

# MYFIZIQ TERMS AND CONDITIONS

## 1. TERMS OF USE

MyFiziq Limited of Unit 5, 71 - 73 The Esplanade, South Perth WA 6151, postal Address: PO Box 190, South Perth WA 6951 (“**the Company**” / “**we**” / “**us**”) owns and operates the MyFiziq website at <http://www.MyFiziq.com> as well as related products (together “**the Website**”) and the mobile application My Fiziq (“**the App**”).

Your access to and use of the information, material and services provided on the Website and the App is conditional upon your acceptance of, and compliance with, these Terms and Conditions and the Company’s Privacy Policy.

By clicking “Connect”, you agree to be personally bound by these Terms and Conditions as well as the Company’s Privacy Policy.

The Company reserves the right at any time to modify or discontinue (temporarily or permanently) the Website, any portion of the Website and/or the App with or without notice to you. The Company shall not be liable on any basis, to you or to any third party, for any modification, suspension or discontinuance of the Website and/or the App.

The Website is made available by the Company which is based in Australia. The Company makes no representations in relation to the appropriateness or availability for use of the Website and the App or the Content of the Website and the App in other locations. Access to the Website and/or the App and their content from territories where the Content or use is illegal is prohibited. If you choose to access the Website and/or the App and their Content from locations outside Australia you do so on your own initiative and you are responsible for compliance with applicable local laws.

## 2. YOUR USE OF THE APP AND THE WEBSITE

With respect to your use of the Website and the App and their content and all communications you make to the Company, including but not limited to photographs, feedback, questions, comments, ideas, suggestions, know-how, concepts and techniques etc (“**the Content**”), you acknowledge and agree that:

- You are responsible for any Content that you send to us or post on the Website or on the App and you warrant that you created or have the necessary rights and permissions to submit the Content to the Website or the App and that in so doing you do not infringe any third party intellectual property, privacy or any other rights and you will not provide access to or link to any material which may infringe the intellectual property rights or other legal rights of another person or entity.

- By registering as a user of the Website or the App you consent to your receipt from the Company of emails and also push notifications on your mobile handset.
- You shall remain responsible at all times for any costs associated with any internet access used as a result of your use of the App or of the Website.
- Your use of the Website and/or the App is for your own private and personal purposes. You are prohibited from any commercial use of the Website and/or the App. You will not advertise or promote any products or services on the Website and/or the App without the prior written consent of the Company.
- You shall have no right of confidentiality in your Content and the Company shall have no obligation to protect your Content from disclosure. Your Content will be displayed on the Website or the App and may then be used and downloaded by other users.
- You waive any and all moral rights you may have in the Content and agree to the Company doing anything with your Content including such things that would otherwise constitute an infringement of your moral rights.
- The Company reserves the right (but is not obliged) to monitor and review all Content and may in its sole discretion and without notice remove or edit Content for whatever reason.
- You grant the Company a royalty-free, perpetual, world-wide, irrevocable and non-exclusive licence to the intellectual property rights in all Content to use, modify, copy, sub-licence, distribute, reproduce, adapt, transmit, publish, communicate and display in any manner which the Company determines.
- You undertake not to bring the reputation of Dr Katherine Iscoe, the Company, and any employees of the Company or any other Website members into disrepute.
- You are prohibited from and will under no circumstances submit any Content or material that is illegal, offensive, discriminatory, harassing or threatening, abusive, defamatory or vilifying in any way or manner including racially or sexually, obscene, pornographic or that includes indecent material of any kind and you will not behave in a way that could reasonably be perceived as predatory or soliciting of identifying information about or from another person.
- You agree that you will not post, submit or send any material to the Website or the App containing viruses, harmful codes or bugs and you further agree that you will not bypass or attempt to bypass the Website's or the App's security measures, or obtain or attempt to obtain email addresses, photographs or personal information of other users.

You further acknowledge and agree that the Company has the right to suspend and terminate your use of the Website and/or the App and your membership of any services at any time if you have breached any of the above conditions of use.

### **3. REGISTRATION AND ACCOUNT**

In order to use and access the App and certain services on the Website you will need to complete a registration form and agree to these Terms and Conditions and the Company's Privacy Policy. When submitting the registration form you agree to only provide information about yourself that is true, accurate and current and to continuously update and notify the Company of any changes to such information. The information you provide to the Company in the registration form will be used to give you access to the App and provide you with the services on the Website. If your information is incorrect or incomplete or the Company has reason to believe that the information is incorrect or incomplete the Company may terminate your account and future use of the App and the Website.

When registering on the App or the Website, you will be provided with access to your account using a password. This password is personal to you and you must not disclose or let anyone else use your password or account. You agree that any access and use of your account with your password will be deemed to be access and use by you, including any purchases made through the Website or the App.

