

Terms and Conditions



MICHAEL HUGHES
FOUNDATION

Policy Number	QPL-214	Version	1
Drafted by	Appleby Legal Pty Ltd	Approved by board on	May 2016
Responsible Person	Charnan Kurth	Scheduled review date	December 2019

Defibrillator Terms & Conditions of Purchase

1. About mhf.life

1.1

Welcome to mhf.life (Our Website). Our Website is operated by the Michael Hughes Foundation Limited (ABN 65 609 790 829) (the Foundation, we, us, our). The Foundation is a charity registered with the Australian Charities and Not-for-Profits Commission which promotes awareness, education and life-saving defibrillators in the hope of improving sudden cardiac arrest statistics across Australia.

1.2

Our Website provides you with an opportunity to browse and purchase defibrillators (the Defibrillators). With each purchase of a Defibrillator, a complimentary information session (training) is included (Information Session). You must be at least 18 years of age to purchase a Defibrillator.

1.3

Please read these terms and conditions (these Terms) carefully. In consideration of the Foundation agreeing to supply the Defibrillators and Information Session to you, you agree and accept that these Terms apply to all sales of Defibrillators by the Foundation to you. You agree to accept these Terms by placing an order with the Foundation. You can place an order by emailing julie@mhf.life or via Contact page at www.mhf.life

1.4

You further acknowledge that these Terms constitute the entire agreement of the parties as to the supply of Defibrillators by the Foundation, and may not be varied without our prior written agreement.

1.5

The Foundation reserves the right to review and change any of these Terms by updating this page at its sole discretion. Any changes to these Terms take immediate effect from the date of their publication. Before you continue, we recommend you keep a copy of these Terms for your records.

2. Price and Purchase

2.1

You agree to the payment of the purchase price listed on Our Website for the Defibrillators (the

Purchase Price). The Purchase Price reflects the purchase price for one (1) Defibrillator only. Should you wish to purchase two (2) or more Defibrillators in one order, please email julie@mhf.life for a formal quotation with pricing to reflect a bulk order purchase. The Purchase Price is in Australian Dollars and includes GST for relevant items.

2.2

Where the option is given to you, you may pay for a Defibrillator by:

- (a) electronic funds transfer into our nominated bank account;
- (b) bank or personal cheque; or
- (c) PayPal Australia Limited (ABN 93 111 195 389) (PayPal).

2.3

In using Paypal, you warrant that you have familiarised yourself with, and agree to be bound by, the applicable Terms and Conditions of Use, Privacy Policy and other relevant legal documentation provided by PayPal.

2.4

Following payment of the Purchase Price being received by the Foundation, you will be issued with a receipt to confirm that the payment has been received.

3. Manufacturer's Warranty & Australian Consumer Law

3.1

The Defibrillators may be provided with applicable voluntary manufacturer warranties. The Foundation does not offer any voluntary warranty in relation to the Defibrillators.

3.2

In any event, the Foundation's Defibrillators come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have a Defibrillator repaired or replaced if the Defibrillator fails to be of acceptable quality and the failure does not amount to a major failure (the Consumer Guarantee).

3.2

In order to make a Consumer Guarantee claim, you must contact us at julie@mhf.life with:

- (a) proof of purchase to the Foundation showing the date of purchase of the Defibrillator; and
- (b) reason for your Consumer Guarantee claim.

3.3

The Foundation will review your Consumer Guarantee claim, liaise with the applicable Defibrillator manufacturer, and will get back to you within five (5) business days.

3.4

Subject to this clause 3, you agree and acknowledge that an automatic external defibrillator is a medical product and if it is opened, it is not refundable.

4. Delivery

4.1

Defibrillators are dispatched directly from the manufacturer to you. You acknowledge that the delivery of the Defibrillators will be organised by the applicable manufacturer through the use of third party delivery companies.

