

## **WEBSITE TERMS & CONDITIONS OF USE**

### **1. About the Website**

- (a) Welcome to Implant Wise (the 'Website'). The Website allows you to access and use the Implant Wise Ordering System (the 'Services').
- (b) The Website is operated by Implant Wise, ACN/ABN TBA . Access to and use of the Website, or any of its associated Products or Services, is provided by Implant Wise. Please read these terms and conditions (the 'Terms') carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of Services, immediately.
- (c) Implant Wise reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Implant Wise updates the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of the Terms for your records.

### **2. Acceptance of the Terms**

You accept the Terms by remaining on the Website. Where the option is available in the user interface, you may also accept the Terms by clicking to accept or agree to the Terms.

### **3. About the Service**

- (a) Implant Ordering System is Allows selection, comparison and create order email for participating implant manufacturers
- (b) Free accounts are currently offered. You acknowledge and agree that the accounts offered, as well as the account features may change from time to time, and may be governed by separate terms which apply specific to the account. Where special account-specific terms apply, you will be informed, and must accept those terms before you are given such an account. For the avoidance of doubt these Terms apply unless otherwise agreed or amended by account-specific terms.
- (c) Some accounts may be governed by a separate Software Licensing Agreement with Implant Wise, which may amend the terms of use. For the avoidance of doubt these Terms apply unless otherwise agreed or amended by the terms of an applicable Software Licensing Agreement.

### **4. Acceptable use of the Service**

- (a) Implant Ordering System, its related features, and website must only be used lawfully. Implant Wise reserves the right to suspend, cancel, or otherwise deny access to users and accounts who use the service:
  - (i) To engage in any act that would disrupt the access, availability, and security of Implant Ordering System and other Implant Wise services, including but not limited to:
    - (A) Tampering with, reverse-engineering, or hacking our servers.
    - (B) Modifying, disabling, or compromising the performance of Implant Ordering System or other Implant Wise services.
    - (C) Overwhelming, or attempting to overwhelm our infrastructure by imposing an unreasonably large load on our systems that consume extraordinary resources.
    - (D) Compromising the integrity of our system, including probing, scanning and testing the vulnerability of our system unless expressly permitted by Implant Wise.
- (b) For any illegal purpose, or to violate any laws, including and without limitation to data, privacy, and export control laws.
- (c) To stalk, harass or threaten users and any member of the public.
- (d) To misrepresent or defraud any user or member of the public through phishing, spoofing, manipulating headers or other identifiers, impersonating anyone else, or falsely implying any sponsorship or association with Implant Wise or any third party
- (e) To access or search any part of the Service, or any other Service owned by Implant Wise other than our publicly supported interface, or otherwise allowed for in an applicable Software Licensing Agreement.
- (f) To post, upload, share, or otherwise circulate content in violation of Implant Ordering System's content policy

## **5. Security and Data Privacy**

Implant Wise takes your privacy seriously and information provided through your use of the Website and/or Services are subject to Implant Wise's Privacy Policy, which is available on the Website. The Privacy Policy also addresses Implant Wise's processes, policies, and obligations in respect of Implant Ordering System security breaches.

## **6. Data Use**

Implant Wise collects, stores, and processes your data on Implant Ordering System. The data is used to provide Services to you, as well as to facilitate Implant Wise's business

operations. The Privacy Policy outlined how your data is collected, stored, and processed by Implant Wise. The Privacy Policy also addresses Implant Wise's processes, policies, and obligations in respect of data encryption and removal requests.

