

RESMED ONLINE PURCHASING TERMS AND CONDITIONS

These terms and conditions apply to the use of the Web site, including the purchase of goods over the Web site. In using the Web site for these or any other purposes, you agree to be bound by these terms and conditions. If you do not accept these terms and conditions, you must refrain from using the Web site. These terms and conditions must be read in conjunction with any other applicable terms and conditions governing the use of the Web site. It is a condition of entry to this Web site that you must:

1. Complete the registration form with your details; and
2. Agree to be bound under the Terms and Conditions of use of this website.

In particular, we draw your attention to the following key points of the Terms and Conditions:

* The content of this website is intended for health professionals, medical clinicians, distributors of sleep-disordered breathing ("SDB") products, and other professionals involved in the treatment of SDB.

* This website is not intended for use by patients, or other unqualified, unauthorized persons.

* We accept no liability in respect of unauthorized or unqualified persons who gain access to the content of this website, or any consequences of misuse of that content by unqualified or unauthorized persons.

* By registering for this website, you authorize us to notify you, via email or other means as may be deemed necessary, of important information relating to ResMed products and services.

* While we will endeavor to contact you in the event that there are important notifications or updates, we recommend that you visit this website regularly to check for updates.

* Access to this website is granted at our sole discretion, and may be revoked temporarily or permanently, without notice.

* You must keep the allocated registration information user name and passwords confidential, and must not distribute it to unqualified or unauthorized persons.

Terminology

In these terms and conditions, the expressions "we," "us," and "our" are a reference to the ResMed Corp, the Web site operator; the expression "you" is a reference to the Web site customer or registered user.

General Provisions

You must be a health professional, medical clinician, distributor of SDB products, or other professional involved in the treatment of SDB in order to access this website. Your access to this website is granted at our discretion, and may be revoked temporarily or permanently, without notice.

This website is not intended for use by patients or other unqualified, unauthorized persons.

All user information provided to us, including without limitation the information on the user registration form and information regarding ship-to addresses, must be current, accurate, and complete. You agree to inform us of changes to your email address and other contact details. If we at any time discover any error or omission in the information you provide to us, we may, at our option, terminate your right to access and use the website.

You consent to us collecting, storing and using information about your use of this website for the purpose of improving services that may be made available.

You authorize us to notify you, via email or other means as may be deemed necessary, of important information relating to ResMed products and services.

You must keep confidential the allocated registration information, user name and password (collectively, the “IDs”) and must not distribute them to unqualified or unauthorized persons. You are solely responsible for (1) any charges, damages, or losses that may be incurred or suffered as a result of your failure to maintain the strict confidentiality of your IDs; and (2) promptly informing us in writing of any need to deactivate your IDs due to security concerns. We are not liable for any harm related to the theft of your IDs, your disclosure of your IDs, or your authorization to allow another person or entity to access and use the website using your IDs. You agree to immediately notify us of any unauthorized use of your IDs.

You will comply with restrictions that we may advise as applying to the redistribution of information provided by way of this website (e.g., you agree not to make available to patients information that is designated “For Clinicians Only”).

Amendments to Terms and Conditions

We reserve the right to amend these terms and conditions at anytime. Amendments will be effective immediately upon notification on this Web site or by other communications to you, which may or may not be provided. Your continued use of the Web site following such update or notification will represent an agreement by you to be bound by the terms and conditions as amended.

Licensed Access to Web Site and Responsibility

As a registered user, we will provide you with access rights to this website. You are licensed to access this website solely in the course of the conduct of usual business with us.

You agree:

- a. to only access this website by use of the access rights made available by us;
- b. that the registration information, user name and password you use to access this website are our confidential information;
- c. to maintain adequate security measures for the access rights provided by us so as to safeguard this website from access by any unauthorized person sourcing the access rights from you;

d. that you are responsible for all access to this website made by way of your access rights sourced from you as a result of your act or omission.

