

## Terms and Conditions

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### The Migraine Clinic Terms and Conditions

Permission to Use the Website and to purchase any Product is conditional on You agreeing to these Terms and Conditions ("Terms"). By purchasing a Product from Us, or contacting Us regarding the supply of any Product, You agree to be bound by the Terms.

#### Purchasing a Product

- 1 Due to the cost required in processing your sample, You must pay for your Product in full before we can act on your order.
- 2 You are responsible to arrange and pay to courier your saliva sample to the indicated address. This is currently in Australia but is subject to change without notice. We will arrange and pay the courier cost for any saliva sample if we meet with you and take the saliva sample in person.
- 3 For the sake of clarity, We, or our relevant credit card payment solution, will process the payment at the time of purchase of the Product.
- 4 All prices are in New Zealand dollars (except as otherwise stated on the Website) and are subject to change without notice to You. The prices do not include GST which will be charged if applicable.
- 5 We will do our best to comply with all regulations, bylaws, codes and standards as specified in these Terms. You agree to not hold us liable for any failure to meet any other regulations, bylaws, codes and standards. You agree that you will pay for any additional costs that come about from any changes in any regulations, bylaws, codes or standards with which We are obliged to comply in relation to any purchase you have made.
- 6 We may at various times offer promotions which carry special conditions for qualification. These may include, among other things, quantity of purchase, time periods or the quoting of special codes when ordering. If the conditions are not satisfied, normal pricing will apply. We may only be able to offer a limited number of each promotion, so if you miss out on any promotion, you will not hold us liable for that lost opportunity.
- 7 Any additional payments that you owe under any purchase must be paid at the time provided at the time of purchase or, if no time is provided, within seven days of our demand for payment.
- 8 We may provide a discount if a Fitgenes Genetic Profile and an Amy1 Test is ordered at the same time.
- 9 Due to the testing required, a Fitgenes Genetic Profile or Amy1 Test will take approximately 4-5 weeks to complete from your providing a saliva sample. However, as some portions of the process are out of our control, this is an estimate only.

#### Fitgenes

- 10 The Fitgenes Genetic Profile includes:
  - 10.1 One saliva sample kit;
  - 10.2 One report covering the focus area and how to improve gene expressions;
  - 10.3 One post analysis consultation for one hours in person or by phone covering the focus area.
- 11 You acknowledge that the Fitgenes product only covers one area of consultation and that additional areas will be charged at Our then standard hourly rate. For the sake of clarity, weight loss is a single focus area.

#### Amy1 Test

- 12 You acknowledge that the Amy1 test is a specific test, and will not provide the same detailed report that the Fitgenes Genetic Profile does. As such you will not need to select a topic, as the topic will be your susceptibility to ingested carbohydrates, and will include a 30 minute consultation on the topic.
- 13 You acknowledge that the Amy1 Test is to show your susceptibility, and having the test will not

change your susceptibility to carbohydrates.

#### **Cefaly**

- 14 The Cefaly product is sold to help relieve you of migraine pain. As with any treatment, We cannot guarantee that it will be successful for every patient. You also acknowledge that you will not hold us liable for any side effects you may experience from using the Cefaly.
- 15 You acknowledge that you will not use the Cefaly while driving or operating machinery.
- 16 You agree that our liability in relation to the Cefaly will be limited to price you pay for the Cefaly.

#### **Additional Clauses**

- 17 While the Terms form the basis of your relationship with Us, any other invoice, patient waiver form or any other contract, document or agreement between us and in writing, will be combined with the Terms to form the Contract between us. You agree to sign any such documentation which we may reasonably require in the providing of our services.

#### **No Assignment or on-sale**

- 18 You must not transfer or assign Your rights under the Contract to anyone else without Our prior consent in writing.
- 19 In addition, You must not on-sell any Product to anyone else without Our prior consent in writing.

#### **Your Obligations in relation to the Website**

- 20 You must not Use the Website in a manner that breaches any laws or regulations.
- 21 You must not post on the Website any content that is offensive, hateful, threatening, pornographic, or that contains nudity or graphic or gratuitous violence.
- 22 You must not Use the Website in a manner that interferes with the Use of the Website by others or defames, intimidates, abuses, harasses or causes harm of any kind to any person.
- 23 You must not solicit login information or access an account belonging to someone else.
- 24 You must not collect other users' content or information, or otherwise access the Website, using automated means (such as harvesting bots, robots, spiders, or scrapers).
- 25 You must not Use the Website in a manner that tampers with, hinders the operation of or makes any unauthorised modifications to, the Website.
- 26 You must not transmit any virus or other disabling feature that may damage the operation of the Website.
- 27 You must not attempt to gain unauthorised access to any of our materials other than those to which You are authorised to access.
- 28 You must not Use the Website to do anything misleading, malicious, discriminatory or engage in any other wrongful conduct.
- You must not facilitate or encourage any violations of these Terms and Conditions.
- 29 You agree to comply with the terms and conditions of those websites connected to the Website including, but not limited to the website YouTube.

