

Terms and Conditions for Twin Waters Pharmacy Healthy Saver Membership

Version 1.1

1. Definitions

Twin Waters Pharmacy (“we”, “us”, “our”) refers to Ophir Health Services Pty Ltd A/T for Ophir Trust T/A Twin Waters Pharmacy 6 / 175 Ocean Drive Twin Waters Qld 4564 Ph: 07 54570009 Email: shop@twinwaterspharmacy.com.au Website: www.twinwaterspharmacy.com.au

Member (“you”, “your”) refers to the members listed on the application form.

2. Plain terms

These Terms use plain language, so we want to ensure that some words and concepts are easily understood. For instance, we have included clause headings as a guide, but these do not form part of this agreement. Certain recurring words are defined in the details and elsewhere in this agreement, and other forms of those words have equivalent meanings.

3. Cooling off

If you change your mind shortly after applying for membership, you may have an opportunity to cancel. You must inform us in writing within 7 days for it to be effective. We will refund you any amounts you have paid us within 7 days. If you wish to end your membership otherwise, different terms apply in these Terms.

4. We take your privacy seriously

(a) Our privacy policy

When you apply for membership, we will have access to personal information about you, such as your health and finances. We will protect this information and only use, disclose, or deal with this information per our Privacy Policy. The latest version of the Privacy Policy will be available on our website.

(b) Please keep your contact details up to date

You promise to tell us promptly if you change your address, phone number, email, bank account, or credit card information for payment or if there is a change to any other personal information relevant to your membership with us. This includes any matters that affect the health or safety of you or others.

5. What you get when you join

From the Start Date, you are entitled to the membership benefits and use of the services that apply to the Healthy Saver Program.

6. When can you put your membership on hold?

You may temporarily suspend your membership for travel or medical reasons if all amounts payable for your membership are paid up to date. You must produce satisfactory supporting documentation when you apply for a suspension. You must apply for a suspension immediately after you become aware of the relevant circumstances. We are entitled to charge you the suspension fee for processing your application. In any 12 months, we are not obliged to suspend your membership on more than two occasions or for more than three months. While your membership is suspended, the term will be extended, and we will freeze any direct debit payments that fall within the suspension period.

7. Ending your membership

For any requirements in this agreement to tell us in writing or give us written notice, we will accept notification by email or post.

7.1 On or after the expiry of the Minimum Term

Your membership is Ongoing, it will continue after the Minimum Term unless you tell us in writing at any time before the expiry of the Minimum Term that you do not wish your membership to continue. We will seek to remind you before this time.

If your membership is Ongoing and you have not told us that you wish your membership to end at the expiry of the Minimum Term, you can terminate any time after the end of the Minimum Term by giving us at least 30 days prior written notice. Any unused membership fees after the required notice period will be refunded.

Where neither you nor we terminate this agreement, any unpaid fees will need to be paid by you in addition to our other rights we may have, including our taking action to recover the outstanding payments.

7.2 Other ways that you can end your Membership.

You can also cancel your membership where:

(When no cancellation fee will apply)

- We don't keep our end of the deal (please see paragraph (a) below);
- We make changes to this agreement that adversely affect you (please see clause 12);
- You otherwise become entitled to do so under consumer legislation;
- you relocate or simply wish to cancel for any other reason (please see paragraph (b) below); or

(a) If we don't keep our end of the deal

You can cancel your membership by written notice to us if we breach any of our obligations under this agreement and we have not remedied that breach within a reasonable time after you have given us a written request that we do so.

No fees will be applicable for cancelling under this clause apart from, to the extent not impacted by our breach, the joining fee, membership fees for the time you have been a member calculated on a pro-rata basis and any outstanding fees for other services already supplied to you.

(b) If your membership is no longer convenient

Otherwise, you can end your membership during the Minimum Term with immediate effect at any time by simply telling us in writing. We understand that circumstances change, so you do not need to give any reason.

7.3 When can we end your membership?

In addition to our other rights under this agreement, we can terminate your membership by written notice to you if you fail to act under any obligation and if you do not remedy the failure within a reasonable time of us giving you a written notice requiring you to do so. However, we will not seek to end your membership in this way if you have failed to make a payment and we are also in breach of a material condition of this agreement. If we cancel this agreement under this paragraph, you will be liable for the membership fees for the time you were a member.

On rare occasions, we may cancel a membership by written notice to the member without giving a reason. If we cancel your membership under this paragraph, you will only be liable for the membership fees for the time you were a member. You agree that this payment is your sole entitlement to compensation for cancellation of your membership under this paragraph.

8. Fees you have to pay for your membership.

The fees you must pay are specified in the details. Clause 7.3 sets out some further rights and obligations that apply to fees.

If you fail to make any payment when due, we can suspend your membership until all outstanding amounts have been paid in addition to our other rights under these Terms. Fees and charges continue to accrue during the suspension.

(a) Membership fees

Membership fees must be paid periodically in advance until your membership ends.