## **7. Subscription to use the Service**

- (a) In order to access the Services, you must first purchase a subscription through the Website (the 'Subscription') and pay the applicable fee for the selected Subscription (the 'Subscription Fee'). After purchasing a Subscription, you will be considered a member ('Member').
- (b) In purchasing the Subscription, you acknowledge and agree that it is your responsibility to ensure that the Subscription you elect to purchase is suitable for your use.
- (c) Before, during or after you have purchased the Subscription, you will then be required to register for an account through the Website before you can access the Services (the 'Account').
- (d) As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including but not limited to Name, Email Address, Patient Initials or Names (at your discretion).
- (e) You warrant that any information you give to Implant Wise in the course of completing the registration process will always be accurate, correct and up to date.
- (f) Once you have completed the registration process, you will be a registered user of the Website and agree to be bound by the Terms ("User"). As a Member you will be granted immediate access to the Services from the time you have completed the registration process until the subscription period expires (the 'Subscription Period').
- (g) You may not use the Services and may not accept the Terms if:
  - (i) you are not of legal age to form a binding contract with Implant Wise; or
  - (ii) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services

## **8. Payments**

- (a) Subject to the terms of any applicable Software License Agreement, the Subscription Fee may be paid by all payment methods available on the Website, and may change from time to time.

- (b) Payments made in the course of your use of Implant Ordering System may be made using third-party applications and services not owned, operated, or otherwise controlled by Implant Wise. You acknowledge and agree that Implant Wise will not be liable for any losses or damage arising from the operations of third-party payment applications and services. You further acknowledge and warrant that you have read, understood and agree to be bound by the terms and conditions of the applicable third-party payment applications and services you choose to use as a payment method for Implant Ordering System services.
- (c) You acknowledge and agree that where a request for the payment of the Subscription Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Subscription Fee.
- (d) You agree and acknowledge that Implant Wise can vary the Subscription Fee at any time and that the varied Subscription Fee will come into effect following the conclusion of the existing Subscription.

## **9. Refund Policy**

Implant Wise will only provide you with a refund of the Subscription Fee in the event they are unable to continue to provide the Services or if the manager of Implant Wise makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances. Where this occurs, the refund will be in the proportional amount of the Subscription Fee that remains unused by the Member (the 'Refund').

## **10. Copyright and Intellectual Property**

- (a) The Website, the Services and all of the related products of Implant Wise are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website code, scripts, design elements and interactive features) or the Services are owned or controlled for these purposes, and are reserved by Implant Wise or its contributors.
- (b) All trademarks, service marks and trade names are owned, registered and/or licensed by Implant Wise, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a User to:
  - (i) use the Website pursuant to the Terms;
  - (ii) copy and store the Website and the material contained in the Website in your device's cache memory; and
  - (iii) print pages from the Website for your own personal and non-commercial

use.

- (c) Implant Wise does not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by Implant Wise.
- (d) Implant Wise retains all rights, title and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will transfer any:
  - (i) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
  - (ii) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
  - (iii) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process), to you.
- (e) You may not, without the prior written permission of Implant Wise and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website, which are freely available for re-use or are in the public domain.

## **11. General Disclaimer**

- (a) Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.
- (b) Subject to this clause, and to the extent permitted by law:
  - (i) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and
  - (ii) Implant Wise will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.
- (c) Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without

warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Implant Wise make any express or implied representation or warranty about the Services or any products or Services (including the products or Services of Implant Wise) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (i) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (ii) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Services related products (including third party material and advertisements on the Website);
- (iii) costs incurred as a result of you using the Website, the Services or any of the products of Implant Wise; and
- (iv) the Services or operation in respect to links which are provided for your convenience.

## **12. Limitation of Liability**

- (a) Implant Wise's total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.
- (b) You expressly understand and agree that Implant Wise, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

## **13. Termination of Contract**

- (a) The Terms will continue to apply until terminated by either you or by Implant Wise as set out below.
- (b) If you want to terminate the Terms, you may do so by:
  - (i) not renewing the Subscription prior to the end of the Subscription Period;
  - (ii) providing Implant Wise with 30 Days days' notice of your intention to terminate; and

- (iii) closing your accounts for all of the services which you use, where Implant Wise has made this option available to you.
- (c) Any notices pursuant to Clause 13.2 above should be sent, in writing, to Implant Wise via the 'Contact Us' link on our homepage.
- (d) Implant Wise may at any time, terminate the Terms with you if:
  - (i) you do not renew the Subscription at the end of the Subscription Period;
  - (ii) you have breached any provision of the Terms or intend to breach any provision;
  - (iii) Implant Wise is required to do so by law;
  - (iv) the provision of the Services to you by Implant Wise is, in the opinion of Implant Wise, no longer commercially viable.
- (e) Subject to local applicable laws, Implant Wise reserves the right to discontinue or cancel your Subscription or Account at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Implant Wise's name or reputation or violates the rights of those of another party.

