



TERMS, CONDITIONS & DISCLAIMER
13/02/2020

1. These Terms, Conditions and Disclaimer together with any quotation submitted to the User to which these terms are attached or in which these terms are referred together form a legally binding agreement (**Agreement**) between Epi-Assist Australia Pty Ltd ACN 075 018 601 trading as Life Minder (**Life Minder**) and the person(s) or company named in the quotation or who purchases and/or uses the Life Minder Pendant (**User**). This Agreement supersedes any previous terms, conditions and disclaimer entered into by the User and Life Minder,
2. This Agreement may be accepted by the User doing any one or more of the following:
 - 2.1 signing these terms and conditions;
 - 2.2 accepting the quotation (whether in writing, via email or other electronic means or orally) after receiving notice of these terms and conditions;
 - 2.3 paying a deposit or the total price to purchasing a Life Minder Pendant.
3. The User must ensure that the User carefully reads and understands this Agreement, and the Manual prior to accepting and entering this Agreement.

4. **Defined Terms**

In this Agreement:

- 4.1 **Life Minder Pendant** means the pendant supplied by Life Minder to the User in accordance with this Agreement.
- 4.2 **Manual** means the instruction manual for use of the Life Minder Pendant provided by Life Minder to the User.
- 4.3 **Nominated Mobiles** means the mobile numbers that have been nominated by the User to be alerted by the Life Minder Pendant if the Life Minder Pendant is triggered.
- 4.4 **Restocking Fee** means an amount equal to 20% of the price paid by the User for the Life Minder Pendant 20% retained by Life Minder as compensation for the costs incurred by Life Minder in allowing a return of the Life Minder Pendant in accordance with clause 16, including costs of acquiring the SIM Card, transaction fees, pre-programming costs and postage.

5. **Agreement to provide Goods**

- 5.1 Life Minder will supply the Life Minder Pendant to the User pursuant to this Agreement. If any future contract or document between Life Minder and the User is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract is signed by Life Minder, refers to and specifically alters this Agreement in writing.
- 5.2 Life Minder will not be bound by any terms or conditions expressed in orders or acceptances generated by the User except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by Life Minder. For the avoidance of doubt, even where the User attaches or refers

to other terms and conditions in any order or other communications with Life Minder, received after this Agreement has been entered into (**additional terms**), such additional terms are expressly excluded from this Agreement and will be of no force or effect against Life Minder unless Life Minder expressly agrees otherwise (by notice in writing, signed by a director of the Life Minder).

- 5.3 Life Minder may decline to accept any order or request to supply the Life Minder Pendant without providing a reason in its absolute discretion.

6. **Placement of Orders**

- 6.1 The User must place an order for the Life Minder Pendant in writing, by telephone, email or other communication acceptable to Life Minder (which includes oral acceptance of a quotation prepared by Life Minder) (**order**). Upon placement of an order, the User will be bound to proceed with the purchase of the Life Minder Pendant.

7. **Payment**

- 7.1 The User must pay the price identified or calculated in accordance with the quotation or otherwise displayed on the Life Minder website for the Life Minder Pendant (**price**). All amounts are quoted in Australian dollars. Credit card payments may attract surcharges or merchant fees payable by the User in addition to the price.
- 7.2 The total price must be paid in full on or before delivery of the Life Minder Pendant.

8. **Delivery**

- 8.1 Deliveries will be made during the normal working hours of Life Minder. Unless otherwise agreed in writing by Life Minder, the User must arrange to take delivery of the Life Minder Pendant at Life Minder's nominated business premises at a time and date to be nominated by Life Minder. Delivery of the Life Minder Pendant to a third party nominated by the User is deemed to be delivery to the User.
- 8.2 Where a date for delivery is nominated by Life Minder, Life Minder will use reasonable endeavours to deliver the Life Minder Pendant to the User by the nominated date, however delay in delivery will not constitute a breach of this Agreement, nor will it affect any other provisions of this Agreement to Life Minder's disadvantage.
- 8.3 It is the responsibility of the User to carefully inspect the Life Minder Pendant immediately after it is delivered. Any claims with respect to damage, shortage or defect will only be considered if made in writing to the Supplier within 7 days of delivery
- 8.4 To the extent permitted by law, the User acknowledges that Life Minder will not be liable for any loss, damage or delay occasioned to the User or any other person arising out of late deliver or non-delivery of the Life Minder Pendant or any actions or obligations conducted or incurred by the User in reliance on any expected delivery date.

