

Terms and Conditions

These Terms and Conditions (**Terms**) govern your use of the website <https://thesleepconnection.com.au/> (**Site**) and the services offered by Lisa Jane Maltman (ABN 97 692 471 130) trading as The Sleep Connection (**we, us, our**), and form a binding contractual agreement between us, and you.

These Terms are important and should be read carefully. Any questions about these Terms must be directed to us in writing at lisa@thesleepconnection.com.au before engaging our Services.

Subject to any subsequent agreements you may be required to enter with us, these Terms and our Privacy Policy constitute the entire agreement (**Agreement**) between you and us and supersedes all prior agreements, conduct, representations and understandings. You confirm you have not entered into this Agreement on the basis of any representation that is not expressly incorporated into these Terms.

1 ACCEPTANCE OF TERMS

- 1.1 We will provide you with a copy of these Terms and with a quote (**Quote**) before you engage our Services.
- 1.2 By browsing, accessing or using our Site, you acknowledge that you have read and understood these Terms and agree to be bound by them, and all our other policies.
- 1.3 By paying any amount to us in respect to the Services or otherwise instructing us to proceed with the Services in writing, you acknowledge that you have read and understood these Terms and the Quote and agree to be bound by them, and all our other policies.
- 1.4 Should you request an increase in the level of services, after receiving the initial Quote, we will provide you with an amended quote and you agree to be bound by the amended quote together with our Terms, as at that date.

2 VARIATIONS TO TERMS

- 2.1 We reserve the right to vary, change or amend any part of these Terms from time to time without notice.
- 2.2 In that event, we will provide notice of the variation by publishing the updated Terms on our Site.
- 2.3 The updated Terms will be taken to have effect on the date of publication.
- 2.4 Your continued use of our Services and the Site constitutes your acceptance of the updated Terms and is taken as your agreement to be bound by these updated Terms.
- 2.5 Should you object or disagree to the Terms, your only remedy is to contact us lisa@thesleepconnection.com.au and immediately discontinue your use of the Services.

3 SERVICES

The Services we provide include the provision of information, education, programs, and soft and hard copy resources relating to sleep improvement during one-on-one sessions and group sessions (seminars and webinars), for individuals, staff members, students and their parents, either online or in person.

4 FEES

- 4.1 The fees for our Services (**Fees**) are as indicated in the Quote provided to you.
- 4.2 All Fees for our Services are in Australian Dollars (AUD).
- 4.3 All Fees are exclusive of GST (if applicable) unless indicated otherwise, and exclude delivery charges and customs duty and other taxes, if applicable.
- 4.4 We reserve the right to modify, cancel and limit any Quote or Services at any time.

5 PAYMENTS

- 5.1 We will send you invoices for our Services in the manner stated in the Quote and you agree to pay the invoices in full via electronic bank transfer or by using the payment method specified on our invoice by the due date specified on our invoice.
- 5.2 All invoices must be paid in full, in accordance with clause 5.1, before we provide further Services to you.
- 5.3 If you fail to pay our fees when due, as indicated on the invoice, you acknowledge that we reserve the right to suspend or terminate the delivery of our Services. We will not be liable for any loss suffered by you as a result of such suspension or termination.
- 5.4 We reserve the right to on-sell or otherwise authorise a debt-collection or other authorised agency to collect any amount not paid by you.
- 5.5 You must pay us all fees and other amounts without set-off or claim under any circumstances, including if a dispute exists in relation to the Services provided.

6 ADDITIONAL WORK

- 6.1 Any requested additions to our Services, made after you have received and accepted our Quote (**Additional Work**) will incur additional charges or fees and we will provide a further quote for Additional Work (**Further Quote**).
- 6.2 You agree that the Fee for Additional Work shall be as indicated in our Further Quote and payable in accordance with clause 5.1.
- 6.3 All Additional Work must be submitted and approved by both parties in writing by email.

7 MEDICAL DECLARATION

- 6.1. You declare that after careful consideration you are not subject to any existing injury, medical condition or treatment that may render you unsuitable for engaging in our Services.
- 6.2. You declare that you have had a consultation with your health professional to ensure that you have no injury or medical condition that renders you unsuitable for engaging in the Services.
- 6.3. You declare that prior to starting any of our recommended Services, you always consult with your medical practitioner.
- 6.4. You must declare any existing injury or medical condition to us, whether psychiatric or physical, prior to using our Services.