## **14. Indemnity**

You agree to indemnify Implant Wise, its affiliates, employees, agents, contributors, third party content providers and licensors from and against:

- (a) all actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with your content;
- (b) any direct or indirect consequences of you accessing, using or transacting on the Website or attempts to do so; and/or
- (c) any breach of the Terms.

## **15. Dispute Resolution**

### **15.1. Compulsory:**

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### **15.2. Notice:**

A party to the Terms claiming a dispute ('Dispute') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

**15.3. Resolution:**

On receipt of that notice ('Notice') by that other party, the parties to the Terms ('Parties') must:

- (a) Within 60 Days days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, 90 Days days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Disputes Centre or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Sydney, Australia.

**15.4. Confidential:**

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

**15.5. Termination of Mediation:**

If 5 Days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

**16. Venue and Jurisdiction**

The Services offered by Implant Wise is intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of New South Wales.

**17. Governing Law**

The Terms are governed by the laws of New South Wales. Any dispute, controversy,



proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of New South Wales, Australia without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

## **18. Independent Legal Advice**

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

## **19. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.

# **CONFIDENTIALITY**

## **BACKGROUND**

- (A) The Disclosing Party possesses the Confidential Information. The Recipient Party wishes to have access to the Confidential Information for the Specified Purpose.
- (B) The Disclosing Party has agreed to disclose the Confidential Information to the Recipient Party subject to the terms and conditions of this agreement.

## **OPERATIVE PROVISIONS**

### **1. Definitions**

In this agreement:

**Confidential Information** means all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise relating in any way to the matters described in schedule 1, and all other information relating to the Disclosing Party and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain and includes any such information in the Disclosing Party's power, possession or control concerning or belonging to any other person.

**Ineffective** means void, illegal or unenforceable.

**Specified Purpose** means the purpose set out in schedule 1.

## **2. Access**

The Recipient Party acknowledges that the Recipient Party may be given access to certain Confidential Information of the Disclosing Party, for the Specified Purpose.

### **3. Obligation of confidentiality**

In consideration of the Disclosing Party allowing the Recipient Party to have access to the Confidential Information, the Recipient Party agrees that it will keep and will ensure that its employees keep confidential the Confidential Information unless and until the parties agree that the Confidential Information is in the public domain other than by a breach of this agreement.

### **4. Duties of Recipient Party**

#### **4.1. Non-disclosure and use**

The Recipient Party will not and will ensure that its employees do not:

- (a) disclose any of the Confidential Information to any other person without the prior written consent of the Disclosing Party; or
- (b) use any of the Confidential Information otherwise than for the Specified Purpose.

#### **4.2. Uncertainty**

If the Recipient Party is uncertain as to whether any information is Confidential Information the Recipient Party will treat the information as if it were Confidential Information and as not being in the public domain unless and until the Disclosing Party agrees in writing that the information is in the public domain.

#### **4.3. Precautions**

The Recipient Party will take all reasonable precautions to maintain the confidentiality of and to prevent the disclosure or use of the Confidential Information.

#### **4.4. Unauthorised disclosure or use**

The Recipient Party will immediately notify the Disclosing Party of any unauthorised disclosure or use of the Confidential Information of which the Recipient Party becomes aware and will take all steps which the Disclosing Party may reasonably require in relation to such unauthorised disclosure or use.

#### **4.5. Return of Confidential Information**

At the conclusion of the Specified Purpose or upon the written request of the Disclosing Party, at its own expense, the Recipient Party will immediately deliver to the Disclosing Party all records and materials (and copies of those records and materials) containing or embodying the Confidential Information that are in the possession of the Recipient Party, its employees and any person to whom the Recipient Party has disclosed all or any of the Confidential Information (whether or not with the consent of the Disclosing Party).