9. **The User's obligations**

- 9.1 Without limiting any other obligations on the part of the User otherwise set out in this Agreement, the User warrants with Life Minder that the User will:
- (a) read and ensure they understand the Manual prior to first use of the Life Minder Pendant;
 - (b) operate and maintain the Life Minder Pendant in accordance with the Manual;

- (c) perform regular tests (on at least monthly intervals) on the Life Minder Pendant to ensure proper operation;
- (d) charge the battery of the Life Minder Pendant regularly (at intervals no less frequent than detailed in the Manual) to ensure sufficient battery power for proper operation;
- (e) where the User is less than 18 years old or lacks capacity to operate the Life Minder Pendant, the User has appointed a guardian to act on its behalf and assist operating and maintaining the Life Minder Pendant; and
- (f) any information the User has provided to Life Minder is accurate and correct to the best of the User's knowledge.

10. SIM Card Installation and Maintenance

10.1 In order to operate, the Life Minder Pendant requires the installation of a subscriber identification module card (**SIM Card**).

10.2 In respect of the SIM Card, the User acknowledges and agrees:

- (a) the SIM Card must be correctly installed and all relevant fees must be paid in connection with the SIM Card to ensure the Life Minder Pendant is operational;
- (b) the SIM Card does not form part of the Life Minder Pendant;
- (c) the SIM Card supplied by Life Minder with the Life Minder Pendant at the request of the User has a 365-day expiry term and a \$5.00 prepaid credit balance. The User may elect, at its cost, to load an additional credit amount to the balance of the SIM Card;
- (d) the User has been provided with the SIM Card carrier's details and login particulars to enable the User to monitor of the credit balance of the SIM Card; and
- (e) the User is solely responsible, at its own cost and expense, to monitor the credit balance and expiry date of the SIM Card to ensure that the balance is at all times adequate to support the SMS messages and/or voice calls generated by the Life Minder Pendant, and to insert a new SIM Card into the Life Minder Pendant prior to expiry of the existing SIM Card.

10.3 Life Minder will, at the request of the User, assist the User to install and program the SIM Card prior to or at the point of delivery to the User, to ensure correct installation of the SIM Card and operation of the Life Minder Pendant. The User acknowledges that this is the method of installation and programming recommended by Life Minder.

10.4 If the User elects to personally install and program the SIM Card, the User acknowledges and agrees that:

- (a) Life Minder has provided the User with the copy of the Manual which sets out instructions to install the SIM Card; and
- (b) the User is solely responsible for the installation of the SIM Card and releases Life Minder to the fullest extent permitted at law for any loss, injury, damage, expense, liability or claim arising

directly or indirectly from the incorrect installation and/or programming of the SIM Card and subsequent malfunction or failure of the Life Minder Pendant.

10.5 To the fullest extent permitted by law, the User releases Life Minder for any loss, injury, damage, expense, liability or claim arising directly or indirectly from the failure of the User to monitor and/or top up the credit balance of the SIM Card and/or replace an expired SIM Card in the Life Minder Pendant.

11. **3G-4G Coverage and GPS Location**

11.1 The User acknowledges that the Life Minder Pendant relies upon cellular phone network coverage to make and receive phone calls, send SMS messages and to provide GPS positioning. The quality, extent and speed of service coverage may vary between service providers and locations within Australia.

11.2 The Life Minder Pendant will only operate to send SMS messages or voice calls to the nominated mobiles where there is 3G-4G GSM or WCDMA coverage. If the Life Minder Pendant is within 3G coverage, a green LED light will flash rapidly at three (3) second intervals. If the Life Minder Pendant is within 4G coverage, a green LED light will flash rapidly at four (4) second intervals. If the Life Minder Pendant is not connected to 3G-4G GSM or WCDMA coverage, then no light will flash on the Life Minder Pendant.

11.3 The User acknowledges and agrees that:

- (a) it is the sole responsibility of the User to ensure that the Life Minder Pendant is always within 3G-4G coverage, to ensure the coverage area is sufficient to operate the Life Minder Pendant, and to monitor any disruption to the network with the relevant service provider; and
- (b) the 3G-4G coverage to the Life Minder Pendant, and consequently operation of the Life Minder Pendant, may be interfered with, diminished or interrupted where there is weak or non-existent 3G-4G coverage (including but not limited to instances where the Life Minder Pendant is located in a lift, underground car park, between high rise buildings, tunnels or road cuttings).

