. **Force Majeure Event**
- 7.1. **Suspension of obligations**  
If the Supplier is unable, wholly or partly, by reason of a Force Majeure Event to supply the Goods or the Training in accordance with the Order, then the Supplier must:
- (a) give the Customer immediate notice of the Force Majeure Event; and
  - (b) use all reasonable endeavours to remove the Force Majeure Event as quickly as possible.
- 7.2. **Supplier may use third party**  
If by reason of the Force Majeure Event, the Supplier cannot supply the Goods or the Training for a period of time, the Supplier may:
- (a) contract with a third party to supply the Goods or Training (or any part of them) for the period of the Force Majeure Event; or
  - (b) cancel the Order and refund all monies paid to the Customer.
- 7.3. **No liability**  
The Customer acknowledges and agrees that the Supplier will not be held liable for any delay or inability to supply the Goods or Training within the agreed timelines or in accordance with the terms of the Order by reason of a Force Majeure Event.
8. **Delivery of Goods**
- 8.1. **Delivery Point**
- (a) The Customer will specify the preferred Delivery Point on the Order which is subject to the approval of the Supplier.
  - (b) If the Delivery Point is not at a Supplier site then the Supplier may charge reasonable delivery fees to the Customer.
  - (c) The Customer must ensure that where the Delivery Point is not a Supplier site, that there is access by vehicle on a properly constructed roadway.
  - (d) In the event that the Customer is not present at the Delivery Point at the time of delivery, the Customer authorises the Supplier to unload the Goods at the Delivery Point and agrees not to make any Claim for any damage or Loss incurred as a result of the Goods being left.
  - (e) If for any reason the Goods cannot be delivered to the agreed Delivery Point, the Customer will be responsible for all costs, expenses and Losses incurred by the Supplier in having to return the Goods or redeliver.
- 8.2. **Delivery Date**
- (a) The Supplier will indicate the estimated Delivery Date on providing confirmation of receipt of the Order.
  - (b) The Supplier agrees that it will make all reasonable attempts to deliver the Goods to the Delivery Point on the Delivery Date during business hours, but the Supplier may extend the intended Delivery Date by providing 5 days' notice to the Customer.
- 8.3. **Delivery complete**  
Delivery is deemed to be complete when the Goods are delivered to the Delivery Point (or upon collection of the Goods by the Customer from the Delivery Point if the Supplier has agreed to collection from a Supplier site).
9. **Acceptance of Goods / Claims**
- 9.1. **Defective or rejected Goods**
- (a) It is the responsibility of the Customer to inspect the Goods immediately upon delivery.

- (b) The Customer will have 7 days from the date of delivery to notify the Supplier that the Goods are not acceptable either due to:
  - (i) A shortage of Goods;
  - (ii) Damage to the Goods; or
  - (iii) Defects or fault in the Goods.
- (c) The Supplier reserves the right to inspect the Goods and make its own assessment of the Goods reported as unacceptable.
- (d) Where both parties agree that the Goods are unacceptable, the Supplier may elect, at its absolute discretion, to either repair, replace or correct the Goods or alternatively offer a refund of any monies paid for those Goods.
- (e) If the Customer fails to make any Claim to the Supplier within 7 days from the date of delivery, the Customer will be deemed to have accepted that the Goods were acceptable at the time of delivery and otherwise comply with the Order.

**10. Title and risk**

- 10.1. Risk in the Goods passes to the Customer immediately upon delivery of the Goods.
- 10.2. Notwithstanding the above, the title in the Goods delivered remains with the Supplier and does not pass to the Customer until the Supplier has received payment in full of any Tax Invoice provided by the Supplier in connection with the supply of the Goods.
- 10.3. Until payment is received by the Supplier in full, the Customer holds the Goods on trust and as bailee for the Supplier
- 10.4. The Customer, by accepting delivery of the Goods agrees that:
  - (a) It will at all times store the Goods so that they can be identified and cross referenced to particular Tax Invoices;
  - (b) It shall have the power to sell the Goods as agent for and on behalf of the Supplier provided that:
    - (i) All proceeds of that sale shall be paid into and kept in a separate account;
    - (ii) Separate records shall be maintained by the Customer in respect of that account;
    - (iii) The Supplier shall be entitled to maintain a Claim against the proceeds of sale of any other goods into which the Goods have been fitted or installed;
  - (c) The Supplier will be entitled to enter the Customer's premises at any time and without prior notice to re-take possession of the Goods;
  - (d) It must insure against the risk in the Goods (given that risk in the Goods passes to the Customer on delivery);
  - (e) It must, if required, deliver up the Goods to the Supplier at its own cost and expense; and
  - (f) Each of the above provisions is severable if they are judged to go beyond what is reasonable.
- 10.5. The right of the Customer to deal with the Goods will immediately cease upon the appointment to the Customer of either a liquidator, receiver, manager, administrator, provisional liquidator or bankruptcy trustee.