You are authorized to print or make an electronic copy of any information contained on this website solely in the course of the conduct of usual business with us, unless such printing or copying is expressly prohibited. Without limiting the foregoing, you may not, without our written permission, sell or otherwise distribute information obtained from this website.

Ordering Procedure

You may offer to purchase goods described on this Web site for the price specified on this Web site. Prices are subject to change without notice. Prices on this Web site do not include tax, fees, freight, and any applicable shipping and handling charges. After acceptance of your order we will invoice you for all relevant charges associated with us fulfilling your order.

Your order, if accepted by us, will be assumed to include your client details as held by us. Your order must contain your purchase order number, extra delivery information, if applicable, and any other ordering information specified on the Web site.

Within seven days of receipt of your order, we will at our discretion accept or reject your offer to purchase.

You may not cancel an order once it has been submitted, even if our acceptance or rejection of your offer is still pending.

We are not required to give reasons for rejecting your offer to purchase.

If we reject your offer to purchase the goods for any reason, neither we nor you will be under any further liability arising out of your original offer or our non-acceptance of that offer even if we were aware of such risk or liability.

If we have not informed you of rejection of the order within seven days, your offer will be deemed to be accepted.

We will impose a separate \$25.00 handling fee for orders under \$200, exclusive of taxes and shipping charges.

We give no undertaking as to the availability of products advertised on the Web site.

Delivery of the goods to you will be effected in the manner determined by us.

We are not responsible in the event of a lost or missing shipment due to inaccurate information you provide to us in your order, including but not limited to customer account information, drop ship information, and customer ship to information.

Title in the goods does not pass to you until payment has been received.

Shipping terms are FOB ResMed's Warehouse. Risk of loss or damage to the goods passes to you upon dispatch.

Payment must be effected in the manner specified by us from time to time. Prices are exclusive of goods and services tax, duties, and charges imposed or levied by relevant authorities in connection with the supply of goods. You will be assessed a finance charge on all overdue balances at a rate of 1.5% per month. If you become delinquent in the payment of any sum due, we will not be obligated to continue performance under any agreement with you. You agree to reimburse us for all collection costs, including reasonable court costs and attorneys' fees, incurred by us in collecting any amount past due.

The goods are offered for sale only to persons who can make legally binding contracts. In addition, You agree not to resell, ship or distribute goods to anyone other than initial patient-users unless you have a written distribution agreement in effect with us allowing you to sell to non-patients.

You agree not to resell or distribute goods outside of the country to which we ship your order. You also agree not to use any internet technology or website to resell or distribute goods unless you have a separate written authorization from us for such activity. The sale of goods in violation of this section voids any of our written product warranties.

Cancellation Due to Error

You acknowledge that despite our reasonable precautions, products may be listed at an incorrect price or with incorrect information due to a typographical error or similar oversight. In these circumstances, we reserve the right to cancel the transaction, notwithstanding that your order has been confirmed and your account with us has been charged. We reserve this right up until the time of delivery of goods to you. If a cancellation of this nature occurs after your account has been charged for the purchase, we will issue a credit to your account for the amount in question per the terms and conditions of this agreement.

Disclaimer

We do not accept responsibility for any loss or damage, however caused (including through negligence), which you may directly or indirectly suffer in connection with your use of the Web site or any linked Web site, nor do we accept any responsibility for any such loss arising out of your use of or reliance on information or content contained on or accessed through the Web site.

To the extent permitted by law, any condition or warranty that would otherwise be implied in these terms and conditions is hereby excluded. This includes any express or implied warranties or representations as to merchantability, fitness, design, condition, quality, capacity, material, equipment, or workmanship in or of any goods purchased from us other than those set forth in our written product warranties. We reserve the right to modify any of our warranty provisions or documents at anytime, in our sole discretion. Where legislation implies any condition or warranty, and that legislation prohibits us from excluding or modifying the application of, or our liability under, any such condition or warranty, that condition or warranty will be deemed included but our liability will be limited for a breach of that condition or warranty to one or more of the following:

- (a) if the breach relates to goods,
 - (i) return of goods through our standard returned goods policy described below.
- (b) if the breach relates to services,
 - (i) the supplying of the services again or
 - (ii) the payment of the direct cost of having the services supplied again.

