

PATIENT TERMS AND CONDITIONS - HeadStart Program

These terms and conditions (**Terms**) are between Ypsomed Australia Pty Limited (ABN 98 611 300 693) (**Ypsomed, we or us**) and a renter of Ypsomed products (**Patient or you**) and govern the supply by Ypsomed to the Patient of Ypsomed's rental medical devices used for the treatment of diabetes and associated services (together, the **Product**).

1. HeadStart Program Orders

- 1.1 You may place an order to rent a Product by completing and signing or otherwise consenting electronically to an Order Form:
 - (a) as accessed via our online ordering system;
 - (b) electronically with an HCP present who will assist with the process and record all relevant Patient personal information in relation to the rental of the Product and populate the Order Form using our online ordering system; or
 - (c) by hand and providing this to your HCP who will manually input the details to populate an Order Form using our online ordering system.
- 1.2 You confirm that you:
 - (a) have provided accurate, correct and up to date Personal Information to us (including any Certified Pump Trainer engaged by us) on the Order Form and any other documents we require to be completed or provided for the purposes of renting a Product to you; and
 - (b) have signed the Order Form on your own behalf or on behalf of a minor under the age of 18 for whom you are legally responsible.
- 1.3 Any HeadStart Program order you place with us using an Order Form is an offer by you to rent the Product specified in the Order Form (and to receive access to any associated services), for the Rental Term and on payment of the Rental Fee.
- 1.4 Failure to provide sufficient details or required documentation may result in a delay in processing the Order Form or rejection of your rental order.
- 1.5 We may refuse to accept any HeadStart Program order provided that we notify you within 5 business days of receiving a completed and signed Order Form.
- 1.6 Orders will be deemed to be accepted by us at the time we send a HeadStart order confirmation to the e-mail address nominated in the Order Form. You must ensure that the correct email address and contact details are entered when you or your HCP submits the Order Form.
- 1.7 We may cancel your HeadStart Program order and refund any Rental Fee paid by you, if:
 - (a) we become aware after issuing our HeadStart order confirmation that the Product is out of stock;
 - (b) there has been a genuine error in our description of the Product or its Rental Fee;
 - (c) the information provided by you to us is inaccurate;
 - (d) the transaction is suspected of being the subject of credit card or payment related fraud; or
 - (e) we cannot contact you or your HCP about your HeadStart Program order using the contact details you provided, after having made reasonable attempts to do so.

2. Term

- 2.1 You agree to rent the Product from us for the Rental Term (or such lesser period of time if the Rental Term is terminated earlier) in accordance with these Terms.
- 2.2 If you do not return the Product to us upon expiry of the Rental Term (or upon the earlier termination of these Terms), then the Rental Term will be extended for successive periods of one month each, until such time as you do return the Product to us.
- 2.3 You may terminate the Rental Term at any time by returning the Product to us in accordance with clause 11.

3. Rental Fee

- 3.1 When you place a HeadStart Program order, you agree to pay the Rental Fee to Ypsomed, monthly in advance, for the duration of the Rental Term.
- 3.2 The Rental Fee is specified in Australian dollars and is inclusive of applicable goods and services tax and other taxes of a similar nature (**GST**).
- 3.3 Unless otherwise stated in the Order Form, the Rental Fee includes the cost of:
 - (a) packing and delivering the Product to you via your HCP;
 - (b) all relevant licence fees and access fees (eg, the Camdiab application);
 - (c) training in the use of the Product; and
 - (d) ongoing technical support.
- 3.4 You agree to pay to Ypsomed the Rental Fee and any other payments due under these Terms:
 - (a) by direct debit or otherwise in accordance with any payment instructions provided by or on behalf of Ypsomed; and
 - (b) in full, without any deduction or set off, at the times and in the manner specified.
- 3.5 Time for payment is of the essence. You must ensure that you have sufficient funds in your nominated bank account at all times.

4. Delivery of Product

- 4.1 The Product will be delivered to your HCP at a diabetes education centre, hospital or any other health provider approved by us within a reasonable commercial timeframe from the date on which the Order Form was accepted by us. You will need to contact your nominated HCP to arrange an appointment to be trained and start use of the Product and the YpsoPump system.
- 4.2 Orders of Product will be shipped via a transportation mode selected by us in our sole discretion.
- 4.3 If the Product cannot be delivered to your HCP and is returned to us or a third-party freight company, you agree to pay our reasonable storage and administrative costs of arranging pick-up and/or further delivery of the Product, or we may cancel your HeadStart Program order and refund any Rental Fee already paid by you for the Product.