**11. Training**

- 11.1. Training will be delivered by the Supplier on the Training Dates using a combination of online learning modules and face to face teaching.
- 11.2. If the Supplier is unable to deliver the Training on the Training Date, then the Supplier may offer the Customer:
  - (a) A refund of the Training Fee; or
  - (b) A revised Training Date.

**12. Intellectual Property**

- 12.1. The Supplier owns (or has a licence or right to use) all IP Rights in the Materials.
- 12.2. The Customer acknowledges and agrees that:
  - (a) It does not and will not by reason of having enrolled in and completed the Training or purchased the Goods, own or have any interest in or right to use any of the IP Rights in the Materials;
  - (b) The ownership of the IP Rights which exist before the Order is placed is not transferred or assigned merely by virtue of its use by a Customer gaining access to Materials;
  - (c) It must not reproduce, copy, modify or in any way use the Materials for any purpose other than its personal use.

**13. Customer warranties**

- 13.1. The Customer warrants and acknowledges that:
  - (a) Each of them has read and understands these Trading Terms;
  - (b) It can pay its debts as and when they fall due;
  - (c) The Goods provided by the Supplier are based on the information provided to it by the Customer and referred to in the Order;
  - (d) It may be required to provide further personal information prior to completing the Training relating to the health and condition of the person participating in the Training and the Supplier will rely on that information provided;
  - (e) It is responsible for providing its own device and internet connection in order to complete the online component of the Training;
  - (f) It will not by reason of an Order, own or have any interest in or right to use any IP Rights owned or used by the Supplier; and
  - (g) Any IP Rights created or developed by the Supplier in the course of delivering the Training will rest in the Supplier upon creation;
  - (h) It must not use the Training or the Goods for commercial use or profit within a radius of 50km from Ballarat VIC 3350; and
  - (i) The Customer promises not to make any Claim or seek to withhold payments in respect of any of the above matters.

**14. Supplier's warranties**

- 14.1. The Supplier warrants that it is an authorised distributor of the Goods but is not the manufacturer of the Goods.
- 14.2. Without limiting any other warranties contained herein, the Supplier warrants that all Goods will be reasonably fit for the purpose for which they are manufactured.
- 14.3. The Supplier expressly warrants (unless otherwise limited by it in writing), that it will inspect and at its own discretion and option, either replace or repair any Goods supplied by it which:
  - (a) Are proved to be defective due to faulty workmanship or materials; or
  - (b) Fail under normal use or operation within the period specified by the Supplier in any Warranty Policy attached to the Goods or Tax Invoice.
- 14.4. The Supplier is not obliged to commence any repair or replacement work until the defective Goods are returned to the Supplier.
- 14.5. If the Goods are not capable of repair, replacement or correction then the Supplier may offer a credit in exchange for the defective Goods equal to the Price paid for the Goods and shown on the Tax Invoice.
- 14.6. The Supplier's warranty shall not apply in respect of:
  - (a) Incorrect Goods ordered by the Customer;
  - (b) Normal maintenance in accordance with operating manuals, instructions or normal standards;
  - (c) Normal wear and tear; or
  - (d) Any other reason specifically excluded in the Warranty Policy.

**15. Liabilities and Indemnities**

- 15.1. **Indemnity by Supplier**  
The Supplier indemnifies the Customer against any Claim or Loss suffered or incurred by the Customer, which may arise from any breach by the Supplier of any of the warranties given the Supplier under these Trading Terms.
- 15.2. **Indemnity by the Customer**  
To the extent permitted by Law or these Trading Terms, the Customer indemnifies the Supplier against any Claim or Loss suffered or incurred by the Supplier or third persons, which may arise from:
  - (a) The Customer provided information containing any errors, omissions, inaccuracies or misleading information;
  - (b) Any breach by the Customer of any warranties or obligations of the Customer under these Trading Terms;
  - (c) Any delay or extension of the Delivery Date by the Supplier;
  - (d) Any defect or error in the delivery of the Goods; and
  - (e) Any injury, death, damage or Loss incurred by the Customer, its personnel, agents, customers or third parties resulting from any participation in the Training or use of the Goods not in accordance with the advice of the Supplier.

