



## THE DIETOLOGIST ONLINE COURSE TERMS AND CONDITIONS

These are the terms and conditions on which we agree to sell access to our Course to you, our Customer.

We're excited to have you join us in one of our online courses, such as 'The Waiting Game' and 'Get Pregnant with Endo', which have been designed to educate and support you in your fertility and pregnancy journey. Our courses feature video-based learning modules about nutrition, downloadable PDF worksheets, access to an online community, meal plans and recipe ideas. If you are unsure how participation in the course may affect you, you should discuss your individual circumstances with a medical professional before commencing.

Please read these terms and conditions carefully, as they apply to all our online courses and can only be waived or varied in writing signed by us. These terms and conditions include any description of the Course on our Website, however to the extent of any inconsistency with these terms, the terms set out in this document will prevail. Please note that additional terms and conditions govern the sale of products and services on our website.

By proceeding to complete your purchase to access the Course, you're indicating to us that you've read, understood and agreed to enter into a binding agreement with us on these terms and conditions. If you have any questions or concerns about our Course, this Agreement or the Website, or any purchase you make through the Website, please don't hesitate to get in touch with us.

### Definitions

**Agreement** means this Agreement between us and the Customer, which commences as set out in this document.

**Course** means any online course produced by us and accessed via the Website, which contains digital information, videos, and documents related to fertility, women's health, and pregnancy, as updated from time to time.

**Course Intellectual Property** means any works contained within the Course (including but not limited to videos, audio files, text, graphics and code) in which Intellectual Property Rights subsist.

**Customer** means the person or entity entering into this Agreement with us by agreeing to these terms and completing a purchase to access the Course. The Customer may also be referred to as "you" throughout this Agreement.

**Intellectual Property Rights** means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, Confidential Information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration, as well as all digital and electronic rights.

**We** refers to the legal entity carrying on a business known as "The Dietologist" which includes the sale of access to this Course on the Website at the time of commencement of this Agreement, or such other entity as validly assumes that entity's rights and obligations under this Agreement in accordance with the terms of this Agreement. We may also be referred to as "us" or "The Dietologist", throughout this Agreement.

**Website** means the website located at [www.thedietologist.com.au](http://www.thedietologist.com.au), or such as other URL where we make the Course available for sale from time to time.

### **eCommerce**

While we take every care to make sure our online store on the Website is accurate and up to date, we're only human and from time to time, mistakes may occur (for example, a pricing error).

Please note that when you submit an order through the Website, no agreement is formed until we process and accept your order and send you a confirmation. If there's been a technical error leading to your order, we may choose not to fill the order, but we'll be sure to contact you to discuss your options (for example, placing an order at the correct price).

### **Payment**

You agree to pay us the price listed on our Website (subject of course to the proviso above, in the case of accidental errors and omissions) to purchase access to the Course. You may pay for your order via electronic funds transfer, or any method of payment available on our Website from time to time.

You acknowledge and agree that your payment in full in cleared funds is a condition of this Agreement, any breach of which will entitle us to terminate this Agreement immediately. If a request for payment is returned or denied by your financial institution or is unpaid by you for any other reason, then you'll be liable for any associated costs incurred by us, including banking fees and charges.

If a payment due to us is not made for any reach, this amounts to a breach of this Agreement, which will entitle us to suspend or limit your access to the Course until the payment is made and/or to terminate this Agreement immediately on notice to you.

In making a payment, you warrant to us that you've read and agreed to the terms of any third-party payment gateway or processor (such as Stripe or PayPal), which are available on their respective websites. You understand that these services are provided by third parties and are made available to you on our Website for convenience only.

We're not responsible for any issues, loss or damage arising out of those facilities. If you have an issue with a third-party provider on our Website, please contact them directly.

We may vary our prices from time to time. You agree and acknowledge that we may do so at any time on notice, and that such notice is given by us posting the updated price on our Website.

If you fail to pay us for an order, or if an insolvency event occurs in relation to you (for example, if you commit an act of bankruptcy or become insolvent), we may terminate this Agreement.

### **Access to the Course**

To access this course, you must create an account during checkout by entering your email and nominating a password. Once your payment has been processed, you will receive a confirmation and welcome email with your login details which you can use to access the course.