5. Risk and Title

- 5.1 As this is a rental arrangement, we retain title in and to the Product at all times.
- 5.2 The Product is at your risk from the time of delivery of the Product to your HCP, and until the Product is returned to us at the expiry of the Rental Term or earlier termination.
- 5.3 You will be deemed to have accepted the Product as delivered unless you or your HCP notifies us within five business days of receipt of the Product that it is defective or otherwise does not match the HeadStart Program order.

6. Pump Use

- 6.1 During the Rental Term and at any time the Product remains in your possession or under your control, you must:
 - (a) use and hold the Product as bailee only;
 - (b) use the Product only for the person for whom it was supplied;
 - (c) use the Product only for personal use and only for the purpose for which it was designed;
 - (d) ensure that the Product is used and maintained in accordance with the manufacturer and/or our instructions, warranty conditions, recommendations, specifications (including applicable maintenance schedules) and reasonable requirements;
 - (e) take proper and reasonable care of the Product, including regarding loss and damage; and
 - (f) comply with all laws relating to the Product and its possession, operation and use.

- 6.2 During the Rental Term, and at any time the Product remains in your possession or under your control, you must not:
- (a) sell, dispose of or part with personal possession of the Product;
 - (b) grant a lien or any other type of security interest over or in relation to the Product;
 - (c) use the Product for any purpose other than the purpose for which it was designed and supplied; or
 - (d) misuse, modify or alter the Product in any way.

7. Patient Acknowledgements

- 7.1 You acknowledge that:
- (a) all Product starts must be performed by your HCP with appropriate training, a Certified Pump Trainer or by us;
 - (b) Patient compliance is required for correct functionality of the pump Product. It is your responsibility to seek clinical advice from your HCP when necessary;
 - (c) knowledge of medical products, such as insulin pumps and appropriate training in using them, are indispensable prerequisites for responsible diabetes management and use of the Product;
 - (d) the Product must not be used without appropriate introduction and the express approval of your HCP or your diabetes team;
 - (e) maintenance of the Product and any supplied accessories is your sole responsibility. We recommend that you contact your home and contents insurer to arrange insurance for the Product; and
 - (f) the Product should only be used under the continued advice of your HCP and is not a substitute for professional advice and correct diabetes management. Insulin pumps are medical aid devices intended for use by patients requiring insulin infusion. Insulin pumps are not a substitute for, and should not replace, regular communication and training between you and your HCP.

8. Camdiab Application Access

- 8.1 The Rental Fee includes access to the mylife™ CamAPS® FX application (**Camdiab application**) for the Rental Term. Subject to these Terms, you will be entitled to receive access to updates and upgrades to the Camdiab application during the Rental Term.
- 8.2 When downloading the Camdiab application onto your mobile device, you will be required to consent to the Camdiab application terms and conditions. If you do not consent to the terms and conditions, the Product may not work as intended. Ypsomed accepts no responsibility for any such lack of functionality so arising.
- 8.3 Upon termination of these Terms or expiry of the Rental Term:
- (a) your access to the Camdiab application will also be terminated; and
 - (b) you will not be able to continue to access the Camdiab application, and you will not have access to the automated insulin dosing algorithm.
- 8.4 If you are in breach of these Terms, Ypsomed reserves the right to cease or suspend your access to the Camdiab application.

9. Loss, Breakdown and Damage

- 9.1 During the Rental Term and at any time the Product remains in your possession or under your control, you must inform us immediately of any:
- (a) breakdown or malfunction of the Product;
 - (b) loss or damage caused to the Product, or any other matter which could jeopardise or in any way affect our title to and interest in the Product;
 - (c) any safety issue relating to the Product; and
 - (d) any technical issue with the Product,
- by contacting Ypsomed Patient Care on 1800 447 042. Support is available 24 hours a day, 365 days per year.
- 9.2 Subject to the application of the non-excludable provisions of the ACL, breakdown or defect in the Product resulting from:
- (a) proper or ordinary use; or
 - (b) the development of an inherent fault(s) not ascertainable prior to the commencement of the Rental Term,

- may, at our option and expense, either be repaired or replaced to enable the ongoing operation of your rental arrangement.
- 9.3 For the purposes of clause 9.2, if repair of the Product is impracticable and replacement Product is not available, then the Rental Term can be terminated.
- 9.4 Subject to the application of the non-excludable provisions of the ACL, you must compensate us on demand for any damage to or loss of the Product sustained wilfully or by accident whilst the Product is in your possession or under your control.
- 9.5 Under no circumstances are you authorised to repair or attempt to repair the Product unless you obtain our prior written consent.