In registering on the App or the Website you represent and warrant that you are not in a jurisdiction which has prohibited the use or access of the App and/or the Website.

### **4. PAYMENTS**

You agree to pay for all account services provided on the App and the Website and any other charges incurred in connection with your account or your use of the App and the Website.

When registering on the App or the Website for services that incur a charge you will need to choose a payment method. The Company will charge you the fee or fees as stipulated on the online registration form. All fees are payable in advance.

The Company reserves the right at any time to increase any fees or institute new fees upon reasonable notice posted on the Website or notified through the App.

To the extent permitted by law, all purchases and account payments are final and no refund will be given for any unused portions of the use of your account, the App or the Website.

### **5. WEBSITE AND APP PROVIDED "AS IS"**

While every effort is made to ensure that the content of the Website and the App is accurate, the Website and the App are both provided 'as is'. To the full extent permitted by law, the Company makes no warranties or representations as to the accuracy, timeliness or completeness of the information contained on the Website

or the App. Nothing on the Website or the App shall be taken as rendering professional advice.

The Company does not warrant that the services that make the Website or the App available will be error, bug or virus free. It is your responsibility to make adequate provision against such threats.

## **6. THIRD PARTY WEBSITES AND CONTENT**

The Website and the App may contain links to third party websites and services that are not owned or controlled by the Company. The Company has no control over and assumes no responsibility for any loss or damage, however caused (including through negligence) which you may directly or indirectly suffer in connection with or arising from the content or accuracy of information, privacy policies, or practices of any third party website or services. The provision of a link to a third party website does not constitute an endorsement or approval of that website or any product or services on that website. It is your responsibility to assess whether any information provided is appropriate for your circumstances.

The Company cannot guarantee control over Content submitted by you or other users of the Website or the App. We are not responsible or liable for any Content submitted by any user. We do not condone or endorse any Content submitted by users and we do not take any responsibility for the accuracy, legality or decency of such Content.

Any misconduct of other users or third parties on the Website or the App may be reported by emailing the Company on [admin@myfiziq.com](mailto:admin@myfiziq.com). We may in our sole discretion investigate your claim and take appropriate action if necessary.

## **7. PRIVACY POLICY**

You agree that your personal information will be managed in accordance with our Privacy Policy which is available on the Website at <http://www.myfiziq.com/>. The Privacy Policy explains what personal information we will collect about you, how we use that information, who we disclose it to, where it is stored, how you may access your personal information and how you may complain about a breach of the privacy laws.

When registering on the Website or the App you will be asked to agree to the Company's Privacy Policy and to your personal information being used and/or disclosed in accordance with the Privacy Policy.

Your transmission of data over the internet will never be totally secure. All information transmitted to us is at your own risk. We will do everything we can to protect your data and the information you send to us, however, we do not warrant the security of such data or information.

The Website and the App use cookies and other web-tracking tools to improve the content and functionality of the Website. Please refer to our Privacy Policy for details on our use of these tools.

#### **8. MEDICAL DISCLAIMER**

The information on the Website and the App is not intended as and should not be used to replace specific professional medical advice (including advice on diagnosis, treatment or prevention of any medical condition) or for any therapeutic purpose. You acknowledge and agree that the Website and the App is an information service only. The Company is not responsible for any injury or loss that you may suffer as a result of following advice on the Website or the App.

If you have any specific health concerns, pre-existing medical conditions or questions regarding your medical condition you should consult a qualified medical professional. You are at all times responsible for seeking independent advice from your healthcare professional before acting on or following any information or material provided on the Website or the App.

**YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR RESPONSIBILITY TO CONSULT WITH YOUR HEALTHCARE PROFESSIONAL BEFORE USING ANY OF THE INFORMATION ON THE WEBSITE OR THE APP (especially – but not only – if you have an eating disorder, diabetes, high or low blood pressure, cholesterol issues, you are pregnant or you are trying to conceive).**

At times the Website and the App will contain recommendations. These recommendations are only provided as general information. You should not rely on these recommendations. They are not provided as medical or professional advice or opinion. They naturally do not take into account factors specific to you and your circumstances. You should always seek your own advice on any health or fitness related matters from your healthcare professional. To the full extent permitted by law the Company hereby avoids liability and/or responsibility for any adverse outcomes that might arise, directly or indirectly, from any recommendations on the Website or the App.