If you have any technical problems accessing the Course or any materials or services which form part of the Course, please contact us for assistance by emailing [natalie@euphoriaskin.com.au](mailto:natalie@euphoriaskin.com.au).

Access to the Course will be revoked:

- a) on expiry of the access period, as set out on our website; or
- b) immediately on termination; or
- c) as otherwise provided for in this Agreement.

### **Transfer of Risk**

Once you have received the email with your login details, risk in the Course passes to you. It is important for you to ensure your login details are stored securely and there is no unauthorised access to the Course using your login details.

### **Discounts**

We may offer discounts from time to time. Please note that discounts are not available in conjunction with any other offer (for example, if we have two promotions on offer at the same time, you can only apply one discount to a purchase, not both).

Discounts are available for the stated time, or else for a period of seven (7) days from the date that the offer was first made (whichever occurs first).

We reserve the right to revoke any discount offer at any time without notice.

### **Refunds**

Refunds will only be granted in accordance with our obligations under Australian Consumer Law.

### **Conduct**

You agree to follow our rules for participation in the Course, which will be notified to you in writing. We may update the rules at any time on notice to you, which may be given by email or by posting the updated rules to any relevant Facebook group or other platform. The updated rules will be binding immediately on notice having been given.

You warrant that you will treat all other Course participants, including members of the Facebook group and any other online communities with respect and to refrain from conduct which is otherwise illegal, discriminatory, harassing, threatening, sexist, defamatory, vilifying, bullying, trolling, misleading or deceptive.

Failure to comply with this clause amounts to a breach of this Agreement, which will entitle us to suspend or limit your access to the Course and/or to terminate this Agreement.

### **Events Beyond Control**

We will not be liable for any loss caused by any failure to observe the terms and conditions of this Agreement, where such failure is occasioned by causes beyond its reasonable control including, but not limited to, by fire, flood, other extreme weather event or natural disaster, riot, strike, act of war, terrorist attack, nuclear event, pandemic, epidemic, widespread contagion, quarantine restriction, critical infrastructure failure, severe disruption to virtual infrastructure, restriction or prohibition or any other action by any government or semi government authority, or major injury or illness of key personnel. We may choose to cancel your order, or otherwise to complete your order once things have returned to normal. If we expect a major delay, we'll contact you to discuss a suitable solution.

### **Advice, Information and Instructional Videos**

Our Course has been created by an Accredited Practising Dietitian and nutritionist. It is designed to provide information to individuals who are trying to fall pregnant and who may be doing so under circumstances such as living with endometriosis.

Throughout the Course we may give you advice, recommendations, information, instruction or assistance in relation to women's health, fertility and pregnancy in writing, verbally or in another format, believing it to be accurate, appropriate and reliable at the time but we don't give any warranty of accuracy, appropriateness or reliability.

The information, advice and instruction we give are general in nature and is not intended to constitute or substitute for professional or medical advice. You should seek appropriate professional and medical advice suitable for your personal circumstances if necessary.

You should always consult with your doctor or health care professional before acting on recommendations or suggested changes to your diet. If at any time you experience an adverse health reaction you should seek professional medical attention immediately.

Where possible, information provided in the Course is supported by external research. We don't give any warranty of accuracy, appropriateness or reliability for third-party content. You should make your own enquiries into any research referenced throughout the course.

We won't accept any liability or responsibility (including liability for negligence) for any loss suffered because of your or any other person's reliance on information or advice we provide in the Course, unless otherwise required by law.

## **Linked Websites**

In the Course, we may link to and from other websites that we think share our ethos and that we think you will find helpful. Those websites will have information collated and presented by third-party businesses, organisations and individuals. Please note that we may include these links for your convenience, however we don't necessarily endorse or support the views, opinions, standards or information expressed on them. For your own safety, please make sure you check the protocols and standards of the linked websites before using them.

As the linked websites are run by third parties, we can't warrant or represent that any of the information on them is up to date, complete or correct. While we do our best to make sure we link to reputable websites, we can't accept responsibility or liability for any loss, damage, cost or expense you or anyone else might incur because you've used or relied on material on the linked websites, so please make sure you use caution and common sense while browsing online, especially if you're making purchases.

