

TERMS & CONDITIONS

1. YOUR ACCEPTANCE

The following terms and conditions relate to the provision of any services or sale of respiratory products (including all physical products and any downloadable material) from the Misti website <https://www.misti.com.au/> (“**Site**”) (“**Products**”) (“**Terms and Conditions**”). These Terms and Conditions constitute an agreement between, Misti Pty Ltd ABN 55 659 820 818 of 328 Swanston St, Melbourne VIC 3000 (“**Misti**” “**us**”, “**we**”, “**our**”), the owner and operator of the Site, and you (“**you**”, “**your**” or “**user(s)**”), a user of the Site and/or purchaser of Products (“**Agreement**”).

By using or accessing our Site or purchasing any Products you agree to be bound by this Agreement, our Terms of Use, Privacy Policy and Returns Policy. We may amend this Agreement, our Terms of Use, Privacy Policy and Returns Policy and will notify you if we do so. If you do not agree to the terms and conditions contained in this Agreement, our Terms of Use, Privacy Policy or Returns Policy (or any subsequent amendments) you must cease using or accessing our Site and the purchase of any Products immediately.

Users must be 18 years or older to purchase any of our Products or use our services.

2. INFORMATION DISCLAIMER

All information supplied on our Site has NO WARRANTY whatsoever. Information and statements are not intended to diagnose, treat, cure, or prevent any disease. No warranty is made that any information on or linked to this site is complete and/or accurate. All information contained on the Site, including information relating to medical and health conditions, products and treatments, is for informational purposes only. It is often presented in summary or aggregate form.

Professional advice is required for any particular illness, disease, infection, injury or other medical condition and for dosages of the pharmaceutical product supplied via this Site. This information is not to be taken as any sort of medical advice whatsoever. None of our Products are intended to treat any medical condition. You take full and total responsibility for what you do with this information, and any resulting outcomes from your actions.

The information contained in this Site is not intended nor is it implied to be a substitute for professional medical advice or any information contained on or in any product packaging or labels. Always seek the advice of your Pharmacist, General Practitioner, other medical practitioner or qualified health provider when starting any new medical treatment or health supplement, continuing with medical treatment or health supplement or with any questions you may have regarding yours or any other parties' medical condition.

NOTHING CONTAINED ON OUR SITE IS INTENDED TO BE OR SHOULD BE TAKEN FOR MEDICAL DIAGNOSIS OR TREATMENT.

ALWAYS READ THE LABEL and USE ONLY AS DIRECTED.

3. REQUIREMENT TO OBTAIN PROFESSIONAL MEDICAL ADVICE

- All content on our Site is for informational and educational purposes only.
- Any statements appearing on our Site have not been evaluated by any other national or international agencies.
- None of the content or Products offered on our Site are meant to diagnose, treat, alleviate or relieve any medical or health conditions, nor to guarantee any particular outcome or results.
- The Products and content found on our Site are not intended as a substitute for the advice provided by your doctor or other healthcare professional.
- You should always speak with your doctor or other healthcare professional before taking any new health supplements, adopting any treatment for a health problem or before adopting any new fitness or dietary regime or otherwise purchasing any of our Products.
- If you have or suspect that you have a medical problem, or if you have a pre-existing medical condition or are pregnant or breast-feeding, you should contact your health care provider before purchasing our Products.
- Never disregard, avoid, or delay obtaining medical advice from your doctor or other qualified health care provider because something you have read on our Site.
- You should be in good health and physically fit when using our Products, failure to be in good health may result in adverse health consequences.
- Please seek medical advice in regards to your health conditions and physical fitness.
- If at any time you notice any unanticipated changes to your health (physical, mental or emotional), you should seek medical attention immediately.

4. RESPIRATORY WELLNESS INFORMATION

Respiratory Wellness information provided on our Site is based on extensive research. Before relying on any respiratory health related information on our Site, you should carefully evaluate the accuracy, completeness and relevance of this information to your purposes and health particularities, and consider the need to obtain appropriate expert advice relevant to your circumstances. We do not give any warranty that the information is free from error or suitable for your purposes.