#### **9. LIMITATION OF LIABILITY**

The Company, including its employees, agents and sub-contractors, shall not be responsible or liable for any direct, indirect, special, exemplary, incidental, consequential, punitive or other loss, costs, expenses or damages of any kind, or any damages whatsoever, including but not limited to, those resulting from loss of profit, loss of contract, goodwill, data or information, loss of savings, business opportunities or revenue, whether or not advised of the possibility of such damage, arising out of or in connection with your use of and reliance on the content or services on the App or the Website or any linked websites, regardless of whether liability is based on

breach of contract, tort (including negligence) or warranty, arises under a statute or any other legal basis for liability.

Any implied terms, conditions or warranties are excluded to the full extent permitted by law. In the event any implied terms, conditions or warranties are contained in legislation that cannot be excluded, such term, condition or warranty will be deemed to be included, however, the Company's liability in such situations will be limited to either repairing, replacing or supplying (or paying for the repair, replacement or supply of) goods equivalent to the goods to which the breach relates, or re-supplying or paying for the re-supply of services in case of any breach relating to services.

The Company's liability regarding claims under these Terms and Conditions (whether in contract, tort, negligence or as a result of statutory liability or otherwise) shall be limited to the total amount of all fees paid by you as a user of the App or the Website to the extent permitted by law. Liability arising under a statute which cannot be lawfully excluded is not excluded by these Terms and Conditions.

#### **10. INDEMNITY**

You agree to indemnify the Company, its employees, its officers, its agents and its subcontractors against any third party claims and any and all losses, expenses or damages and costs (including reasonable legal fees) suffered or incurred by us and arising out of your breach of any of these terms and conditions in your use of the Website or the App.

#### **11. INTELLECTUAL PROPERTY**

Material on the Website and on the App including but not limited to text, video, audio, graphics, icons and images are owned or licensed by the Company, are protected by copyright law and are copyrighted to the Company unless otherwise credited. The names, logos and trademarks are the property of their respective owners. No names, logos or trademarks on the Website or the App may be used without the prior written consent of the Company or their respective owners.

As a user of the Website and/or the App you have been granted a limited, personal, non-exclusive, non-transferable and revocable license to use and print the content of the Website or the App for your personal and non-commercial use and for no other purpose. To the full extent allowed by law, you agree and acknowledge that you will not reproduce, re-use or distribute any part of or any Content on the Website or the App without the prior written consent of the Company.

#### **12. BREACH OF USE**

Any breach of these Terms and Conditions by you will result in the use of your account and/or access to the App and the Website being terminated immediately and without prior notice. You agree that all terminations are made in the Company's

sole discretion and that the Company has no liability to you or anyone else for the termination of your account or use of the App and/or the Website.

Termination by the Company may occur in the following circumstances:

- a) A breach or violation of these Terms and Conditions or any other policies or guidelines of the Company and/or Website and/or App;
- b) Non-payment of fees owed by you to the Company in relation to the Website and/or the App;
- c) Receipt of a request from a law enforcement or other authorised government entity;
- d) The Company deciding in its sole discretion to discontinue the Website and/or the App;
- e) Technical or security issues with the Website and/or the App;
- f) A request by you to terminate your account or use of the App and/or the Website; and
- g) Any other circumstances in which the Company deems it necessary to terminate the account and/or your use of the App and/or the Website.

Consequences of termination of your account and/or use of the App and/or the Website include:

- a) No access to any offerings on the Website or the App;
- b) Deletion of all your information, files and Content within your account;
- c) Barring from future use of the Website and the App; and/or
- d) To the extent permitted by law, no refund for any unused portion of the use of your account or your access to the App or the Website.

### **13. AMENDMENTS TO THESE TERMS**

These Terms and Conditions may be revised and updated from time to time by the Company without notice to you. You can review the current version of the Terms and Conditions at any time on the Website. If there are major changes to the Terms and Conditions that could adversely affect you (as determined by us in our sole discretion), then we will provide you with additional notice via email to the email address provided by you when you register with the Website or the App. Without limiting our right to provide notice by any other means, you will be deemed to have received notice of any changes upon us notifying amendments on the Website or the App, and you will be deemed to have agreed to any such amendments to the Terms and Conditions when you next use the Website or the App.

**14. SEVERANCE**

You agree that if any of these Terms and Conditions are found to be unenforceable under any applicable law, the unenforceability of that term shall not have any bearing or impact on the enforceability of any of the other Terms and Conditions.

**15. GOVERNING LAW**

These Terms and Conditions shall be governed by and construed in accordance with the laws of Western Australia.

**16. DISPUTE RESOLUTION**

You agree to submit to the exclusive jurisdiction of the courts of Western Australia and any courts hearing appeals from those courts.

**17. SURVIVAL**

Clauses 2 (Your use of the Website), 8 (Medical Disclaimer), 9 (Limitation of Liability), 10 (Indemnity) and 11 (Intellectual Property) shall survive the termination and/or expiry of this agreement.

**Rev 4 Last modified: 28 September 2016**