You must report any discrepancies in goods received within 3 business days of receipt by you or you will be deemed to have accepted the goods as shipped. In the event that you need to return products to us, please take note of these standard returned goods guidelines so that we may process your return and issue a credit where appropriate:

- 1) Request a Returned Material Authorization (RMA) number from our Customer Service Department before returning any products. When requesting an RMA, please be prepared with the product serial number. When returning masks and other non-serialized products, please be prepared with the part number(s) and at least one of the following: the original purchase order number; our confirmation number; or the invoice number.
- 2) Mark the RMA number clearly on the outside of all returned boxes and ship to us freight prepaid. If you fail to do so, we reserve the right to refuse your shipment and direct that the shipment be returned to you at your expense.
- 3) The issuance of any credit for returned merchandise is subject to inspection and approval by us. You will be charged with a 20% restocking fee unless the return results from our shipping error that is communicated to us within 10 business days of receipt of product by you.

We considers all sales final and will not, under any circumstances, accept return of: a) product not in its original, unopened package; or b) discontinued product which is not included in our current published price lists or is identified to you as discontinued.

Any claim you submit under any of our written product warranties must be on behalf of the initial patient-user of the goods and be returned in accordance with our standard returned goods policy.

Except as otherwise stipulated in these terms and conditions, we will not accept liability to you in respect of any loss or damage (including indirect, special, or consequential loss or damage) which may be suffered or incurred by you or which may arise directly or indirectly in respect of goods or services supplied pursuant to an order placed on the Web site or in respect of any failure or omission on our part to comply with our obligations as set out in these terms and conditions or any other matters relating to these terms and conditions whether based on contract, tort or any other legal theory.

Exception to Disclaimer

This disclaimer does not limit liability arising under law.

Specific Warnings

You must ensure that your access to the Web site is not illegal or prohibited by laws that apply to you.

You must take your own precautions to ensure that the process that you employ for accessing the Web site does not expose you to the risk of viruses, malicious computer code, or other forms of interference that may damage your own computer system. For the removal of doubt, we do not accept responsibility for any interference or damage to your computer system that arises in connection with your use of the Web site or any linked Web site.

While we have no reason to believe that any information contained on the Web site is inaccurate, we do not warrant the accuracy, adequacy or completeness of such information, nor do we undertake to keep the Web site updated. We do not accept responsibility for loss suffered as a result of reliance by you upon the accuracy or currency of information contained on the Web site.

Responsibility for the content of advertisements, if any, appearing on the Web site (including hyperlinks to advertisers' own Web sites) rests solely with the advertisers. The placement of such advertisements does not constitute a recommendation or endorsement by us of the advertisers' products and each advertiser is solely responsible for any representations made in connection with its advertisement.

We make no warranty that goods acquired from us over the Web site will meet your requirements.

It is your responsibility to determine whether details contained on the Web site relating to goods or services satisfy the laws of the jurisdiction where you reside and if the details do not satisfy the laws of your jurisdiction, you may not order any goods or services from the Web site.

You acknowledge that despite all reasonable precautions on our part, there is a risk of unauthorised access to or alteration of your transmissions or data or of information contained on your computer system or on the Web site. We do not accept responsibility or liability of any nature for any such losses that you may sustain as a result of such activity.

