

## 1. Application

1.1 These are the Terms of sale of the Atomo HIV Self-Test.

1.2 In these Terms:

**Atomo, we, us or our or those terms in another grammatical form** means Atomo Diagnostics Pty Limited ACN 142 925 684.

**Customer, you** or those terms in another grammatical form means the person or entity purchasing or otherwise acquiring the Atomo HIV Self-Test

**Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in New South Wales are open for business.

**Compliance Agreement** mean an agreement between Atomo and an authorised health clinic to distribute Atomo HIV Self-Test.

**Distributor**, means an authorized distributor who has entered into a Compliance Agreement in respect of Atomo HIV Self-Test.

**Goods** means the Atomo HIV Self-Test products (or any part of them) set out in an order or otherwise purchased from Atomo.

**Instructions** means any applicable user guide, instructions or other documentation (either written or digital) otherwise communicated to you from time to time or posted on the Website, including but not limited to the Instructions Video, and instruction for use as posted on the Website.

**Instructions Video** means the 'How to' video posted on the Atomo website.

**Order** means an offer made by you to purchase goods or services made using this Website in accordance with these Terms;

**Terms** means these terms of sale.

1.3 By making an order or request to purchase the Atomo HIV Self-Test you acknowledge that you warrant that you are an Australian resident, and that you accept these terms and that these terms, together with your order and any Compliance Agreement you have with us constitute the entire agreement between you and Atomo for the supply of Atomo HIV Self-Test.

1.4 Each discreet order you place with us for the supply of Atomo HIV Self-Test creates a new and individual contract for sale. These Terms may be amended at any time. The version published on the Atomo website immediately prior to your order is the applicable version. . We recommend you review the terms for amendments each time you use our website and before placing any order for the Atomo HIV Self-Test.

## **2. Orders**

- 2.1 Upon confirmation by Atomo of acceptance of your order, you and Atomo enter into a contract for the sale and supply of the Goods at the specified price last published by Atomo immediately prior to your order upon these Terms.
- 2.2 By placing an Order you declare and warrant to us that you have watched the Instruction video on Atomo's website in full, that you understand its contents in full and that you have not relied on any other statement, promise or representation made or given by or on behalf of Atomo which is not set out or expressly incorporated within these Terms.
- 2.3 Atomo may act on and process all completed Orders through the website without further consent from or reference to you.
- 2.4 Any electronic instruction may be treated by Atomo as authentic and Atomo is under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.
- 2.5 Atomo will notify you in writing if Goods are not available within 48 hours from the time of placing an order and at its option, either place the Goods on back order or refund the amount paid for the Goods.
- 2.6 The Order is accepted if Atomo issues a written acceptance of the Order, or does any act which indicated fulfilment of the Order, or delivers the Goods or part of them. If Atomo issues a conditional acceptance that is acknowledged by You, the Order is as modified in the conditional acceptance.
- 2.7 Atomo may, in its sole discretion, accept or reject any offer made by you for any reason (or no reason), including an error in the advertised price or description of products, or an error in your Order.
- 2.8 If your Order is not accepted by Atomo, we will notify you by telephone or email and arrange for a full refund of any payment made by you to be processed.

## **3. Price**

- 3.1 Prices shown are in Australian dollars and include GST where applicable. Prices do not include delivery and handling charges. Prices are subject to change.

## **4. Payment**

- 4.1 All payments must be made in full at time of order and prior to delivery.
- 4.2 Payments must be made via credit card facilities (Mastercard or Visa) accessible via the Atomo website and will be subject to any terms and conditions of these providers.

## **5. Delivery**

- 5.1 On acceptance of your Order by Atomo, your order will be dispatched to your specified delivery address generally within 2 business days of the date of acceptance. Delivery times after dispatch will vary depending upon location and other matters outside our control.
- 5.2 A signature or written acknowledgement of delivery from you or the occupant is required to accept delivery of the Goods.
- 5.3 Delay in delivery (or any part of it) shall not entitle you to cancel an Order or refuse delivery or render Atomo liable for loss or damage sustained by you or any other person as a result of a delay. Atomo shall not be liable for any delay or failure in delivery of the Goods (or part of them), including such failure or delays caused by a third party supplier, freight delay, a force majeure event or Your failure to accept delivery, make payment or provide Atomo with adequate delivery instructions or any other information relevant to the supply of the Goods.
- 5.4 If Atomo fails to deliver the Goods, its liability, if any, shall be limited to either replacement of the Goods or a refund of the price paid for the Goods not delivered.
- 5.5 We may make part deliveries of any Order and will notify you in that case.. Failure to deliver all the Goods you have ordered will not invalidate the completed sale contract in respect to part deliveries.
- 5.6 If you or any occupant of your specified delivery address do not take or accept delivery, the Goods will nevertheless be deemed to have been delivered when Atomo or its agent attempted to deliver them at your specified delivery location. In such instances where practicable, arrangements will be made for you to collect the Goods at a suitable location.
- 5.7 Title to the Goods shall not pass until Atomo has received payment in full for those Goods.