11.4 The User releases Life Minder to the fullest extent permitted at law for any loss, injury, damage, expense, liability or claim arising directly or indirectly from the Life Minder Pendant not being connected to 3G-4G coverage (temporarily or permanently) and failing to operate correctly (including without limitation failing to send a SMS message or voice call as a result).

11.5 The User acknowledges that the Life Minder Pendant uses GPS tracking (and such applications as Google Maps) to fix the location of the Life Minder Pendant, which is accurate within approximately 2-3 meters. The Life Minder Pendant requires line of sight to a satellite for effective operation. The User must complete a fix to these satellites, and the fix must be tested for its accuracy, in accordance with the Manual on delivery of the Life Minder Pendant. If the Life Minder Pendant is successfully fixed to the satellites, a blue LED light on the side of the Life Minder Pendant will flash at 3 second intervals. If the Life Minder Pendant cannot locate a fixed co-ordinate, it will provide its last known position.

11.6 The User acknowledges and agrees that:

- (a) it is solely responsible at its own cost and expense for fixing of the Life Minder Pendant to GPS and subsequent testing of its accuracy in accordance with the Manual;
- (b) the ability of the Life Minder Pendant to track the location of the User is dependent upon and limited to the capabilities and constraints of GPS technology; and

- (c) the Life Minder Pendant requires a direct connection to GPS satellites in order to track the location of the Life Minder Pendant, and that where there is a failure or interruption to the Life Minder Pendant connecting to GPS satellites, this will result in an interruption to the Life Minder Pendant updating the Life Minder Pendant's current positioning.

11.7 The User releases Life Minder to the fullest extent permitted at law for any loss, injury, damage, expense, liability or claim arising directly or indirectly out of:

- (a) the User's failure to correctly fix the Life Minder Pendant to the satellites and test its location accuracy on delivery of the Life Minder Pendant; and/or
- (b) the Life Minder Pendant failing to connect to satellites, track the location of the Life Minder Pendant and/or provide an updated or accurate positioning of the User.

12. **Fall Detection**

12.1 The Life Minder Pendant includes limited fall detection capabilities. However, the User acknowledges that the activation of the fall detection capabilities is dependant upon the angle and velocity at which the Life Minder Pendant comes into contact with the ground (or other surface). If the angle and/or velocity is insufficient (such as where the User slides down a wall and/or the Life Minder Pendant falls from a distance of less than 1 metre from the ground), the Life Minder Pendant may not activate. In this instance, if the User does not hear a beep tone after 10 seconds, they have the option to manually press the SOS button for assistance.

12.2 The User acknowledges and accepts the limitations of the fall detection capabilities of the Life Minder Pendant. The User releases Life Minder to the fullest extent permitted at law for any loss, injury, damage, expense, liability or claim arising directly or indirectly from the Life Minder Pendant failing to activate following a fall by the User, unless directly caused by a negligent act or omission of Life Minder.

13. **Scope of Intended Purpose**

13.1 The User acknowledges and agrees that:

- (a) the Life Minder Pendant has not been designed or guaranteed to prevent any loss or injury;
- (b) subject to the limitations of the Life Minder Pendant identified at clauses 10, 11 and 12 above, the Life Minder Pendant's purpose is to send SMS messages and telephone calls to Nominated Mobiles in the case of an emergency;
- (c) the Life Minder Pendant is water/liquid resistant IP65, but is not waterproof and Life Minder recommends that the User avoids direct water/liquid contact with the Life Minder Pendant;
- (d) the User has been provided with a copy of the Manual prior to entry into this Agreement and they have carefully read the contents of the Manual and understand the operational requirements, maintenance and any limitations of the Life Minder Pendant;
- (e) it is the responsibility of the User to determine whether the Life Minder Pendant is suitable or appropriate for their needs;
- (f) once a SMS message or telephone call has been sent by the Life Minder Pendant to the Nominated Mobiles, it is the responsibility of the holder of the Nominated Mobile/s to attend the location of the User and/or arrange appropriate medical assistance;

- (g) Life Minder will not be responsible or liable for any loss, injury, damage, expense, liability or claim arising directly or indirectly from a failure of the holder of the Nominated mobiles to respond to a SMS message or telephone call sent by the Life Minder Pendant.