8 GENERAL SERVICES DISCLAIMER

- 8.1 We provide the Services on an "as-is" and "as available" basis and whilst every effort is taken to ensure the content provided and the Site is accurate, we make no representations and give no guarantees or warranties about the currency, suitability, reliability, availability, timeliness and/or accuracy of the content and the Site for any purpose.
- 8.2 The implementation of any Services we provide may have unexpected or unintended consequences, which may vary from person to person, and you acknowledge that you will implement any changes at your own risk.
- 8.3 In the event that you provide personal health information to us while engaging in our Services, the provision of Services:
 - (a) will not constitute a doctor-patient relationship between you and us;
 - (b) shall not involve or constitute the practice of medicine; and
 - (c) shall not be a replacement or substitute for medical advice which should be obtained from your medical practitioner.
- 8.4 Any Services provided by us do not constitute professional or medical advice or practice.
- 8.5 You acknowledge and agree that we, our employees, affiliates and representatives are not responsible for decisions that you may make, or for any consequences, undesired or otherwise, that may flow from your engagement of the Site or the Services offered on the Site or in person.

- 8.6 Any testimonials and examples of our Services, wherever published (online or in print) are not to be taken as a guarantee that you will achieve the same or similar results.
- 8.7 We make no warranty, representation, or guarantee regarding the suitability of our Services for any particular purpose, nor do we assume any liability whatsoever arising out of the application or use of any Service. It is your responsibility to independently determine suitability of any service and to test and verify the same.
- 8.8 Any timelines or delivery dates are provided by us on an estimated basis only. We make no guarantee that these timelines or delivery dates will be met as there may be interfering factors beyond our control, and we are not responsible for any delay in the delivery of our Services.
- 8.9 You acknowledge and agree that any results to be attained by you is dependent upon you solely.
- 8.10 All our Services are intended for general education and information purposes only. Nothing on this Site, our Services or any of the content provided to you by us during our provision of the Services, purports to offer medical, financial, legal, tax or other professional advice. Use caution and always seek professional advice before acting on any information that we provide.
- 8.11 We provide support, guidance and tools for you to set goals, determine priorities and achieve results, but any decision you make, and the consequences that flow from such decisions, is your sole responsibility. Your success depends on many factors, including your dedication, participation, desire, motivation and pre-existing conditions.
- 8.12 We do not purport to diagnose or treat health or sleeping conditions but will use our Services to offer possibilities to support and improve your sleep health.
- 8.13 Any template, training module, document, information, guideline, forecast and recommendation made by us in relation to our Services are made on the basis of information that was available to us at the time.
- 8.14 You acknowledge that our Services are delivered based on instructions, medical declaration, and/or information provided by you and you acknowledge and agree that we are not responsible if those instructions, medical declaration and/or information are incorrect or contain errors.
- 8.15 We may rely on third parties from time to time to supply content as part of our Services and we therefore do not warrant the quality or accuracy of the results.

9 GENERAL SITE DISCLAIMER

- 9.1 We offer a number of Services on our Site from time to time.

- 9.2 You acknowledge and agree that each Service offering may have different terms, prices and fees, as displayed on our Site or as contained in any contract entered into with you and us for those Services.
- 9.3 It is your responsibility to independently verify the information made available on the Site.
- 9.4 You acknowledge and agree that we, our employees, affiliates and representatives are not responsible for decisions that you may make, or for any consequences, undesired or otherwise, that may flow from your engagement of the Site, or the Services offered on the Site.
- 9.5 All our information shared on the Site are intended for general education and information purposes only. Nothing on this Site, our Services or any of the content provided to you by us during our provision of the Services, purports to medical or other professional advice. Use caution and always seek professional advice before acting on any information that we provide.

10 RESULTS DISCLAIMER

- 10.1 Nothing on the Site or any of the content or Services is a promise or guarantee of results. Any information given (including case studies) is purely based on experience and is for illustrative purposes only. Information provided may not always be tailored specifically for your situation or background.
- 10.2 We cannot and do not make any guarantees about your ability to achieve results with our programs, content, ideas, information, tools, or strategies. You acknowledge that there is an inherent uncertainty in any sleep condition or activity and agree there is no guarantee that you will achieve results as a result of your use or purchase of our Services.
- 10.3 Any representations referenced by us on the Site, in our programs, courses, videos, forums or during the provision of our Services are illustrative of concepts only and should not be considered as promises for actual or future performance.
- 10.4 We shall not be liable, under any circumstances whatsoever, for any loss of business, profits or goodwill, loss of use or data, interruption of business or activity, or for any indirect, special, incidental or consequential damages of any character, that result in any way from your use or inability to use our Services.
- 10.5 Our Services are educational, and coaching based only and the extent of any results to be attained by you, whether for your own personal or professional development, is dependent upon you solely.