#### **Intellectual Property**

- 30 The Content of this Website is Our intellectual property and all rights are reserved.
- 31 You acknowledge and agree that all trade marks, patents, copyright and other intellectual property rights in or relating to Content belong to and are Our property or are used by Us with the

- intellectual property right's owners. You agree that you will not, and will not attempt to:
- 31.1 directly or indirectly make any claim in the rights in the intellectual property in any of the Content;
  - 31.2 reproduce, copy or otherwise redistribute the Content of this Website.; and
  - 31.3 enable or facilitate any other person to breach these Terms.

32 The brand names, logos and related tag-lines appearing on this Website are, or will be, Our trade marks or are used with the consent of the trade mark owners.

33 The use or misuse of any of the intellectual property found on our Website, except as permitted in the Terms, is expressly prohibited.

#### **Disclaimer**

34 We have developed this Website as a service to You. Like any other service, and in spite our efforts to keep the Content current, the Content may become out of date from time to time. You agree that we are not liable for any issue raised through the Content being out of date.

35 Nothing on this Website should be construed as the giving of advice or the making of a recommendation and it should not be relied on as the basis for any decision or action. It is important that you rely only on the advice of a health care professional to advise you on your specific situation. We make no representation about the accuracy, reliability, completeness or timelines of the Content. The Content may contain inaccuracies or typographical errors. The use of the Website and Content is at your own risk..

#### **Exclusion of warranties and liability**

36 To the extent permitted by law, and without limiting Your rights under the Consumer Guarantees Act 1993, We exclude all:

- 36.1 warranties, conditions and representations whether express, implied, statutory or otherwise, relating in any way to the Website, Your Use of the Website and the information, products and services supplied (including, but not limited to, the Products), offered to be supplied or advertised or accessed through the Website; and
- 36.2 liability (including for negligence) to You or anyone else in respect of any loss or damage (including special, indirect or consequential loss or damage), costs and expenses suffered by You or claims made against You arising from or in connection with any Use of the information, products or services supplied (including, but not limited to, the Products), offered to be supplied or advertised or accessed through this website for any reason whatsoever (including negligence).

37 The Use of the Website is at Your own risk. We will Use all reasonable endeavours to ensure that the Website operates reliably and consistently. However we do not guarantee this, and you will not hold us liable for any failure to do so or for any damage our failure to do so causes.

#### **Other websites**

38 We do not monitor all websites that we link to. As websites may change over time, we accept no responsibility or liability in relation to anything contained on any website we provide a link to. By including a link to another site we are not endorsing it and You Use the link at Your own risk.

#### **Indemnity**

39 You agree to Us, our partners, agents, officers, employees and other authorised representatives against all claims, actions, demands, damages, liabilities, costs or expenses arising in any way out of or in any way connected to Your Use of the Website or purchase of any Product.

#### **Termination**

40 If, in Our reasonable opinion, You fail to comply with any of the Terms, We may terminate or limit Your access to the Website.

#### **Updated Terms**

41 We may change the Terms at anytime by updating this document and providing it on our Website. The updated Terms will take effect as soon as they are provided on Our Website. By continuing to Use the Website following any such an update You agree to be held by the updated Terms. It is Your responsibility to check the Terms regularly.

### **Governing Law**

42 The Terms are governed by the law of New Zealand. You agree to the exclusive jurisdiction of New Zealand courts and courts of appeal. However, We reserve the right to commence any action arising out of or in respect of the Your Use of the Website or the Contract in any other court if we feel that court is better suited to the situation.

### **Privacy**

43 You agree that any information about you which you provide to us may be used by us at any time for any purposes connected with our business. Any personal information is held at 1 Tiger Moth Street, Hobsonville, Auckland and you have certain right of access to your personal information under the Privacy Act 1993.

44 Any information provided by you will not be disclosed to any third party unless we are required to do so to fulfil any order placed by you, or we are legally required to do so by any legislation or government department.

### **Severability**

45 Each clause of the Terms is severable. If any provision is or becomes illegal, unenforceable or invalid, it is to be treated as being severed from the Terms and the rest of the Terms will not be affected.

### **Definitions**

**Content** means all information, text, material, graphics, or sound recording You access on or via the Website.

**Contract** means the Terms together with any and every invoice or other document evidencing or describing, whether by item or kind or otherwise, any Product.

**Product** means any of the Products available for purchase on the Website from time to time.

**The Migraine Clinic** means The Migraine Clinic Limited, Incorporation Number 4745019 having its registered office at 1 Tiger Moth Street, Hobsonville, Auckland.

**Us, We and Our** mean The Migraine Clinic.

**Use** means access, download, install, store, load, post, register, execute and/or display.

**You and Your** means a person Using this Website.