## **Australian Consumer Law**

Our Course is covered by the Australian Consumer Law, which forms Schedule 2 to the Competition and Consumer Act 2010 (Cth) (ACL) and which provides for consumer guarantees that cannot be excluded.

Nothing in these terms excludes any right, guarantee or warranty you're entitled to by law, however we do exclude all other guarantees, conditions and warranties to the maximum extent permitted by law. We also specifically exclude liability for negligence.

## **Disclaimer and Limitation of Liability**

Except as set out above, to the maximum extent permitted by law, we exclude all terms, guarantees, warranties, representations or conditions which are not expressly stated in these terms and conditions. Please note that we 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 to which you are entitled under the ACL), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Course, Website or this Agreement (including as a result of not being able to use or access the Course or Website), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise, except where we are unable to limit or exclude such loss under the ACL (for example, we are unable to exclude or limit liability for consequential loss arising out of a breach of a consumer guarantee).

We make the Course available to you, however you use the Course at your own risk. Everything in the Course is provided "as is" and "as available" – we don't make any representations or warranties of any kind.

If for any reason you are not a consumer for the purposes of the ACL, we exclude all liability to you, however arising, including by negligence.

## **Intellectual Property**

All content in the Course and Website is subject to copyright and is protected by copyright under the laws of Australia and through international treaties. Unless we say otherwise, all Intellectual Property Rights and other rights in the Course and Website (including text, graphics, logos, button icons, video

images, audio clips, code, scripts, design elements and interactive features) are owned or controlled by us and are reserved by us.

You acknowledge and agree that all Intellectual Property Rights owned by us or to which we are entitled before and after this Agreement will remain our sole property and that nothing in this Agreement transfers any ownership in our Intellectual Property Rights to you.

You are expressly prohibited from producing, publishing, or otherwise distributing any of the Course Intellectual Property, save as to any licence granted under this Agreement.

If you would like to share our Website or social media content that's freely available for re-use or is in the public domain, you are permitted to do so, as long as you attribute same to us and link back to our Website. This includes images on our Website and social media profiles, unless we explicitly cite a copyright notice indicating otherwise. If you'd like to share, re-publish or otherwise use our Website or content in a way that you aren't expressly authorised to do by these terms, please don't hesitate to get in touch with us.

### **Licence of Course Intellectual Property**

We grant you, our Customer, a worldwide, non-exclusive, royalty-free, revocable license to access the Course and Course Intellectual Property in accordance with the terms of this Agreement, to copy and store the Course content in your device's cache memory and to print pages from the Course for your own personal and non-commercial use.

We don't grant you any other rights whatsoever in relation to the Course or Website. You are not permitted to copy or share the Course Intellectual Property with any other person, including by sharing your course login details. You are specifically prohibited from re-using the content contained in the Course for commercial use. You warrant to us that you will not use the content for any commercial use.

We may revoke this license immediately and without notice if we form the reasonable belief that you have breached any warranty given in this Agreement.

### **Non-Disparagement**

You acknowledge that we've established a valuable reputation and goodwill in Australia in the area of women's health, fertility and pregnancy services with regard to dietetics. Subject to law and your rights in connection with the enforcement of this Agreement, you must not at any time disparage, permit or authorise the disparagement of us, any of our related entities or any director, officer, employee, agent, consultant or adviser of us or a related entity; or otherwise make, permit or authorise the making of any statement in anyway relating to or connected with any matters in dispute which is calculated or is reasonably likely to cause damage to us, any of our related entities or any director, officer, employee, agent, consultant or adviser of us or any related entity (including damage to their respective reputations).

This clause survives termination of this Agreement.

### **Confidentiality**

You acknowledge that you may have access to certain confidential information belonging to us, including (but not limited to) technical information and know how relating to the Course, the Website

and us (**Confidential Information**). You agree to treat as confidential the Confidential Information and not use or disclose the Confidential Information during the term of this Agreement or thereafter, other than in connection with performing this Agreement or with our prior written consent.