**16. Default by the Customer**

- 16.1. The Customer will be in default in the event that:
  - (a) It has breached any one of the warranties made by the Customer under these Trading Terms; or
  - (b) It has failed to perform any of its obligations under an Order or these Trading Terms; or
  - (c) The Customer is insolvent in that it is unable to pay its debts when they fall due.
- 16.2. **Penalty interest**
  - (a) The Customer must pay to the Supplier, interest at the rate which is 2% above the rate from time to time fixed by the *Penalty Interest Rates Act 1983 (Vic)* on any overdue amounts, with such interest calculated from the due date for payment until the date that payment is received in full as clear funds by the Supplier.
  - (b) Any payment received by the Supplier from the Customer must be applied, in order, to costs and Losses, then to the interest on the oldest overdue Tax Invoice, and then to the costs, Losses, interest and amount outstanding on subsequent Tax Invoices, until all overdue amounts are paid for in full.

- 16.3. **Rights of Supplier and withdrawal of credit**  
The Customer must pay to the Supplier within 7 days of a request, the Supplier's reasonable expenses, costs and Losses in respect of:
- (a) Any breach by the Customer of these Trading Terms; or
  - (b) The exercise or attempted exercise by the Supplier of any right or remedy against the Customer pursuant to these Trading Terms or the Order in place.
17. **Guarantee**  
Each person that is an owner or director of the Customer, jointly and severally:
- 17.1. Guarantees to the Supplier the prompt payment of all amounts due to the Supplier from time to time;
  - 17.2. Guarantees that the Customer will comply with these Trading Terms;
  - 17.3. Promises to comply with these Trading Terms personally and all obligations of the Customer under the Trading Terms.
18. **Privacy**
- 18.1. **Collection of personal information**  
Subject to clause **Error! Reference source not found.**, any personal or confidential information obtained or collected by the Supplier shall be retained, held and used only in accordance with the Supplier's privacy policy and the provisions of the *Privacy Act 1988* (Cth).
  - 18.2. **Change of details**  
The Customer must notify the Supplier of any change to its contact details (as set out in the Order) or in its accounts payable contact at least fourteen (14) days prior to any of those changes taking place.
19. **Miscellaneous**
- 19.1. **Notices**  
Any notice or other communication to or by a party under these Trading Terms:
    - (a) may be given by personal service, email or post;
    - (b) must be in writing, legible and in English addressed to the address of each party contained in the Order, or to any other address last notified by the party to the sender by notice given in accordance with this clause;
    - (c) is deemed to be given by the sender and received by the addressee:
      - (i) if delivered in person, when delivered to the addressee;
      - (ii) if emailed, 4 hours after the sent time (as recorded on the sender's email server); or
      - (iii) if posted, two (2) business days after the date of posting to the addressee whether delivered or not; but if the delivery or receipt is on a day which is not a business day or is after 5.00pm (addressee's time), it is deemed to have been received at 9.00am on the next business day.
  - 19.2. **Assignment**  
The Customer must not assign the Order or any rights benefits or obligations under these Trading Terms without the prior written consent of the Supplier. A purported assignment without written consent will be deemed to be void and to convey no rights.
  - 19.3. **Costs**  
Each party must pay its own costs of negotiating, preparing and submitting each Order.
  - 19.4. **No Exclusion of rights**  
The rights, powers or remedies provided in these Trading Terms are cumulative with and not exclusive of any rights, powers or remedies provided independently of these Trading Terms.
  - 19.5. **Partial exercise of rights**  
No single or partial exercise by any party of any right, power or remedy under these Trading Terms shall preclude any other or further exercise of that or any other right, power or remedy.
  - 19.6. **Survival**  
Notwithstanding any other provision in these Trading Terms, any indemnity, warranty or any obligation of confidence under each Order is independent and survives completion or cancellation of the Order.
  - 19.7. **Entire Agreement**  
The Order and Trading Terms contain the entire understanding between the parties in relation to each separate request for the supply of Goods and or Training and supersedes all prior agreements and communications between the parties.
  - 19.8. **Severability**  
Any provision of these Trading Terms which is invalid in any jurisdiction must, in relation to that jurisdiction:
    - (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
    - (b) be severed from these Trading Terms in any other case,without invalidating or affecting the remaining provisions of these Trading Terms or the validity of that provision in any other jurisdiction.
  - 19.9. **Relationship**  
An Order does not create a relationship of employment, agency or partnership between the parties.
  - 19.10. **No waiver**
    - (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by these Trading Terms does not operate as a waiver of the power or right.
    - (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under these Trading Terms.
    - (c) A waiver of a breach does not operate as a waiver of any other breach.
  - 19.11. **Governing law and jurisdiction**
    - (a) These Trading Terms are governed by and must be construed in accordance with the Laws in force in Victoria.
    - (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to these Trading Terms, the Order, its performance or subject matter.