14. Limitation of Liability

14.1 The User acknowledges and agrees that to the fullest extent permitted by law, Life Minder will not be liable for, and the User releases Life Minder in respect of any loss, injury, damage, expense, liability or claim arising directly or indirectly out of:

- (a) the User's purchase and use of the Life Minder Pendant, except where the loss, injury, damage, expense, liability or claim is caused directly by the negligence of Life Minder or its employees or agents;
- (b) any act or omission of any third party supplier of goods or services used in conjunction with or to aid the operation of the Life Minder Pendant (including without limitation the instances set out in clauses 11.3 and 11.7) or failure or malfunction of any goods supplied by third party manufacturers, except where the loss, injury, damage, expense, liability or claim is caused directly by the negligence of Life Minder or its employees or agents;
- (c) the User's failure to read and comply with the Manual; or
- (d) the User's failure to comply with their obligations under this Agreement, including without limitation any misuse or neglect of the Life Minder Pendant (including exposure to water/liquid), incorrect or incomplete set-up, programming or regular testing of the Life Minder Pendant, or a failure by the User to maintain or charge the battery.

14.2 The parties agree that any liability of Life Minder that cannot be excluded will be limited to the lesser of:

- (a) the re-supply of defective goods (if applicable);
- (b) the cost of the re-supply of defective the goods in question (if applicable); or
- (c) the price of the original supply of the goods.

14.3 Notwithstanding any of the above, the parties agree that Life Minder will under no circumstances be liable to the User for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.

14.4 To the extent permitted by law, unless otherwise expressly set out in this Agreement, Life Minder does not provide and expressly excludes all warranties whether implied by statute or otherwise. This clause does not attempt to limit, restrict or modify the application of any applicable laws that cannot be excluded, restricted or modified including Australian Consumer Law.

15. Life Minder Warranty

15.1 Life Minder provides a limited warranty that the Life Minder Pendant is free from defects in material and workmanship for a period of 12 calendar months from the date of purchase (**Warranty Period**).

15.2 Life Minder's liability/obligations to honour any claim under or in connection with this Agreement (including a claim for a breach of warranty) do not extend to:

- (a) rectification of defects, loss or damage which is caused or contributed to by the use or operation of any part of the Life Minder Pendant otherwise than in accordance with Manual supplied by Life Minder, or under normal working conditions;
- (b) rectification of defects, loss or damage arising out of or in connection with the misuse, neglect, or wilful destruction of any part of the Life Minder Pendant;
- (c) rectification of any damage caused by or to the Life Minder Pendant as a result of continued use of any part of the Life Minder Pendant after a defect has been detected or ought to have been detected; or
- (d) rectification or replacement of any Life Minder Pendant that has been repaired, modified, altered, dismantled or otherwise interfered with by a person other than Life Minder or its authorised repairer.

15.3 The User must make a claim for refund, replacement or repair in writing to Life Minder within the Warranty Period (**Warranty Claim**). When making a Warranty Claim, the User must provide to Life Minder a copy of the purchase receipt with the date of purchase, the original invoice number, the User's contact details, and the faulty Life Minder Pendant along with a detailed description of the alleged fault.

15.4 Life Minder will assess any Warranty Claim within a reasonable period and will notify the User of its determination of the Warranty Claim, including whether the Life Minder Pendant will be repaired or replaced.

15.5 Life Minder cannot, and will not be responsible for, maintaining any programming that the Life Minder Pendant may contain if returned for repair or replacement.

15.6 Life Minder will use reasonable endeavours to transfer warranties given by third party manufacturers of the goods supplied and to the extent those warranties are transferrable. However, Life Minder will not be liable for negotiating with manufacturers on behalf of the User and will not be liable to provide warranties to the User in addition to those provided by the manufacturer and transferred under this clause.

16. **Return & Refunds Policy**

16.1 If a User is not satisfied with the Life Minder Pendant (other than as a result of a Warranty Claim), a User must return, at the cost and risk of the User, the Life Minder Pendant to Life Minder within 14 business days from delivery. Life Minder will provide a refund of the price, subject to clause 16.3, only if the Life Minder Pendant is returned:

- (a) in an unused condition free from any wear or defects;
- (b) with evidence of the purchase receipt; and
- (c) in the original packaging complete with the Manual, USB cable, power docking station and any other accessories that were included in the original purchase.

16.2 Refunds are available to Users who have who purchased the Life Minder Pendant directly from Life Minder. Any Life Minder Pendant purchased at a third-party retail outlet or other distributor will be subject to the returns and refunds policy of that third-party. The User must contact the retailer or distributor to arrange any available refund or return.

