

TERMS AND CONDITIONS

BCAL Diagnostics Ltd (ABN 51 142 051 223) (**BCAL Diagnostics**) supplies Services and provides access to its Website in accordance with the following terms and conditions (**Terms**).

INTRODUCTION

1. Interpretation

1. In these Terms:
 - (a) **ACL** means the Australian Consumer Law which is Schedule 2 to the CC Act;
 - (b) **CC Act** means the *Competition and Consumer Act 2010* (Cth) and subordinate instruments;
 - (c) **Health Practitioner** means a health practitioner as defined in the TG Act;
 - (d) **Order** means an order, whether in writing or orally or through the Website, by a Patient or by a Health Practitioner on a Patient's behalf, to acquire any of the Services from BCAL Diagnostics;
 - (e) **Patient** means a patient under the care and treatment of a Health Practitioner;
 - (f) **Practitioner Only Content** is defined in clause 6;
 - (g) **Services** means the *in vitro* medical diagnostic services supplied by BCAL; and
 - (h) **TG Act** means the *Therapeutic Goods Act 1989* (Cth) and subordinate instruments.
 - (i) **Website** means the internet-based portal at www.bcaldiagnostics.com (or any other domain that BCAL Diagnostics may use from time to time for the same purpose) that BCAL Diagnostics uses to provide information about itself and the Services, and to otherwise facilitate access to the Services.

2. Application of Terms

1. Your access to and use of the Website and its contents, and your acquisition of the Services (and all other associated products and services sold and/or provided by BCAL Diagnostics), are governed by these Terms.
2. Any time you access or use the Website or Order or otherwise acquire any Services, including:
 - (a) when you access the Website, or when an Order is placed on your behalf by a Health Practitioner, or when you otherwise receive the Services or the results of the Services (either directly or through a Health Practitioner);
 - (b) if you are a Health Practitioner, when you access the Website yourself, or when you place an Order or otherwise receive the Services or the results of the Services on behalf of a Patient,

you will be deemed to have read, understood and accepted the Terms and you agree to be bound by them.

3. Amendments to Terms

1. BCAL Diagnostics reserves the right to amend these Terms from time to time. Amendments will be effective immediately upon being updated on the Website or as otherwise notified to you (whichever is earlier). Your continued use of the Website or your Order or acquisition of any Services following such update or notification will signify an agreement by you to be bound by the Terms as amended.
2. You should check this page regularly to take notice of any changes BCAL Diagnostics may have made to the Terms.

WEBSITE

4. Restrictions on use

1. You agree that you will:
 - (a) use the Website and any content on or from the Website in accordance with these Terms and not for any unlawful purpose;
 - (b) if you are not a Health Practitioner, only use the Website and any content on or from the Website for your personal and non-commercial use;
 - (c) if you are a Health Practitioner, only use the Website and any content on or from the Website for the purpose of obtaining information about BCAL Diagnostics and the Services, arranging for Patients to receive the Services and not for any other commercial or other use; and
 - (d) not violate or attempt to violate the security of the Website or any right of BCAL Diagnostics in respect of the Website or its content.
2. Your use of the Website, other than by the placement of an Order, does not constitute a binding agreement to acquire any BCAL Diagnostics goods or services.

5. Hyperlinks

1. Any third-party reference to the Website or any other website of BCAL Diagnostics via hyperlink is only permitted with the prior approval of BCAL Diagnostics.
2. BCAL Diagnostics makes no representations or warranties regarding any content published by third parties referring, by hyperlink, to BCAL Diagnostics' websites (including the Website).

6. Practitioner Only Content

1. The Website may include webpages, or content within webpages, that are only accessible to Health Practitioners with a valid professional registration (**Practitioner Only Content**).
2. Health Practitioners may obtain access to such Practitioner Only Content upon provision of valid professional registration credentials and such other information as BCAL Diagnostics may reasonably require to ensure that Practitioner Only Content is accessible only to Health Practitioners.
3. All Practitioner Only Content, including any content that would otherwise constitute advertising of goods or services for the purposes of the TG Act or any other relevant legislation, is intended exclusively for Health Practitioners with a valid professional registration.
4. Practitioner Only Content, and all other Website content, is provided for the purpose of allowing Health Practitioners to consider if any of the Services are suitable, appropriate and provide a potential benefit for the practitioner's Patients.

SERVICES

7. Orders

1. Services may be acquired for Patients by submission of an Order by a Health Practitioner on the Patient's behalf in accordance with the processes and forms specified by BCAL Diagnostics.
2. Where any biological sample from a Patient is required for the provision of any Service, you must comply with BCAL's directions and instructions for the collection, handling, storage and submission of such samples.
3. All information and documentation submitted by a Health Practitioner or Patient to BCAL Diagnostics as part of or in connection with an Order must be true, accurate, complete and current.

4. BCAL Diagnostics accepts no liability for any loss or damage suffered by any person in connection with the provision of Services to the extent to which it is caused or contributed to by the provision of information, documentation or samples to BCAL Diagnostics which do not comply with this clause.