10. Consumer Guarantees, Indemnity, Limitations on Liability

- 10.1 Our Products come with guarantees that cannot be excluded under the ACL. These guarantees are not limited by a defined timeframe. Nothing in these Terms is intended to exclude, restrict or modify the operation of any non-excludable provisions under the ACL which cannot be so excluded, restricted or modified (for more information regarding your rights as a consumer, see www.consumerlaw.gov.au).
- 10.2 In all other respects, to the maximum extent permissible by law and subject to any rights you may have under the ACL:
- (a) all conditions and warranties in respect of the Product and your rental of the Product are expressly excluded;
 - (b) you are responsible for, and we will not be liable to you or any person claiming through you in contract or in tort for, or in respect of, any direct, indirect or consequential loss (including loss of expectations, loss of opportunity, loss of goodwill, loss of profits or similar loss), damage, expense or injury suffered by you or any other person arising out of, or in connection with, or relating to:
 - (i) the selection, possession, use, operation, maintenance and safekeeping of the Product;
 - (ii) the performance or non-performance or any breach of these Terms by us; or
 - (iii) any other matter relating to these Terms or any error in information supplied to you before or after the commencement of the Rental Term; and
 - (c) our liability to you for loss or damage of any kind arising out of these Terms will be reduced or limited to the extent (if any) that you cause or contribute to the loss or damage.

11. Return of Product

- 11.1 At the end of the Rental Term, or upon earlier termination, you must return the Product to us:
- (a) at your own expense;
 - (b) in a clean, serviceable and working state; and
 - (c) in the same condition as at the start of the Rental Term (fair wear and tear excepted).
- 11.2 If the Product is returned to us other than in accordance with clause 11.1, you must pay to us on demand and at our election:
- (a) the difference between the fair market retail value of the Product as actually returned to us, and the fair market retail value of the Product as should have been returned to us; or
 - (b) all of our reasonable costs and expenses relating to the cleaning and restoration of the Product to substantial working order.
- 11.3 For the purposes of clause 11.2, the Rental Term will continue (including the payment of all Rental Fees) until the Product is returned, or otherwise agreed with us.

12. Default and Termination

- 12.1 You will be in default of these Terms if you:
- (a) have breached any of your obligations under these Terms, and have failed to remedy such breach within 15 days of our written notice requiring the breach to be remedied;
 - (b) fail to make any of the required payments to us at the times and in the manner specified in these Terms (unless other arrangements have been made with us);
 - (c) sell or dispose of the Product, or grant any security over the Product; or

- (d) allow the Product to become damaged or lost, or the Product is damaged or lost whilst in your possession or under your control.
- 12.2 If you are in default of these Terms, we may (as applicable), and subject to the application of the non-excludable provisions of the ACL:
- (a) charge and recover from you default interest at the pre-judgement interest rate set by the New South Wales District Court for the period from the due date of your overdue payment until the date of payment in full;
 - (b) charge you for the amount that our bankers charge us for your dishonoured payment(s) and any reasonable losses we incur from the late payment;
 - (c) recover from you our reasonable collection and enforcement costs;
 - (d) charge you for all overdue Rental Fees (if any);
 - (e) charge you for the full value of or a reasonable portion of all future Rental Fees owing for the balance of the Rental Term;
 - (f) charge you for the cost of repairing or replacing the Product;
 - (g) terminate or suspend your access to the Camdiab application; and
 - (h) terminate your rental of the Product.
- 12.3 We will be in default of these Terms, and you will be entitled to terminate your rental of the Product, if we:
- (a) have breached any of our obligations under these Terms; and
 - (b) have failed to remedy such breach within 15 days of your written notice requiring the breach to be remedied.
- 12.4 If your rental of the Product expires or is terminated:
- (a) we will provide you with prior written notice of the expiry or termination (as applicable);
 - (b) you must immediately return the Product to us in accordance with clause 11;
 - (c) you must immediately cease your access to and use of the Camdiab application; and
 - (d) you must immediately pay to us all amounts due under these Terms.
- 12.5 Termination of these Terms does not affect a party's rights arising under these Terms prior to termination.

13. Purchase of Product

- 13.1 At any time during the Rental Term, you may choose to purchase the Product through any of Ypsomed's available purchase arrangements. If you wish to purchase the Product (or a similar product), Ypsomed may reallocate to the purchase price of the new product such portion of your already-paid Rental Fees as agreed.

14. Intellectual property

- 14.1 You acknowledge that we own (or license) the intellectual property in the Product and any services we provide to you and nothing in these Terms is, or is intended to, transfer ownership of any intellectual property rights of any kind to you.