4.2

In the event that an item is lost or damaged in the course of delivery, the Foundation asks that you contact us by sending an email to julie@mhf.life outlining in what way the Defibrillator was damaged in transit.

4.3

You acknowledge that the Foundation does not provide the delivery services to you and you agree that the Foundation will not be liable to you for any direct, special, indirect or consequential loss or damage, loss of profit or opportunity, or damage to goodwill arising out of or in connection with the delivery.

5. Privacy

5.1

The Foundation takes your privacy seriously and any personal information collected through your purchase of a Defibrillator or receipt of our Information Session is subject to the Foundation's [Privacy Policy](#), which is available on Our Website.

5.2

In selling you a Defibrillator, we are obligated to pass certain personal information directly to the manufacturer.

6. General Disclaimer

6.1

The Foundation will make every effort to ensure a Defibrillator is accurately depicted on Our Website, however, you acknowledge that actual sizes, colours and packaging may differ from what is displayed on Our Website.

7. Our Liability

7.1

Nothing in these Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.

7.2

Subject to any condition, warranty or right implied by the Australian Consumer Law or any other law which cannot by law be excluded by agreement:

(a) we give no warranties, and you have no other rights, apart from those, if any, expressly set out in these Terms; and

(b) all implied conditions, warranties and rights are excluded.

7.3

Without limiting paragraph 7.2, to the extent permitted by law, we do not give any warranty of reliability, quality, fitness for purpose, merchantability or accuracy nor accept any responsibility arising in connection with any errors in, or omissions from, the information, or tools provided on or by Our Website.

7.4

Where any condition, warranty or right is implied by law and cannot be excluded, we limit our liability for breach of that implied condition, warranty or right:

(a) in connection with the supply of goods, to any one or more of the following, as we may determine- the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the costs of replacing the goods or of acquiring equivalent goods or the payment of the costs of having the goods repaired; and

(b) in connection with the supply of services, to one of the following, as we may determine- the supplying of the services again or the payment of the costs of having the services supplied again.

7.5

Subject to paragraphs 7.2 and 7.4, we are not liable to you in contract, tort (including negligence), under any statute or otherwise for, or in respect of, any:

(a) indirect or consequential loss or damage; or

(b) loss of profits, sales, turnover, reputation, production, anticipated savings, goodwill, business opportunities, customers, software or data, whether of a direct, indirect or consequential nature, suffered by you or any other person and arising out of any breach or other act or omission in connection with these Terms.

7.6

Subject to this paragraph 7, our total and aggregate liability in contract, tort (including negligence), under statute or otherwise for, or in respect of, any direct loss or damage arising out of any breach or other act or omission in connection with these Terms will not exceed the total amount paid by you to us for the Purchase Price.

8. Dispute Resolution

8.1

Compulsory: If a dispute arises out of or relates to these Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following paragraphs have been complied with (except where urgent interlocutory relief is sought).

8.2

Notice: A party to these Terms claiming a dispute (Dispute) has arisen under these Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

8.3

Resolution: On receipt of that notice (Notice) by that other party, the parties to these Terms must:

(a) Within 14 days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;

(b) If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Australian Mediation Association or his or her nominee;

(c) The parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The parties must each pay their own costs associated with the mediation;

(d) The mediation will be held in New South Wales, Australia

8.4

Confidential: All communications concerning negotiations made by the parties arising out of and in connection with this dispute resolution paragraph are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

8.5

Termination of Mediation: If 2 weeks have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

9. Governing Law

9.1

These Terms will be governed by and construed in accordance with the laws of New South Wales, Australia. You submit to the jurisdiction of the courts of New South Wales, Australia.

10. Independent Legal Advice

10.1

Both parties confirm and declare that the provisions of these Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare these Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

11. Severance

11.1

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of these Terms shall remain in force.

Policies can be established or altered only by the Board. **Procedures** may be altered by the Executive Director

Authorisation



23rd January 2019

Charnan Kurth
Board Secretary
The Michael Hughes Foundation