In the event of a breach or threatened breach by you of this clause, you acknowledge we will be irreparably harmed, and monetary damages will be an insufficient remedy. Accordingly, you consent to enforcement of this clause by means of temporary or permanent injunction and other appropriate legal or equitable relief in any competent court.

This clause survives the expiry or termination for any reason of this Agreement.

You agree the restrictions set out in this clause are reasonable and necessary to protect our goodwill and reasonable commercial interests.

### **Relationship of parties**

The relationship between the parties is that of independent contractors and nothing in this Agreement is to be construed as constituting an agency, partnership, joint venture, relationship of employee and employer or franchisor and franchisee or any other form of association between the parties.

### **Dispute Resolution**

If a dispute arises between the parties, the party claiming the dispute must not commence any court or arbitration proceedings (except where they seek urgent interlocutory relief), unless they have first complied with this clause.

The party must inform the other party in writing of the following:

- the nature of the dispute;
- the outcome they desire to resolve the dispute, and
- the action they believe will settle the dispute.

On receipt of the notice by the other party, both parties will make every effort, without delay and in good faith, to resolve the dispute by mutual negotiation within fourteen (14) Business Days. If the parties are unable to resolve the dispute in that time, the parties must agree on selection of a mediator (if the parties are unable to agree, they agree to request that the President of the Law Society of New South Wales appoint a mediator) and will be equally liable for the fees and reasonable expenses of the mediator and the cost of the venue of the mediation (to be paid in advance). The parties must each pay their own costs associated with the mediation, which must be held in Sydney, New South Wales, unless the parties agree on a suitable virtual alternative.

The existence of a dispute or the commencement of proceedings does not affect the obligation of the parties to continue to perform their obligations under this Agreement.

This clause survives termination of this Agreement.

### **Independent Legal Advice**

You can seek independent legal advice on these terms and contact us to negotiate changes or amendments to these conditions before proceeding with your order. If you don't do so, we'll take it that

you've read, understood and agreed to be bound by these conditions, and that you consider the conditions fair and reasonable and not against public policy.

### **Variation**

We may make permitted variations to these conditions at any time by updating this document and giving notice to you by posting a copy on the Website, or otherwise notifying you in writing. The variations will take effect thirty (30) days after the date of posting. Your continued access and use of the Course will indicate your acceptance of the variations.

Permitted variations will be limited to those reasonably required by us to protect our legitimate business interests and which do not seriously impact the benefit you receive under this Agreement.

### **Severance**

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

### **Assignment**

The rights of each party under this Agreement are personal. You may only assign, charge, transfer or otherwise encumber or dispose of any of their rights under this Agreement with our prior written consent, which can only be withheld on reasonable grounds. We may assign, charge, transfer or otherwise encumber or dispose of any of our rights or obligations under this Agreement on giving you notice in writing.

### **Entire Agreement**

The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

### **Waiver**

Except as explicitly set out in this Agreement, a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude its future exercise or the exercise of any other power or right.

### **Term**

This Agreement commences on the date that it is accepted by you and will remain in force until each party has fulfilled their obligations under this Agreement, unless terminated earlier in accordance with this Agreement or general law.

### **Termination**

We may terminate this Agreement at any time on thirty (30) days' written notice to you.

### **Consequences of Termination**

If we elect to terminate this Agreement without cause, your access to the Course will expire on the effective date of termination.

We may elect (in our absolute discretion) to provide you with such documents or other items as we determine to provide you with information you can access post-termination (such as copies of Course



materials), however we will be under no obligation to do so and failure to do so will not entitle the Customer to any remedy.

If we terminate this Agreement for cause due to a breach of a clause or warranty as contemplated by this Agreement, you agree that we may terminate immediately (or if in our opinion immediate termination is not reasonable, on expiry of such notice as we give in writing) and that access to the Course will be withdrawn on the effective date of termination.

All disclaimers and limitations of liability will survive termination. Any accrued rights or remedies to which either party is entitled will not be affected.

### **Jurisdiction**

As we're based in New South Wales, these conditions will be governed by the laws of that state. If we do end up in court, you agree that the non-exclusive venue for resolving any dispute will be in the courts of New South Wales.