8. Prices and payment

1. All prices for Services are in Australian dollars inclusive of GST (where applicable). All pricing is subject to change without notice.
2. Where Services are ordered and payment is made using a credit or debit card/account, the person providing the payment details represents and warrants that the credit or debit card/account is owned by the person who purports to own it. All credit and debit card/account holders are subject to validation checks and authorisation by the card/account issuer. If the issuer of the payment card/account refuses or does not, for any reason, authorise payment to us, whether in advance or subsequent to the provision of any Service, BCAL Diagnostics will not be liable for any delay in performance of the Services or provision of the results of the Service.

9. Refunds

1. BCAL Diagnostics may in certain circumstances consider that it would be appropriate to issue a full or partial refund to a Patient in relation to its supply of Services.
2. Except where provided otherwise by the application of law:
 - (a) refunds are provided at the sole discretion of BCAL's Chief Executive Officer and requests for a refund will be assessed on a case-by-case basis;
 - (b) requests for a refund must be made by either emailing support@bcaldiagnostics.com or telephoning 1300 222 539;
 - (c) if BCAL Diagnostics decides in its discretion to issue a refund, the refunded amount will be paid only to the cardholder or person who made the original payment, by the method that payment was provided.

10. Health Practitioner responsibilities

1. Health Practitioners must exercise their own independent clinical judgment when deciding whether any Services are suitable, appropriate and provide a potential benefit for any given Patient and whether to recommend that a given Patient acquire any Services.
2. You acknowledge and agree, as a Patient or as a Health Practitioner, that:
 - (a) the provision of Services by BCAL Diagnostics for or in relation to a Patient does not affect in any way the nature of the relationship between the Patient and the Health Practitioners who recommended, facilitated or arranged the provision of the Services or who are otherwise involved in the care and treatment of the Patient, and those Health Practitioners remain fully responsible and liable for the ongoing care and treatment of the Patient;
 - (b) it is the responsibility of those Health Practitioners to exercise their independent clinical judgment in:
 - (i) interpreting the results of any Service;
 - (ii) providing medical advice to their Patient regarding and in light of those results;
 - (iii) determining, recommending and/or conducting any further testing, investigation or analysis in light of those results; and
 - (iv) determining, recommending and/or providing appropriate medical treatments (if any) for the Patient in light of those results; and
 - (c) BCAL Diagnostics is not responsible or liable in any way for the matters referred to in paragraph (b) above, except and only to the extent to which BCAL Diagnostics may provide interpretation information in relation to the results of any Service as part of those results.

11. Availability of Website and Services

1. Your access to and use of the Website and/or the Services may be suspended in whole or part for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the technologies, platforms, equipment, products, processes and methodologies used in the provision of the Website or Services for any reason, including as a result of power outages, system failures or other interruptions.
2. BCAL Diagnostics may also, without any liability to you, cease, limit, suspend or deny access to any portion or all of the Website and/or access to or provision of the Services at any time, on an element- or service-wide basis:
 - (a) for scheduled downtime to permit us and/or our third party service providers to conduct routine and other maintenance on, or to repair, modify, improve and/or upgrade, the Website or any of the technologies, platforms, equipment, products, processes and methodologies used in the provision of the Website or Services;
 - (b) if we are required to do so by any Government agency or third party service provider; or
 - (c) in the event that we determine that any service, functionality or content is prohibited by applicable law or would infringe any third party's rights or that it is otherwise necessary or prudent to do so for legal or regulatory reasons.
3. We may also suspend your access to and use of the Website and/or the Services or any element thereof, in your own right or on behalf of any other person, immediately upon notice if you violate, or we have reason to believe that you have violated, any of these Terms.
4. We may update, add, make changes to, withdraw, suspend or discontinue any feature, functionality or content on or of the Website, or any Service (in whole or in part), from time to time and at any time as we consider appropriate.

GENERAL

12. Warranties and representations

1. The Services come with certain consumer guarantees that cannot be excluded under the ACL. You are entitled to compensation for any reasonably foreseeable loss or damage you suffer as a result of failure of the Services we provide to comply with one or more of those guarantees.
2. Subject to our liability pursuant to those guarantees, the Services, the Website and the contents of the Website (including Practitioner Only Content) are made available to you on an "as is" and "as available" basis and at your own discretion and risk, and BCAL Diagnostics makes no representation, and provides no warranty or guarantee (either express or implied), that any Service or the Website (including the contents of the Website and any feature or functionality provided through the Website):
 - (a) complies with all legal requirements, is suitable for use by you or any other person, is free of inaccuracies, errors, bugs or defects, is compatible with any other systems or services, will be provided for continuous access free of interruptions (including service suspensions), or is reliable, current, complete or otherwise valid;
 - (b) does not infringe any third party rights (including intellectual property rights);
 - (c) is accurate, reliable, of acceptable quality, fit for any purpose or capable of achieving any particular result;
 - (d) is safe, secure and free from viruses or defects, including those which could damage or interfere with your data, hardware or software (it is your responsibility to ensure that you have in place antivirus, firewall and other appropriate security software to protect against malicious programs when browsing the internet and/or accessing the Website), and, to the extent permitted by the ACL and other laws, BCAL Diagnostics excludes any warranties or guarantees (whether implied by statute or otherwise) in connection with the above matters.