General Disclaimers

THE WEBSITE IS PROVIDED TO YOU ON AN "AS IS, WITH ALL FAULTS" BASIS, AND YOUR USE THEREOF IS AT YOUR OWN RISK. WE MAKE NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT, OR WARRANTIES ARISING BY COURSE OF DEALING OR CUSTOM OF TRADE. WE MAKE NO REPRESENTATION OR WARRANTY THAT ANY CONTENT IS ACCURATE, COMPLETE, APPROPRIATE, RELIABLE, OR TIMELY. WE ALSO MAKE NO REPRESENTATIONS OR WARRANTIES THAT YOUR ACCESS TO AND USE OF THE SITE (1) WILL BE UNINTERRUPTED OR ERROR-FREE, (2) IS FREE OF VIRUSES, UNAUTHORIZED CODE, OR OTHER HARMFUL COMPONENTS, OR (3) IS SECURE. YOU ARE RESPONSIBLE FOR TAKING ALL PRECAUTIONS YOU BELIEVE NECESSARY OR ADVISABLE TO PROTECT YOU AGAINST ANY CLAIM, DAMAGE, LOSS OR HAZARD THAT MAY ARISE BY VIRTUE OF YOUR USE OF THE SITE. Some jurisdictions do not permit the exclusion or limitation of implied warranties. Therefore, only if required by applicable law, some or all of the exclusions or limitations above may not apply to you. You may have other rights from jurisdiction to jurisdiction.

Exclusion of Damages

UNDER NO CIRCUMSTANCES WHATSOEVER WILL WE BE RESPONSIBLE OR LIABLE TO YOU OR ANY OTHER ENTITY FOR ANY DIRECT, COMPENSATORY, INDIRECT, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS AND LOST BUSINESS OPPORTUNITIES), SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES THAT RESULT FROM OR RELATE IN ANY MANNER WHATSOEVER TO (1) YOUR USE OF THE SITE, OR RELIANCE ON THE CONTENT, OR (2) ERRORS, INACCURACIES, OMISSIONS, DEFECTS,

UNTIMELINESS, SECURITY BREACHES, OR ANY OTHER FAILURE TO PERFORM BY RESMED OR ITS CONTENT PROVIDERS. THE FOREGOING EXCLUSION SHALL APPLY REGARDLESS OF WHETHER RESMED HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Some jurisdictions do not permit the exclusion of certain types of damages. Therefore, only if required by applicable law, some or all of the exclusions above may not apply to you. You may have other rights from jurisdiction to jurisdiction.

Copyright

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- b) commercialize any information, products or services obtained from any part of the Web site;

without our written permission.

At our request, which request may be made at any time, you agree to immediately discontinue further use of the images, drawings and materials in which copyright subsists, and, in such event, you will retain no copies in electronic or material form.

Any content you download or print may not be altered in any way and must contain all copyright and proprietary rights notices that were contained in such content. ANY UNAUTHORIZED OR UNAPPROVED USE OF ANY OF THE CONTENT CONSTITUTES COPYRIGHT INFRINGEMENT AND SUBJECTS YOU TO ALL CIVIL AND CRIMINAL PENALTIES PROVIDED FOR UNDER DOMESTIC AND INTERNATIONAL COPYRIGHT LAWS AND TREATIES.

In all such usage, you further agree to comply with the requirements set forth in the Trademarks section below.

Trade Marks

Except where otherwise specified, any word or device to which is attached the (™) or (®) symbol is a trademark of a member of our corporate organization.

If you use any of our trademarks in reference to our activities, products or services, you must include a statement attributing that trademark to us. You must not use any of our trademarks:

- a) in or as the whole or part of your own trade marks;
- b) in connection with activities, products or services which are not ours;
- c) in a manner which may be confusing, misleading or deceptive;
- d) in a manner that disparages us or our information, products or services (including this Web site).

Restricted Use

Unless we agree otherwise in writing, you are provided with access to the Web site only for your personal use. You are authorized to print a copy of any information contained on the Web site for your personal use only, unless such printing is expressly prohibited.

Linked Web sites

The Web site may contain links to other Web sites ("linked Web sites"). Those links are provided for convenience only and might not remain current or be maintained.