(b) Fee increases

We will not increase the membership fees during the Minimum Term. However, we may increase your membership fees or any other fees with effect any time after that. We will make a fair effort to tell you at least 60 days before by writing to you at the last address you gave us (which may be an email address). Where we have done so, you authorise us to increase any debits from your nominated account in line with this increase. We will not use this right to vary the terms of any special offer which applies to you.

(c) Refunds and the Credit Code

We are entitled to deduct all fees and charges you must pay under this agreement from any refund we give you. The National Credit Code does not apply to this agreement.

9. When you pay by direct debit

(a) Authorisation to deduct fees

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under this agreement. Accordingly, it is essential that you keep your account details up to date.

(b) If your payment is late or rejected

You are responsible for ensuring enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.

Any bank fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the Direct Debit Provider).

If a payment remains outstanding, you agree that, unless we breach our obligations under these Terms, we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you. If the amount owing is more than one periodic membership fee, we will seek to contact you first.

(c) Direct debits

If you pay fees by direct debit, we will provide you with a copy of the terms and conditions that apply to the direct debit services. Those terms and conditions are entirely separate to this agreement, and you may have rights and obligations under those terms and conditions.

10. Issues with outside providers

We will ensure that franchisees, contractors and other authorised persons who provide services at the facilities (**outside providers**) are appropriately qualified before granting them access. Please note that we neither employ outside providers nor are they our agents, even if they happen to be wearing clothes displaying our name and logo. You will know that they are outside providers because they will directly require payment of their fee from you when you engage them.

This is important because we are not liable for any injury, loss or other claims arising from breach of contract, negligence or otherwise that you suffer in connection with any outside provider services other than to the extent caused by our negligence. In addition, you release us and hold us harmless about any such claims.

We have no responsibility with respect to the fees that you must pay directly to outside providers nor for any associated costs or refunds. However, please advise us if you have a problem with an outside provider, and we will try to help if we can. Nothing in this clause limits our liability for the actions of our employees or agents.

11. Other services

Other services offered at Twin Waters Pharmacy may not form part of your Healthy Saver but are available for you to purchase separately. These are not part of the services provided under your membership and you will be advised at the time if any additional terms apply to these services.

12. Changes to your membership agreement

During your membership, we may need to change this agreement, including our Rules. However, we will always try to do this fairly by allowing you to cancel your membership if you do not agree to the change as described in this clause below.

We will tell you in writing of the proposed change in advance and the date it will come into effect. This effective date will be at least 30 days from our notification unless it is impractical for us to do so. Your membership will be amended with effect from the effective date. If you are adversely affected by the change, you may cancel your membership by telling us in writing before that date. Please note that you cannot cancel under this clause if we are required to make the change to comply with a law or any direction of a competent authority.

13. Our liability to you

(a) Statutory guarantees

ACL: The Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides certain guarantees in sections 60 to 62 (**statutory guarantees**), which generally require that services supplied to you:

- are rendered with due care and skill,
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier and might reasonably be expected to achieve any result you have made known to the supplier and
- are supplied within a reasonable time (when no time is set).

Permitted exclusion: However, the CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from our failure to comply with any statutory guarantee.

In the previous sentence, "injury" means:

- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- the contraction, aggravation, or acceleration of a disease; or
- The coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or situation about you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.

Reckless conduct: This exclusion of liability does not apply if you have suffered any significant personal injury caused by our reckless conduct (within the meaning given to those terms by the CCA).

(b) General exclusions

Please note that nothing in this agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) that cannot lawfully be excluded, restricted or modified.

Otherwise, except as expressly included in this agreement, all implied terms, conditions, warranties, rights or other obligations that can be lawfully excluded are excluded from this agreement. In particular, but subject to the preceding paragraph, we are not liable for:

- negligence; or
- breach of terms implied that services will be provided with reasonable care and skill,

at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection with or under this agreement, but to avoid doubt, we do not exclude liability for our reckless conduct.

14. General legal guff

(a) Unexpected events

We are not liable if you cannot use your membership due to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, you or we can cancel this agreement immediately by telling the other in writing. We are entitled to make part or all the facilities unavailable for up to two weeks during each calendar year to undertake maintenance, repairs or improvements. In this case, we will extend your membership by the time you cannot use the facilities.

(b) Our logo and intellectual property

No rights with our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under this agreement, except that any exercise program created for you may be used while you are a member for the purpose of your exercise activities.

(c) Transferring this agreement

We can transfer the rights or benefit under this agreement or sub-contract our obligations under this agreement to a third party at any time without notice to you but in doing so we will make sure that the transferee agrees to honour the terms of your membership.

(d) Severability and waiver

If a court finds that any part of any term of this agreement is or becomes illegal, void or unenforceable, that part is deleted, and this does not invalidate the rest of this agreement. If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so on future occasions.

(e) Applicable law

The law of the State/Territory specified in the details applies to this agreement.