5. FITNESS LEVEL

Persons with pre-existing medical conditions, in poor health, or with any concerns as to commencement of new fitness regime should consult with an appropriate healthcare professional before beginning any use of a new device. You are responsible to make your own inquiries and seek independent advice from a healthcare professional before acting on any information or material made available to you through our Site. Respiratory product information available on our Site may not be suitable to your particular circumstances and is not a substitute for obtaining specific advice from a qualified health care professional.

You acknowledge that by purchasing any of the Products available on our Site you are doing so voluntarily and, depending on your particular circumstances, there may be risks to your health. You further acknowledge that these risks may be caused by your own acts or omissions, or those of other users of our Site, or may be risks that are not known to you or are not readily foreseeable at

the time of purchasing any of our Products. This is a risk warning pursuant to the Australian Consumer Law. You assume all risks in connection with your selection, use and consumption of any of the Products available on our Site. To the extent permitted by law, we exclude any express or implied warranties of fitness for purpose or merchantability. WE DO NOT GUARANTEE THE USE OR CONSUMPTION OF ANY PRODUCTS WILL ACHIEVE ANY PARTICULAR RESULT(S) OR THAT OUR PRODUCTS ARE RIGHT FOR YOU. YOU SHOULD ALWAYS CONSULT YOUR HEALTHCARE PROFESSIONAL BEFORE CONSUMING OR ADMINISTERING OUR PRODUCTS.

6. TESTIMONIALS

Please be aware that any testimonials on the Site may not reflect the results that you may achieve. Results may vary and your experience may not be similar to the experience of the user testimonials.

7. PERSONAL INFORMATION

We are required to collect such personal information from you as reasonably required to provide you with our Services, and in accordance with our Privacy Policy. This information may include your personal details such as name, email address and postcode together with certain health information; not limited to your age range, height, weight, exercise levels, biochemistry, medical history, medication and supplement use. We acknowledge and agree that this information is confidential and will be used for the purposes of the provision of our Services only, unless otherwise required by law as set out in our Privacy Policy.

You warrant the personal information and health information you provide us is truthful, accurate, current and complete to the best of your knowledge or belief. We accept no liability in the event you fail to provide us with personal information or health information that is truthful, accurate, current and complete.

By agreeing to the terms and conditions contained in this Agreement you agree to receive our email newsletter. You can unsubscribe at any time by emailing us at admin@misti.com.au with 'unsubscribe' in your email's subject.

9. PAYMENT

We use secure online payment systems powered by Stripe, which accepts major credit cards such as VISA, MASTERCARD and AMEX.

In order to purchase any of our Product you will be required to provide us with your credit card information. Please be aware that all credit card information may be shared with our third party payment processors. By purchasing through our Site, you agree that we may charge you the price

listed at the checkout screen, and that any payments made via credit card may attract an additional percentage fee, as charged by the relevant merchant from time-to-time.

All orders must be pre-paid. Orders will only be shipped or available for download (for electronic products) after full payment of the total amount is cleared.

You warrant that the payment details and any related personal details you provide us are correct. We accept no liability in the event you fail to provide correct or incomplete payment or personal details or for any losses suffered as a result of the fraudulent or unauthorised use of credit cards

The prices for Products provided under this Agreement will be as set out on our Site at the time you offer to purchase the Products. All prices are in Australian Dollars unless otherwise stated, and inclusive of GST, and you agree that we may charge you GST as set out in the A New Tax System (Goods and Services Tax) Act 1999 ("**GST Act**").

From time to time we may issue promotional or discount codes. These can be redeemed at checkout and are subject to the terms of issue stated by us in relation to each promotion or discount.

If you have any issues with payment do not hesitate to contact us at admin@misti.com.au.

All Products available from our Site are subject to consumer protections under the Australian Consumer Law.