15. Images of Products

- 15.1 All pictures and images of a Product displayed on our Website or in other written materials are for illustrative purposes only.
- 15.2 Where we provide dimensions and measurements in the description of any Product, the dimensions may vary and you must ensure that the actual size of the Product is suitable for your purpose prior to your HCP submitting your HeadStart Program order.

16. Pharmacovigilance

- 16.1 During the Rental Term and at any time the Product remains in your possession or under your control:
- (a) you must report any and all Product related Adverse Events and/or Product issues to us as soon as practical after the issue occurs;
 - (b) if you receive any reports or information related to a complaint about a Product or an Adverse Event, you must forward the unassessed case information or source documents to us in accordance with this clause within one business day of first becoming aware of the report or information;

- (c) we will acknowledge receipt of the report or information within 3 business days of receipt. If you do not receive an acknowledgement of receipt from us within 3 business days, you must resend the information or source documents with a request for acknowledgement of receipt by us;
- (d) you agree to cooperate with any reasonable request made by us in meeting any obligations we may have to report or otherwise furnish information to, or to cooperate with, any government agency, department, authority, instrumentality or similar entity, including but not limited to the TGA; and
- (e) we and you must immediately inform each other when we receive any information or communication regarding any possible safety actions related to the Product, including but not limited to, communications with the TGA. We and you must provide a copy of any such written communication to each other within 2 business days of receipt of the communication. We must work together to respond to such communications. If specific safety measures are to be taken, we will co-ordinate such actions and you agree to co-operate in implementing such measures.

17. Privacy and Patient Information

- 17.1 We are committed to protecting the privacy of all Patients and will only collect, use and store Personal Information and Sensitive Information (including Health Information) provided by you or your HCP to us for the purposes which it was collected and always in accordance with the requirements of the Australian Privacy Act 1988 (Cth) and relevant State-based legislation applicable to the protection of Health Information (**Privacy Laws**). Our Privacy Policy is available online at www.mylife-diabetescare.com.au/data-privacy-policy.html.
- 17.2 You agree that Personal Information and Sensitive Information provided in an Order Form or when you contact us may be used and retained by us for the following purposes and for other purposes as may be required by law from time to time:
- (a) assisting with your rental and use of the Product;
 - (b) providing you with information about the Product;
 - (c) Product tracking purposes as required by the TGA;
 - (d) fulfilling and delivering your HeadStart Program order;
 - (e) processing payments and other administration in respect of your rental of the Product;
 - (f) communicating with you in respect of the Product; and
 - (g) providing you with marketing materials, special offers and promotions in connection with the Product.
- 17.3 In some cases, we will use your Personal Information and Sensitive Information for other purposes, but only:
- (a) if you have consented to such use, or
 - (b) we reasonably believe that the use or disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health or safety or a serious threat to public health or public safety; or
 - (c) the use or disclosure is required or authorised by law.
- 17.4 We will notify you if we collect your Personal Information and Sensitive Information from your HCP rather than directly from you, but will only do so if you provide your written consent to such collection and/or it is necessary for processing your HeadStart Program order for a Product or subsequent administration of that Product or similar products.
- 17.5 If you do not provide any or all of your Personal Information and Sensitive Information requested in respect of your particular transaction, it may impact upon our ability to fulfil your request, rent you the Product, answer your enquiry or complete the transaction.
- 17.6 Your Personal Information and Sensitive Information may be held in our secure international databases, which are maintained by our affiliates and/or third-party providers and may be stored in servers outside of Australia for that purpose. We will not disclose your Personal Information and Sensitive Information unless our affiliates' and/or third-party providers' privacy practices comply with our Privacy Policy and the applicable data protection laws. The countries of operation for us, our affiliates and our third-party providers are set out in our Privacy Policy.
- 17.7 We reserve the right to conduct and implement fraud detection processes, including to validate your direct debit details. If your nominated payment method triggers our fraud prevention protocols, we may contact you to confirm additional details, or rescind the transaction.