13. Exclusion of liability

1. Except as provided by the ACL or any other law:
 - (a) BCAL Diagnostics will not be liable for any losses, costs, expenses or damages, to or incurred by you or any other person or property, arising out of or in connection with:
 - (i) your use of, or your inability to use, the Services or the Website, including any content, features, functionalities or services on or of the Website;
 - (ii) any advice, information, care or treatment provided by a Health Practitioner;
 - (iii) any loss of your personal information (including health information); or
 - (iv) our performance or non-performance of our obligations under these Terms of Use.
 - (b) BCAL Diagnostics' liability will be limited at its option to supplying the Services again, or payment of the cost of supplying the Services again;
 - (c) BCAL Diagnostics will not be liable for any consequential, indirect, incidental, special, punitive or exemplary damages, or any loss of profits or loss or corruption of data, damage to a computer system, loss of anticipated savings, loss of goodwill or economic loss, even if BCAL Diagnostics has been advised of the possibility of such loss or damage;
 - (d) BCAL Diagnostics' liability to you will be reduced by the extent to which you caused or contributed to any loss, cost, damage or expense incurred by you.

14. Intellectual property rights

1. BCAL Diagnostics is the owner or licensee of:
 - (a) the Website and its contents; and
 - (b) the technologies, platforms, equipment, products, processes and methodologies used in the provision of the Services,and of all intellectual property rights therein. You obtain no interest in those intellectual property rights by virtue of your use of the Website or of any Service or otherwise, and you must not do anything which infringes, interferes with or contravenes those intellectual property rights.
2. Without limiting the foregoing:
 - (a) All intellectual property rights in any material or content displayed on the Website, including, without limitation, trade marks, logos and trade names, belong to BCAL Diagnostics, its affiliates or licensors, and are used with BCAL Diagnostics' permission. This applies to all trade marks displayed on the Website, whether or not appearing with trade mark symbols (® or ™). Nothing on the Website should be construed as granting any right or licence to use any trade mark displayed on the Website without the prior written permission of BCAL Diagnostics, its affiliates or licensors.
 - (b) All text, advertising material, images, graphics, audio and other content on the Website are the subject of copyright and are presented solely for your personal and non-commercial use or, if you are a Health Practitioner, only for the purpose of arranging for Patients to receive the Services or otherwise facilitating access by Patients to the Services. Other than viewing and downloading content from the Website for such purposes, or except as otherwise expressly provided by these Terms, you do not have the right to duplicate, distribute, alter or alternatively use, these intellectual property rights without BCAL Diagnostics' written permission.

15. Privacy

1. BCAL's [Privacy Policy](#) forms part of these Terms and by agreeing to these Terms, you also agree to the Privacy Policy.

2. Your personal information, including any sensitive information and/or health information, will be collected, stored, accessed, used and disclosed in accordance with our [Privacy Policy](#) (as read in conjunction with these Terms).

16. Relationship

1. Nothing contained or implied in these Terms will create a joint venture, partnership or principal and agency relationship between BCAL Diagnostics and you.

17. Governing law

1. These Terms are governed by and will be construed in accordance with the laws of New South Wales. Any legal action or proceeding against BCAL Diagnostics shall be brought exclusively in the courts of New South Wales (or of the Commonwealth of Australia in New South Wales), and you agree to submit to the personal and exclusive jurisdiction of such courts.

18. Force Majeure

1. BCAL Diagnostics will not be liable for any failure to carry out an obligation under the Terms to the extent that the failure was caused by events or circumstances beyond its reasonable control (Force Majeure Event) including, but not limited to, fire, accident, pandemic, interruptions to energy supply, strike, riot, civil commotion or war whether declared or not.
2. While BCAL Diagnostics will do all things reasonably necessary to mitigate the effect of the Force Majeure Event on the performance of its obligations, it may cancel or defer Orders and/or the provision of Services at its sole discretion. In a Force Majeure Event, BCAL Diagnostics will endeavour to provide notice to any affected party detailing the nature of the Force Majeure Event and the steps taken to mitigate its effect.

19. No waiver

1. BCAL Diagnostics' failure to require your performance of any of these Terms shall not affect its full right to require such performance at any time thereafter, nor shall its waiver of a breach of any of these Terms be taken or held to be a waiver of future breaches of these Terms.
2. No failure to exercise and no delay by BCAL Diagnostics in exercising any right, remedy, power or privilege under these Terms and no course of dealing, shall be construed or operate as a waiver of these Terms.

20. Severance

1. If any of these Terms are held by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed from the Terms and the remainder of these Terms will continue to be effective and valid notwithstanding such severance.