10. DELIVERY AND SHIPPING OF PRODUCTS

- Products available from our Site are subject to the terms and conditions contained in this Agreement. Our terms of shipping are available in the shipping policy.
- We make every effort to ensure our Product descriptions are accurate as possible with specifications made on the information provided to us. However, should an error occur we reserve the right to correct our description.
- Images are for illustrative purposes only and may not be an exact image of the actual Product.
- Due to Product demands, Misti Products may not be available at all times. If no products are available we will contact you and inform you of our product availability and projected delivery times. Although our product may be delayed or momentarily unavailable you agree that we may still charge your credit card and ship Misti Products when they become available.
- We reserve our rights to limit the quantities of any Products purchased through our Site.
- Orders are dispatched within 1-2 business days of receiving your confirmed order/payment.
- We currently only ship to street addresses in Australia. Freight/shipping costs are outlined in the shipping policy.

11. REFUNDS AND CANCELLATIONS

- Your rights to refund or replacement (if applicable) are as prescribed under the “consumer guarantees” as defined by Schedule 2 of the Competition and Consumer Act 2010 (Cth) (“**Consumer Guarantees**”) (“**Australian Consumer Law**”).
- In the event of any defect with any Product(s) that you have purchased on or through our Site, your remedies will be as prescribed under Australian Consumer Law, and our liability will be limited to replacement of the Product(s) in question (where applicable), or refund to the value of those Product(s) If you believe any of the Products purchased on or through our Site contain a defect, you must notify us immediately by emailing us at admin@misti.com.au.

12. RETURNS

Please refer to our Returns Policy. Unfortunately we do not offer refunds for change of mind returns.

13. CONTACT INFORMATION

If you have any questions or concerns about your order or if you have any questions about our products do not hesitate to contact us. You may contact us by email at admin@misti.com.au.

14. DISCLAIMER & LIMITATION OF LIABILITY FOR PRODUCTS SOLD

EXCEPT AS EXPRESSLY STATED HEREIN, MISTIMAKES NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO PRODUCTS SOLD ON OUR SITE. EXCEPT AS EXPRESSLY STATED HEREIN, MISTIEXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WITH RESPECT TO PRODUCTS SOLD ON THIS SITE, INCLUDING BUT NOT LIMITED TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE EXCEPT FOR THE 'CONSUMER GUARANTEES' OUTLINED IN THE AUSTRALIAN CONSUMER LAW (FOUND AT:WWW.ACCC.GOV.AU). YOU AGREE THAT THE SOLE AND EXCLUSIVE MAXIMUM LIABILITY TO MISTIARISING FROM ANY PRODUCT SOLD ON OUR SITE SHALL BE THE PRICE OF THE PRODUCT ORDERED. IN NO EVENT SHALL VITALITY BY DR. ANUSHI, ITS RELATED ENTITIES OR ITS DIRECTORS, OFFICERS, EMPLOYEES AND REPRESENTATIVES BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES RELATED TO ANY PRODUCT SOLD

For Jurisdictions that do not allow us to limit our liability: Notwithstanding any provision of this Agreement, if your jurisdiction has provisions specific to waiver or liability that conflict with the above then our liability is limited to the smallest extent possible by law. Specifically, in those jurisdictions not allowed, we do not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; or (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

If you are a resident of a jurisdiction that requires a specific statement regarding release then the following applies: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.” You hereby waive any provision in law, regulation, or code that has the same intent or effect as the aforementioned release. Your ability to use our site is contingent on your agreement with this and all other sections of this Agreement. In the event that we may not limit our liability in your jurisdiction, you agree our total liability to you is not more than AUD\$100 or the total amount you spent while using our Site, Services (and any products) within the last six months, whichever is greater.

15. INDEMNITY

You agree to defend, indemnify and hold harmless Setnio Investments Pty Ltd Pty Ltd its officers, directors, employees and agents and its Related Entities, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney’s fees) arising from:

- your use of and access to our Site and your use of any Products;
- your violation of any term or condition of this Agreement;
- your violation of any third party right, including without limitation any copyright, property, or privacy right; or
- any claim that any of your use caused damage to a third party.