- 17.8 You must inform us of any change to your details set out in the Order Form within five business days of the date of any change. It is a regulatory requirement of the TGA that all insulin pumps can be traced.
- 17.9 We take reasonable steps to ensure the Personal Information and Sensitive Information we use or disclose is accurate, complete and up to date, having regard to the purpose of the use or disclosure. Access to your Personal Information and Sensitive Information will be provided unless there is a sound reason under the Privacy Laws.
- 17.10 You have the right to request access to the Personal Information and Sensitive Information and to request that we update and/or correct the Personal Information and Sensitive Information we hold about you. In most cases, we expect to comply within a reasonable time of receiving your requests. However, if we do not agree to provide you access or correction as requested, we will give you written reasons why we will not be fulfilling your request.
- 17.11 You also have the right to complain about our privacy and data protection practices. We would like to be the first to know if you have any complaints or concerns. Your complaint will be handled in accordance with the requirements of the Privacy Laws. If we do not respond to your complaint within 30 days, or if you are not satisfied with our response, you have the right to escalate your complaint to the Office of the Australian Information Commissioner (**OAIC**).
- 17.12 To opt out of receiving information about offers, products, services and/or technological developments, please reply to the email with 'unsubscribe' or 'STOP' at info@ypsomed.com.au.
- 17.13 For privacy queries and complaints, or to access or update your Personal Information and Sensitive Information, please phone: 1800 477 042 (toll free) or write to us.

18. General

- 18.1 You acknowledge that to the maximum extent permitted by law, we have not, and no person purporting to act on our behalf, has made any representation to you as to the fitness or quality of the Product.
- 18.2 These Terms comprise the entire agreement between you and us with respect to our rental supply and your use of the Product.
- 18.3 You agree that these Terms may be signed electronically. Any signature made by you or on your behalf in a way which complied with the Electronic Transactions Act 1999 (Cth) and equivalent State and Territory legislation will be effective and binding on you.
- 18.4 If there is any inconsistency between the content of your Order Form and these Terms, the Order Form will prevail to the extent of the inconsistency.
- 18.5 No failure by a party to enforce any right arising under these Terms will constitute a waiver by that party of that right.
- 18.6 Time is of the essence in respect of your obligations under these Terms.
- 18.7 If any provision of these Terms is determined to be void or unenforceable by any court, then such determination will not affect any other provision of these Terms, which will remain in full force and effect.
- 18.8 No person, not employed by Ypsomed by or through whom this transaction may have been introduced, negotiated or conducted, has the authority to act as Ypsomed's agent. Ypsomed will not be liable to you or any third party for any actions or statements of such person under any circumstances.
- 18.9 Notices to us must be sent using the contact details below or any other contact details we notify to you from time to time:
Attention: Ypsomed Australia Customer Care
Postal address: Ypsomed Australia Pty Limited, Suite 36.01, Level 36 201 Elizabeth Street, Sydney NSW 2000.
Email address: info@ypsomed.com.au
Phone: 1800 477 042
- 18.10 Notices to you will be sent to your details as contained in the Order Form. You must notify us of any updates to your contact information.
- 18.11 This Agreement is governed by the laws in force in the State of NSW and each party submits to the non-exclusive jurisdiction of the courts of that State.

19. Interpretation

19.1 In these Terms (except where the context otherwise requires):

- (a) headings are for convenience and will not affect the interpretation of the Agreement;
- (b) references to legislation are to that legislation as amended, extended or re-enacted from time to time.

20. Definitions

In these Terms (except where the context otherwise requires):

ACL means the Australian Consumer Law as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)

Adverse Event means any untoward medical event in connection with the Product, irrespective of any causal relationship with the Product, such as any unfavourable and unintended sign, symptom, disease or outcome of death temporally associated with the use of the Product and including the following events (which may be reportable to the TGA or equivalent international regulatory authorities according to adverse event reporting regulations):

- (a) drug or biologic overdose, whether accidental or intentional drug or biologic abuse;
- (b) an event occurring from drug or biologic withdrawal;
- (c) any failure of expected pharmacological action;
- (d) exposure to a drug or biologic during pregnancy;
- (e) inadvertent or accidental drug or biologic exposure;
- (f) unexpected therapeutic or clinical benefit from the drug or biologic product; and
- (g) medication errors;

business day means a day which is not a Saturday, Sunday, bank holiday or public holiday in Sydney, Australia;

HCP means the Patient's registered health care professional who is qualified to provide medical advice with respect to the application and use of the Product for the treatment of diabetes;

Order Form means the Ypsomed Patient Initiation Form or any other form which a Patient and their HCP can place an order for the rental of the Product;

Personal Information, Sensitive Information and Health Information each have the meaning given in the *Privacy Act 1988* (Cth) and equivalent Privacy Laws;

Product means the YpsoPump system (rental pump) which Ypsomed rents to the Patient on these Terms including access for the Rental Term to the Camdiab application;

Rental Term means the time period during which the Patient rents the Product from Ypsomed, being two years or such other time period as specified in an Order Form;

TGA means the Therapeutic Goods Administration, the unit within the Commonwealth Department of Health and Aging responsible for administering the *Therapeutic Goods Act 1989* (Cth) or any other similar body established for the same or similar purpose during the Rental Term; and

Website means www.mylifediabetescare.com.au.