11 YOUR OBLIGATIONS

- 11.1 During the delivery of our Services, you agree to:

- (a) respond promptly to our communications in relation to the Services;
 - (b) provide, within a reasonable amount of time, accurate, complete and current information or documentation reasonably required by us to perform the Services; and
 - (c) act in good faith.
- 11.2 When providing our Services, we may request that you provide us with responses, feedback, completed questionnaires, copy content, images and other information so we can best deliver our Services. You agree that you will provide any such information in a timely manner. Any delays in receiving this information may result in information not being provided by us to you.
- 11.3 You acknowledge and agree that we aim to teach skills and equip you with tools and templates for your own navigation, implementation, development and use. Before acting on any recommendations and information you receive in connection with our Services, you acknowledge and agree to seek such other independent professional advice as required.
- 11.4 When engaging our Services for a group session organised by you, you agree to direct all Participants to these Terms prior to the Services being provided.
- 11.5 When engaging our Services for a group session organised by you, where any of the Participants are under the age of 18, you confirm that you have obtained prior consent from the Participants' parents or guardians for us to deliver our Services.

12 CODE OF CONDUCT

- 12.1 Whilst using our Site or our Services we ask that you not:
- (a) Contact anyone who has asked not to be contacted.
 - (b) Collect personal data about other individuals for commercial or unlawful purposes.
 - (c) Infringe other individuals' privacy rights.
 - (d) Violate the intellectual property of others.
 - (e) Publish, post or upload anything that contains software viruses, worms or any other harmful code.
 - (f) Use manual or automated software, devices, script robots, other means or processes to access our Site or any related data or information.

13 CONFIDENTIALITY

- 13.1 We respect your confidential and proprietary information and ideas (collectively, **Confidential Information**) and by using our Services, you agree to respect the same rights of the other Services participants (**Participants**) and representatives of ours.
- 13.2 You agree:
- (a) That any Confidential Information shared by Participants or any of our representatives is confidential and proprietary and belongs solely and exclusively to the Participant who discloses it to you or to us.
 - (b) Not to disclose such information to any other person or use it in any manner other than in discussion with Participants during seminars or webinars.
 - (c) That all materials and information provided to you by us are our confidential and proprietary information and intellectual property, belong solely and exclusively to us, and may only be used by you as authorised by us.
 - (d) That if you violate, or threaten to violate, any of your agreements contained in this paragraph we will be entitled to, among other things, injunctive relief to prohibit such violations.
- 13.3 While you are free to discuss your personal results from our Services, you must keep the experience and statements, oral or written, of the Participants in the strictest of confidence.
- 13.4 This clause survives termination or expiry of these Terms.

14 COPYRIGHT AND TRADE MARK NOTICES

- 14.1 All material on our Site or provided as part of our Services including (but not limited to) soft and hard copy templates, information, text, images, graphics and coding (**Our Content**), is subject to copyright. While you may access, browse or print Our Content for non-commercial, personal or internal business use, you must obtain our prior written permission if you'd like to use, copy or reproduce it. Modification of Our Content for any other purpose is a violation of our copyright and other proprietary rights, and is strictly prohibited.
- 14.2 You acknowledge that you do not acquire any ownership rights by using the Site, our Services or Our Content.
- 14.3 The trade marks, logos, and service marks displayed on our Site to denote our brand are either registered or unregistered trade marks of us (our **Marks**). Our Marks, whether registered or unregistered, may not be used in connection with any product or service that does not belong to us, in any manner that is likely to cause confusion with customers, or in any manner that disparages us.

- 14.4 Nothing contained on our Site should be construed as granting, by implication, estoppel or otherwise, any license or right to use any our Marks without our express written permission.
- 14.5 You agree that damages may be an inadequate remedy to a breach of these Terms and acknowledge that we will be entitled to seek injunctive relief if such steps are necessary to prevent violations of its intellectual property rights.
- 14.6 This clause survives termination of these Terms.