## **6. Distributor Obligations**

- 6.1 If you are a Distributor, you must comply with the terms set out in the Compliance Agreement. If, at any given time you do not meet any of terms set out therein, you must notify Atomo immediately and refrain from distributing the Goods.
- 6.2 In the event that you no longer meet the requirements of the Compliance Agreement, or if Atomo has reasonable cause to believe that you may not meet the requirement of the Compliance Agreement, Atomo may, in its sole discretion, require you to return any Goods to Atomo, at your cost.
- 6.3 You must take reasonable care of the Goods, in accordance with the Instruction or any documentation otherwise communicated to you from time to time. You must not use products that have exceed their expiry date or otherwise than in accordance with the instructions provided.
- 6.4 You agree to provide to Atomo written reports of all claims or complaints regarding the Goods and services relevant to the Goods that come to your attention within one (1) business day of becoming aware of such claims or complaints.

6.5 A Distributer must comply with all applicable laws, regulations, industry standards and codes of conduct in Australia and any other relevant jurisdictions in relation to all matters contemplated (whether expressly or implicitly) by these Terms.

## **7. Atomo's Warranties**

7.1 The Atomo HIV Self-Test has a very high (99.6%) validated accuracy. This is not the same as perfect accuracy. you acknowledge that such accuracy depends upon you using the Atomo HIV Self-Test precisely in accordance with the instructions accompanying it and that even if the Atomo HIV Self-Test is used properly there will be a small statistical risk that the result of the test is inaccurate.

7.2 Atomo warrants that all Goods supplied to You by Atomo will:

- (a) comply with Atomo's specifications for those Goods (or if no such specifications exist, will be free of defects in materials and manufacture),
- (b) be fit for their intended purpose, subject to the stated statistical accuracy, when used properly and in accordance with the accompanying instructions and before their expiry date.

7.3 If Goods do not comply with the warranty set out in clause 7.2 and You promptly notify Atomo of the defect in writing together with adequate images, during the Warranty Period, Atomo will, at its sole discretion, either replace the Goods, or refund the amount paid for the Goods.

7.4 When a refund is given pursuant to clause 7.3, the Goods for which the refund is provided must, at Atomo's discretion, be destroyed or returned to Atomo, at Atomo's expense, and if returned become the property of Atomo.

7.5 To the extent permitted by the Australian Consumer Law, if applicable to you, and relevant state legislation, if applicable to you, the sole obligation of Atomo is to use its best endeavours to provide the Goods, or to replace the Goods. Atomo will not be liable for any other claims or damages including, but not limited to, claims for faulty design, negligent or misleading advice, damages arising from loss or use of the Goods, and any indirect, special or consequential damages or injury to any person, corporation or other entity.

7.6 If any Goods supplied under this agreement are supplied to you as a "consumer" of goods or services within the meaning of that term in the Australian Consumer Law (as amended) or relevant state legislation, you as the consumer will have the benefit of certain non-excludable rights and remedies in respect of the Goods. Nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred. Otherwise, Atomo's liability is limited to payment of an amount equal to the cost of replacing the Goods.

7.7 Without limiting the preceding terms, Atomo shall not be liable to You in any of the following circumstances:

- (a) A defect in the Goods arises as a result of any acts or omissions by any person other than Atomo after the Goods are shipped;

- (b) A defect arises because You or anyone else failed to follow the Instructions from Atomo as to the storage, use, limitations and maintenance of the Goods;
- (c) The Goods being used for purposes other than their intended use as promoted by Atomo and otherwise than in accordance with the usage instructions;
- (d) The Goods have been modified.

7.8 Atomo will have no liability to a Distributer, however arising and whether in contract, tort (including negligence), breach of statutory duty, or otherwise, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity. Atomo's total liability to the Distributer in respect of all other losses arising under or in connection with the Contract, shall not exceed the price of the Goods supplied.

7.9 Any term implied by statute is negated or excluded to the full extent permitted however nothing in these Terms shall be taken or read to limit or exclude a mandatory statutory provision.

## **8. Indemnity**

8.1 If you are a Distributer you release and indemnify Atomo, its officers, employees and related entities from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with those indemnified, and whether at common law, in equity or pursuant to statute or otherwise, in respect of any loss, death, injury, illness or damage (whether personal or property, and whether direct or consequential, including consequential financial loss) arising out of a breach of Distributer's warranties or obligations contained in these Terms or the Compliance Agreement, and from and against all damages, reasonable costs and expenses incurred in satisfying, defending or settling any such claim.

## **9. Privacy**

9.1 Atomo's Privacy Policy is incorporated into these Terms, and can be viewed at <https://atomohivtest.com/privacy.html>.

9.2 Atomo may collect and use your personal information for the purpose of processing your Orders, providing you with the Goods and any related services, administering the transaction and offering you other Atomo products.

9.3 Atomo will not sell, trade, give or pass on to any third party any personal information unless such a disclosure is anticipated by these Terms or our Privacy Policy and directly related to the purpose outlined by these Terms and our Privacy Policy, or the Distributer consents to such a disclosure or such disclosure is required to do so by law.

9.4 By placing an Order for Atomo HIV Self-Test you acknowledge that you have read Atomo's Privacy Policy and consent to the terms thereof.

## **10. General**

- 10.1 Any notice in connection with these Terms or any Contract will be deemed to have been duly given when made in writing and delivered or sent by post or email to the party to whom such notice is intended to be given, at the address of that party in the Contract or to such other address as may from time to time be notified in writing to the other party.
- 10.2 If any provision of these Terms is invalid, illegal or unenforceable, these Terms take effect (where possible) as if they did not include that provision.
- 10.3 A waiver of any right or remedy under these Terms is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 10.4 These Terms, the Compliance Agreement and Contracts are governed by the laws of New South Wales, Australia. The parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.