We are not responsible for the content or privacy practices associated with linked Web sites.

Our links with linked Web sites should not be construed as an endorsement, approval or recommendation by us of the owners or operators of those linked Web sites, or of any information, graphics, materials, products or services referred to or contained on those linked Web sites, unless and to the extent stipulated to the contrary.

Foreign Access or Use

We make no claim that the website is appropriate for access or use outside the U.S. Your access and/or use of the website are at your own risk, and you are responsible for compliance with the laws of your jurisdiction.

Information Service

We intend that this website and associated email services will be used by us to provide you with information. The information may include notifications regarding updates to our products, services and documentation. We may provide that information by way of you viewing this website, downloads from this website or by way of emails sent to the email address you provide to us or any other mode of communication.

All information provided by us by way of this website (including downloads from this website) is provided in good faith. We derive our information from our own resources and sources, which we believe to be accurate and up to date as of the date of publication. We nevertheless reserve the right to update this information at any time. In addition, we do not make any representations or warranties that your access to that information will be uninterrupted, timely or secure.

We are not liable for any loss resulting from any action taken or reliance made by you on any information or material made available by us. Before acting or relying on any information that is made available to you pursuant to our information service, you agree to make your own inquiries and use your own professional judgment as to the applicability of that information.

You agree to use our information service for lawful purposes only.

Privacy Policy

We undertake to comply with the terms of our privacy policy that is annexed to these terms and conditions.

E-mail

We will preserve the content of any e-mail you send us if we believe we have the legal requirement to do so.

Security of Information

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. While we strive to protect such information, we do not warrant and cannot ensure the security of any information that you transmit to us. Accordingly, any information that you transmit to us is transmitted at your own risk. Nevertheless, once we receive your transmission, we will take reasonable steps to preserve the security of such information.

Indemnification

You agree that the relationship between you and us is that of independent contractors, and that under no circumstances will either party be authorized to act in the capacity of an agent of the other. You will indemnify and hold us harmless against any and all liability arising out of, and any injury, loss, claims or damages arising from (a) the negligent operations, acts or omissions of you or your employees, agents and contractors; (b) your breach of these terms and conditions; (c) your unauthorized or unlawful use of the website; (d) breach of any privacy laws, rules or regulations, including those governing patient health information; (e) the unauthorized or unlawful use of the website by any other person using your IDs/passwords; and (f) inaccurate or incomplete information provided by you under this Agreement or in connection with the services. You will indemnify and hold us harmless against all costs and expenses, including reasonable legal expenses, incurred by or on behalf of us in connection with the defense of such claims. We, while providing product and any related services, shall not interfere with any provider-patient relationship between you and your patients.

Confidentiality

In your use and access of this Web site, we will disclose to you confidential information, including but not limited to the terms of this invoice, product pricing, sales and new product development information. You will retain such information in confidence and will not use, publish or disclose, or cause anyone else to use, publish or disclose, any confidential information supplied by us without prior written permission. This obligation does not extend to any information subject to disclosure by legal process or information which you can demonstrate with tangible evidence was already known or independently derived by you, or publicly available, prior to our disclosure. In the event of a disclosure required by law, you agree to provide prompt notice to us prior to any such disclosure so that we may seek protective relief.

Compliance with Laws

You represent and warrant that you will abide by all applicable laws related to the sale of the goods, including the disclosure of discounts or rebates on products reportable to government reimbursement programs, and will maintain all applicable licenses as required by law. You further agree to (i) comply with all local and federal laws, regulations and instructions relating to medical device complaints, recalls and record-keeping requirements; (ii) promptly inform us of any known complaint involving injury, safety, product performance or adverse event involving products; (iii) use best efforts to obtain products

subject to any complaint or recall in this section and return such products to us or our agents; and (iv) maintain records of serial and or batch numbers of products with the relevant end-user for a minimum of five (5) years from the date of sale.