15 RIGHT TO SUSPEND, TERMINATE, CANCEL AND REFUND

- 15.1 We reserve the right to suspend or terminate your use of the Site or our Services generally if you breach these terms, as determined by us in our sole discretion.
- 15.2 We expressly reserve the right to:
 - (a) Cancel or alter scheduled dates for any of our Services due to illness of our representative or unforeseen events; and
 - (b) Substitute our representatives for any of our Services.
- 15.3 If you terminate or cancel any of our Services more than 42 days prior to the scheduled date, no cancellation fee applies.
- 15.4 If you terminate or cancel any of our Services within 42 to 21 days prior to the scheduled date, you acknowledge and agree that a cancellation fee of 50% of the quoted Service cost will apply.
- 15.5 If you terminate or cancel our Services less than 21 days prior to the scheduled date, you acknowledge and agree that a cancellation fee of 80% of the quoted Service cost will apply.
- 15.6 Refunds are not provided for our Services, other than in accordance with the Australian Consumer Law, as set out in Schedule 2 to the *Australian and Competition Act, 2010* (Cth).
- 15.7 Any refund requests will be assessed on a case-by-case basis, in accordance with the costs associated with each service delivered by us.
- 15.8 Any initial deposits paid to us for the provision of Services to you (if applicable) are non-refundable.
- 15.9 Final payments are non-refundable after at the completion of our Services.

16 NON-EXCLUSIVITY

- 16.1 You acknowledge and agree that we may at all and any times provide our Services to other clients in the same or similar industry as you.
- 16.2 We do not provide our Services on an exclusive basis.
- 16.3 We will however endeavour to protect the confidential information you provide us and in accordance with our privacy policy.

17 LIABILITY IS LIMITED

- 17.1 We provide the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by Law. Subject to the other terms of this clause, we exclude all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by Law.
- 17.2 Without limiting the generality of clause 17.1, we expressly exclude any liability in contract, tort or otherwise for any injury, damage, loss, delay or inconvenience caused directly or indirectly by your use of our Services.
- 17.3 Subject to the other terms of this clause, our maximum aggregate liability owed to you in for any loss or damage or injury arising out of or in connection with the supply of our Services under these Terms, including any breach by us of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by you under these Terms in the one month period preceding the matter or the event giving rise to the claim.
- 17.4 The disclaimers, limitations of liability and indemnities within these Terms do not exclude rights that may not be excluded by law, including but not limited to, those rights under the Australian Consumer Law.
- 17.5 If we are liable to you in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the Australian Consumer Law that cannot be excluded, our total liability to you for that failure is limited to, at our option, to the resupply of the Services or the payment of the cost of resupply.
- 17.6 Subject to the other terms of this clause, we exclude any liability owed to you, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with these Terms, including any loss of profits, loss of sales or business, loss of production, loss of agreements, loss of business opportunity, loss of anticipated savings, loss of or damage to goodwill or reputation or loss of use or corruption of data or information.
- 17.7 This clause applies to the fullest extent permitted by Law and shall survive termination of these Terms.

18 YOUR INDEMNITY

- 18.1 You agree to indemnify us and our officers, agents, partners, directors, shareholders and employees and subcontractors, against any direct losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by us arising out of or in connection with:
- (a) your use of our Services;
 - (b) any claim made against us or you by a third party arising out of or in connection with the provision of our Services and/or these Terms;
 - (c) any breach of these Terms by you, including any failure to pay any fees on time;
 - (d) any reliance by you or a third party on our Services or any advice or information provided in connection with the provision of our Services and/or these Terms; and
 - (e) the enforcement of these Terms.
- 18.2 You must make payments under this clause in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by Law.
- 18.3 We are not responsible, and expressly limit our liability to the extent permitted by law, which is without limitation to your rights under the *Australian Consumer Law*, for damages of any kind arising out of use, reference to, or reliance or use on any information contained within our Site or by engaging our Services.
- 18.4 This clause survives the termination of this Agreement.

19 NO DISPARAGEMENT

- 19.1 At all times, you must not make any public or private statement or comment, whether oral or in writing by any method, which in our reasonable opinion is adverse to the interest, reputation or commercial standing of our business or is in any respect a disparaging remark or representation about us and/or any of our Services.
- 19.2 Should you breach this clause, you hereby indemnify us in accordance with clause 18 above.

20 FORCE MAJEURE

- 20.1 We will not be in breach of these Terms or liable to you for any Loss incurred by you as a direct result of our failing or being prevented, hindered or delayed in the performance of our obligations under these Terms where such prevention, hindrance or delay results from a Force Majeure Event.