## **5. Exceptions**

The Recipient Party will not be bound to keep confidential any information if and to the extent that:

- (a) the information is, or becomes part of the public domain otherwise than by breach of this agreement by the Recipient Party;
- (b) the information is lawfully obtained by the Recipient Party from another person without any restriction as to use and disclosure;
- (c) the information was in the Recipient Party's possession prior to disclosure to it by the Disclosing Party;
- (d) the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency;
- (e) the Disclosing Party has authorised in writing the disclosure of the information; or
- (f) the information is disclosed by the Recipient Party to its professional advisers who have agreed to keep confidential the Confidential Information.

## **6. Remedy**

The Recipient Party acknowledges and accepts that:

- (a) the Disclosing Party would suffer financial and other loss and damage if the Confidential Information were disclosed to any other person or used for any purpose other than the Specified Purpose and that monetary damages would be an insufficient remedy;
- (b) in addition to any other remedy which may be available in law or equity, the Disclosing Party is entitled to injunctive relief to prevent a breach of this agreement and to compel specific performance of this agreement; and
- (c) it will immediately reimburse the Disclosing Party for all costs and expenses, (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of that Party under this agreement.

## **7. Indemnity**

### **7.1. Indemnity for costs**

The Recipient Party indemnifies the Disclosing Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the Disclosing Party as a result of any breach of this agreement by the Recipient Party.

## **7.2. Scope of indemnity**

The indemnity in clause 7.1 extends to and includes all costs, damages and expenses incurred by the Disclosing Party in defending or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

## **4. Cumulative rights**

The rights arising out of this agreement do not exclude any other rights of either Party.

## **5. Enforceability**

### **9.1. Effect of ineffectiveness on part of the agreement**

Any clause or part of a clause of this agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

### **9.2. Severance of Ineffective parts of the agreement**

Where any clause or part of a clause is Ineffective it may be severed without affecting any other part of this agreement.

## **5. Waiver**

### **10.1. No waiver except by notice in writing**

No right under this agreement is waived or deemed to be waived except by notice in writing signed by the Party waiving the right.

### **10.2. No waiver of subsequent breaches**

A waiver by one Party under clause 10.1 does not prejudice its rights in respect of any subsequent breach of this agreement by the other Party.

### **10.3. No waiver by extension or delay**

The failure to exercise, or any delay in exercising, any right, power or remedy by a Party does not operate as a waiver or an election to abandon the right to exercise any right, power or remedy.

## **2 Variation**

A variation of this agreement will be in writing and signed by the parties.

## **3 Execution**

7. Subject to clause 12(b), each Party, and their respective successors and assigns,

will be authorised to rely upon the signatures of all the Parties on this agreement (or any amendment) which are:

9. delivered by facsimile machine; or
10. transmitted electronically in either:
  - (a) a tagged image format file (TIFF); or
  - (b) portable document format (PDF),

as constituting a duly authorised, irrevocable, actual, current delivery of this agreement (or any amendment) with original ink signatures of each person and entity.

Each Party that delivers or transmits an executed counterpart pursuant to clause 12(a) (Counterpart) to another Party, agrees that it will deliver an executed original copy of the agreement (or any amendment) to the Party(s) receiving the Counterpart within 10 business days after the delivery of the Counterpart.

Any noncompliance with clause 12(b) will not affect the validity, enforceability or binding effect of this agreement.

## **2 Governing law and jurisdiction**

### **13.1. Governing law**

This agreement is governed by the laws of the place set out in schedule 1.

### **13.2. Jurisdiction**

The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the place set out in schedule 1.

## **Schedule 1**

### **11. Description of subject matter of confidentiality obligation (clause 1)**

Screens, workflows, and design of the website.

Know-how and business secrets

### **12. Purpose of disclosure (clause 1)**

To use for personal benefit and test the website.

**13. Place of proper law of agreement (clause 13)**