Termination of Access

Access to the Web site may be terminated at any time by us without notice. Our disclaimer will nevertheless survive any such termination.

Disputes

In the event of any controversy or dispute related to or arising out of these terms and conditions or your use of the Web site, you and us agree to meet and confer in good faith to attempt to resolve the controversy or dispute without an adversarial proceeding. If we bring an action for any relief or collection against you arising out of this arrangement, you will be responsible for reasonable attorneys' fees and costs actually incurred in bringing such action.

Governing Law

These terms and conditions are governed by the laws of the State of California, County of San Diego. You agree to submit to the exclusive jurisdiction of the courts of that jurisdiction.

Miscellaneous

We accept no liability for any failure to comply with these terms and conditions where such failure is due to circumstance beyond our reasonable control.

If we waive any rights available to us under these terms and conditions on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

If any of these terms and conditions is held to be invalid, unenforceable or illegal for any reason, the remaining terms and conditions shall nevertheless continue in full force.

We may assign these Terms and Conditions, in whole or in part, in its sole discretion. You may not assign your rights under these Terms and Conditions without our prior written permission. Any attempt by you to assign your rights under these Terms and Conditions without our permission shall be void.

Patient and Individual Privacy Protection

In the event that either you or us collects, creates, or maintains personally identifiable data about patients as part of their respective obligations under these terms, both parties agree to collect and not disclose such information except as authorized by applicable laws and regulations. Both you and us agree to de-identify such information prior to sharing any portion of it with the other party and comply with all applicable federal and state privacy and security laws as practically possible. You agree to indemnify and hold us harmless for your breach of this Section or unauthorized disclosure of personally identifiable data about patients.

Privacy Policy

We may collect Web site visitors' contact information (like their e-mail addresses and telephone numbers). Unless you specifically object in writing, this information may be used:

- a) to send news, information about our activities and general promotional material which we believe may be useful to you;
- b) to monitor who is accessing the Web site or using services offered on the Web site; and
- c) to profile the type of people accessing the Web site.

If you do not wish to have your personal information used in this manner or for any other specific purpose, you must e-mail us accordingly.

We utilize "cookies" which enable us to monitor traffic patterns and to serve you more efficiently if you revisit the site. A cookie does not identify you personally but it does identify your computer. You can set your browser to notify you when you receive a cookie and this provides you with an opportunity to either accept or reject it in each instance. Should you choose to reject cookies, certain Web site functionality will cease.

We will not sell or otherwise provide your personal information to a third party (independent of our corporate organization), or make any other use of your personal information, for any purpose which is not incidental to your use of the Web site. For the removal of doubt, personal information will not be used for any purpose which a reasonable person in your position would not expect.

If you request us not to use personal information in a particular manner or at all, we will adopt all reasonable measures to observe your written request but we may still use or disclose that information if:

- a) we subsequently notify you of the intended use or disclosure and you do not object to that use or disclosure;
- b) we believe that the use or disclosure is reasonably necessary to assist a law enforcement agency or an agency responsible for government or public security in the performance of their functions; or
- c) we are required by law to disclose the information.

We will preserve the content of any e-mail you send us if we believe we have the legal requirement to do so.

Your e-mail message content may be monitored by us for trouble-shooting or maintenance purposes or if any form of e-mail abuse is suspected.

Personal information that we collect may be aggregated for analysis but in such circumstances we would ensure that individuals would remain anonymous.

All personal information that we collect (including your contact details and, if relevant, account and financial details) is kept confidential to our reasonable ability. You will appreciate, however, that we cannot guarantee the security of transmission.

You are entitled to have access to any personal information relating to you that you have previously supplied to us over this Web site. You are entitled to edit or delete such information unless we are required by law to retain it.

If you wish to comment on or query our privacy policy, or if you wish to make an inquiry regarding any personal information relating to you that may be in our possession, contact the ResMed sales support at onlinestoresupport@resmed.com.