- 20.2 If a Force Majeure Event occurs, we will notify you in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 20.3 On providing the notice in the above clause, we will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, we will continue to use all reasonable endeavours to perform those obligations.
- 20.4 The performance of the affected obligations will be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.
- 20.5 References to a Force Majeure Event in this clause means: events, circumstances or causes beyond a party's reasonable control including (but not limited to):
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, cyber-attack, service attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (c) fire, explosion, storm, flood, earthquake, subsidence or other natural disaster;
 - (d) epidemic, pandemic, health emergencies, disease;
 - (e) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (f) interruption or failure of utility services (including the inability to use public, private telecommunications networks, servers or third party hosting platforms); and
 - (g) the acts, decrees, legislation, regulations or restrictions of any Government Agency;
- however does not include a lack of funds.
- 20.6 References to Loss in this clause means: any loss, liability, cost, charge, expense, Tax, Duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence).

21 LINKED WEBSITES, AFFILIATES OR SPONSORS

- 21.1 Any links to other websites on our Site, which are not operated by us are not controlled by us and we accept no responsibility for them or for any loss or damage that may arise from your use of them. Your use of any linked sites will be subject to the terms of use and service contained within each such site.

21.2 As affiliates of certain services we may also receive compensation for recommending, endorsing or promoting services as featured on our Site or in the course of delivering our services. Any affiliation or sponsorship is for remuneration purposes only and is not an expression of our own recommendation, endorsement or promotion of those services which are not our own.

21.3 We make no representation or warranty as to the recommendations, endorsements or promotions we make of certain services, unless expressly stated otherwise. You acknowledge and agree that any remuneration or other non-monetary benefit we receive from our affiliated, endorsed or sponsored services is for the purposes of that affiliation, endorsement and sponsorship only. We expressly disclaim any liability arising from your use or reliance of any recommended, endorsed or promoted services by us which are not our own and caution you to make your own independent inquiry prior to any such use or purchase.

22 SEVERABILITY

22.1 If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect.

23 NO ASSIGNMENT

23.1 You cannot transfer or assign your rights in accordance with these Terms, including any membership or registration with us, without our prior written consent.

23.2 We may assign or transfer our rights and obligations under these Terms at any time, upon prior written notice to you of at least 4 calendar weeks.

24 SUB-CONTRACTING

24.1 We are free to sub-contract any of our obligations under these Terms, but such sub-contracting will not release us from our liabilities under these Terms.

25 BINDING ON SUCCESSORS

25.1 These Terms shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

26 DISPUTE RESOLUTION

26.1 If a dispute arises between the parties in relation to these Terms, the dispute must be dealt with in accordance with this clause.

26.2 Any party claiming that a dispute exists must notify the other party to the dispute (Second Party) in writing of the nature of the dispute.

- 26.3 In the case of claims against us, all notices are to be provided to lisa@thesleepconnection.com.au.
- 26.4 If the dispute is not resolved by agreement within 5 business days of the Second Party receiving the notice referred to above, either party may refer the matter to mediation conducted by a mediator agreed between the parties within a further 5 business days or failing agreement within that period, as appointed by the executive director for the time being of the Australian Commercial Disputes Centre Limited.
- 26.5 Once a mediator is appointed, the parties agree that:
- (a) The costs of the mediator shall be borne equally between the disputing parties.
 - (b) The chosen mediator shall determine the procedures for mediation.
 - (c) The chosen mediator will not have the power or authority to make any other determination in relation to the dispute.
- 26.6 If the parties have not mediated a resolution of the dispute within 10 business days of the selection of a mediator, neither party shall be obliged to continue any attempt at mediation under this clause, and either party may then commence such legal proceedings as it considers fit in relation to the dispute.
- 26.7 Nothing in this clause prevents a party from commencing proceedings seeking urgent interlocutory relief from a court of competent jurisdiction to hear the matter, if, in that party's reasonable opinion, it is necessary to protect their rights.
- 26.8 Despite the existence of a dispute the parties must continue to comply with their obligations under the contract.
- 26.9 This clause survives termination of these Terms.

27 APPLICABLE LAW

- 27.1 These Terms shall be construed in accordance with and governed by the laws of New South Wales, Australia. You consent to the exclusive jurisdiction of the courts in New South Wales, Australia to determine any matter or dispute which arises between us.

28 YOUR FEEDBACK

- 28.1 We welcome enquiries or feedback on our Site. Unless specifically stated by you, we shall treat any information you provide us with, as non-proprietary and non-confidential. Please see our Privacy Policy for further details.
- 28.2 If you have questions or comments regarding this Site or our Services, please email us at lisa@thesleepconnection.com.au. © Progressive Legal Pty Ltd – All legal rights reserved (2022). These Terms were last updated on 4 October 2022.