This indemnity will survive this Agreement and your use of our Services. You also agree that you have a duty to defend us against such claims and we may require you to pay for a solicitor of our choice in such cases. You agree that this indemnity extends to requiring you to pay for our reasonable solicitor’s fees, court costs, and disbursements including in relation to the settlement of any claim.

16. PRIVACY AND CHILD PROTECTION

We comply with the Privacy Act 1988 (Cth) (“**Privacy Act**”) and the applicable Privacy Principles in the Privacy Act when handling personal information, together with the Health Records Act 2001 (Vic) (“**HR Act**”) and the applicable Health Privacy Principles in the HR Act when handling personal information which is health information.

Our Privacy Policy can be accessed on our website.

Misti complies with all Australian Child Protection legislation to the extent applicable.

17. CHOICE OF LAW

This Agreement shall be governed by the laws in force in the state of Victoria, Australia. The offer and acceptance of this contract is deemed to have occurred in Victoria, Australia.

18. FORUM OF DISPUTE

You agree that any dispute arising from or relating to this Agreement will be heard solely by a court of competent jurisdiction nearest to the state of Victoria, Australia.

If you bring a dispute in a manner other than in accordance with this section, you agree that we may move to have it dismissed, and that you will be responsible for our reasonable attorneys' fees, court costs, and disbursements in doing so.

You agree that the unsuccessful party in any dispute arising from or relating to this Agreement will be responsible for the reimbursement of the successful party's reasonable attorneys' fees, court costs, and disbursements.

19. FORCE MAJEURE

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labour shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

20. SEVERABILITY

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement are deemed to conflict with each other's operation, we shall have the sole right to elect which provision remains in force.

21. NON-WAIVER

We reserve all rights permitted to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or the any applicable law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

22. ASSIGNMENT

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

23. AMENDMENTS

We may amend this Agreement from time to time. When we amend this Agreement, we will update this page and indicate the date that it was last modified or we may email you. You may refuse to agree to the amendments, but if you do, you must immediately cease using our Site and/or purchasing our Products.

24. ELECTRONIC COMMUNICATIONS

We use electronic means of communication, whether you visit our Site or send use-mails, or whether we post notices on our Site or communications with you via e-mail. For contractual purposes, you (1) consent to receive communications from us in an electronic form; (2) agree that all terms, conditions, agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing. The foregoing does not affect your statutory rights.

Crawling the Services is allowed if done in accordance with the provisions of our robots.txt file, but scraping the Services is prohibited.

25. GENERAL

- a. This Agreement, together with our Terms of Use, Privacy Policy and Returns Policy constitute the whole of the legal agreement between the parties. It supersedes and extinguishes any previous agreement or understanding between the parties about the subject matter of this Agreement and any representation or warranty previously given.
- b. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the provision must be read down so as to give it as much effect as possible. If it is not possible to give the provision any effect at all, it is severed from this Agreement. Any reading down or severance does not affect the validity and enforceability of the remaining provisions in that jurisdiction or the validity and enforceability of the offending provision in any other jurisdiction.
- c. No failure by either party to exercise and no delay in exercising any right under this Agreement will be taken as a waiver of the right. No waiver of any right is effective unless made in writing. Waiver of any particular right does not in any way release the other party from strict compliance in the future with the same or any other obligation.
- d. The rights and remedies provided in this Agreement are cumulative and do not exclude any other rights provided by law.

26. TCPA Compliance:

Text Marketing and notifications:

By entering your phone number in the checkout and initializing a purchase, subscribing via our subscription form or a keyword, you agree that we may send you text notifications (for your order, including abandoned cart reminders) and text marketing offers. Text marketing messages will not exceed 30 a month. You acknowledge that consent is not a condition for any purchase.

If you wish to unsubscribe from receiving text marketing messages and notifications reply with STOP to any mobile message sent from us or use the unsubscribe link we provided you within any of our messages. You understand and agree that alternative methods of opting out, such as using alternative words or requests will not be accounted as a reasonable means of opting out. Message and data rates may apply.

For any questions please text HELP to the number you received the messages from. You can also contact us for more information. If you wish to opt-out please follow the procedures above.