16.3 Subject to satisfaction of the conditions specified at clause 16.1 above, Life Minder will refund to the User the original price paid by the User less the Restocking Fee.

17. **Term and Termination**

17.1 This Agreement commences on the date of its acceptance by you and will expire upon delivery of the Life Minder Pendant or on such earlier termination in accordance with its terms or at law.

17.2 Without limiting any other rights of the Life Minder under this Agreement or at law, Life Minder may immediately terminate this Agreement at any time by giving written notice if:

- (a) the User is in default under this Agreement in any way (and has not rectified that default within 7 days from receipt of notice from Life Minder requiring you to so rectify);
- (b) any information you provide to Life Minder (including information contained in a warranty) is false, misleading or incomplete; or
- (c) a Force Majeure Event continues for a period of 3 days.

18. **Intellectual Property**

18.1 For the purposes of this Agreement, “**Intellectual Property Rights**” means copyright, trademark, design, patent, trade secret, secret process, know-how, concept, idea, information, formula, invention, semiconductor or circuit layout rights and any other rights (including software and services) whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by Life Minder in respect to this Agreement and the Life Minder Pendant.

18.2 Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights created by Life Minder on or after the commencement of this Agreement will remain vested in Life Minder regardless of whether those rights were created pursuant to or for use in or with this Agreement or the Life Minder Pendant.

19. **Personal information**

19.1 The User consents to Life Minder at any time:

- (a) seeking, advising, exchanging and verifying any of your personal or commercial information with any third party (such as to any health care providers and government departments);
- (b) carrying out any further pertinent investigation about you and the information you have provided; and
- (c) using your personal information to contact you about or send you material relating to events and special offers Life Minder considers may be of interest to the User.

19.2 Life Minder will otherwise deal with the User’s personal information in accordance with the law application in the jurisdiction and any privacy policy that Life Minder may implement from time to time.

20. **Goods and Services Tax (GST)**

20.1 GST will be charged to all relevant goods and services and will be payable by the User at the time of payment, including but not limited to all stock, services, costs, fees, freight charges and any other amounts.

21. **Force Majeure**

21.1 A Force Majeure event means anything outside reasonable control of Life Minder, including but not limited to: power, data or communication outages; acts of God or the public enemy; national emergencies; radioactive contamination; insurrection; riot; hostile or warlike action or sabotage; a transportation embargo; industrial action (including a picket); and any legislation or regulation and any action or inaction of any government or government agency.

21.2 If Life Minder is wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, then:

- (a) as soon as reasonably practicable after the Force Majeure event arises, Life Minder will notify the User of the extent to which Life Minder is unable to perform its obligations; and
- (b) Life Minder's obligation to perform will be suspended for the duration of the delay arising directly out of the Force Majeure event.

22. **Applicable Law**

22.1 The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the State of New South Wales, Australia. The parties irrevocably submit to the non-exclusive jurisdiction of the laws courts of New South Wales for settlement of all disputes or claims that may arise out of or in connection with this Agreement.

23. **Assignment**

23.1 Life Minder may assign or otherwise transfer any of its rights or obligations under this Agreement. The rights of the User under this Agreement are personal to the User and may not be assigned or otherwise transferred.

24. **Confidentiality**

24.1 Neither party will, without the prior written approval of the other party, disclose the other party's confidential information, which includes the content of this Agreement and any quotation, any information of a party which is marked confidential and any information which is by its nature confidential.

24.2 A party will not be in breach of this clause in circumstances where it is legally compelled to disclose the other party's confidential information or where such confidential information is already in the public domain other than as a result of that party's breach of this Agreement.

24.3 Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement on a confidential basis to its solicitors, auditors, insurers and accountants.

24.4 The User expressly authorises and consents to Life Minder disclosing the User's confidential information to third parties as is required by the Life Minder to comply with this Agreement (including government departments overseeing disability assistance schemes and other health services).

24.5 This clause 24 will survive the termination of this Agreement.

25. **Contact**

- 25.1 Should a User wish to discuss the contents of this Agreement with Life Minder, please email Life Minder on sales@lifeminder.com.au. Alternatively, please phone our free call line at 1800 6844 22 from a landline only and leave your name and contact details. Life Minder will use reasonable endeavours to return your call within 24 hrs of receiving the call.