

Only Tans - Terms of Use

1. Introduction

- (a) These Terms apply to all goods and Services delivered by Only Tans.
- (b) These Terms incorporate the dictionary terms in clause 33 of this document.

2. Services

- (a) You can acquire our goods and Services via our website or via our app subject to these Terms.
- (b) Our Services include the following:
 - (i) tiered subscriptions plans for tanning services;
 - (ii) casual or one-off use of our tanning services;
 - (iii) goods such as gift cards or take-home packs.
- (c) Our tiered subscription plans and pricing are set out on our website or our app and are subject to change from time to time.
- (d) Once you subscribe to our Services or enter into a subscription we will provide you with an access code or password to enter and use any of our facilities.

3. Subscription Term

- (a) Your right to use a subscription service is subject to:
 - (i) your compliance with these Terms;
 - (ii) payment of the respective subscription fee; and
 - (iii) you providing us with a Direct Debit Authority for debit or credit card processing.
- (b) You may use a subscription service until it is terminated under these terms.
- (c) Your subscription commences from the date you order our services through our website or app, and continues until, terminated in accordance with these Terms.

4. Subscription Upgrades and Downgrades

- (a) You may upgrade or downgrade your subscription where we agree subject to:
 - (i) your payment of any additional fees; and

- (ii) your compliance with any applicable terms and conditions.
- (b) Where you down grade your subscription then to the extent permitted by law you are not eligible for a refund.

5. Charges and payment

- (a) You must pay all Charges applicable to our goods and services.
- (b) Charges apply as specified or referenced in our then current Price List, but are subject to change.
- (c) We may charge interest on overdue Charges at the Default Rate, compounding monthly.
- (d) Our Charges are:
 - (i) inclusive of GST;
 - (ii) in Australian dollars;
 - (iii) payable regardless of whether goods or services are used; and
 - (iv) will be charged to your credit card or debit card on the same day or each month or any other time frame we may reasonably determine on notice to you.
- (e) To the extent permitted by law:
 - (i) Charges are non-refundable in part or in whole;
 - (ii) any prepaid Charges which are unused at the end of a billing period are carried over into the next billing period.
- (f) Unless we agree otherwise, we require you to provide us with a Direct Debit Authority for subscription services to enable us to debit Charges for each billing period, for example each month. Your Direct Debit Authority lasts until you validly terminate services under these terms.
- (g) You are responsible for:
 - (i) any credit card fees incurred in processing your payments;
 - (ii) any dishonour fees, late payments fees or any other bank or payment gateway fees incurred by us as a result of your acts or omissions; and
 - (iii) any taxes or levies (excluding income taxes) which arise due to your acquisition of Services.

- (h) Any fees arising under clause 3(g) above are due and payable to us under these terms.
- (i) In addition to any other rights we have under these Terms, we may suspend your subscription and access to our facilities if your payment is declined.

6. **Billing Disputes**

You may only dispute a Charge:

- (a) within 1 month after it is debited from your account; and
- (b) our determination of disputes is final.

7. **Price variations**

We may vary our Charges on at least 7 days notice.

8. **Term of Subscriptions**

- (a) You may either selection a month-to-month subscription or a Minimum Term subscription.
- (b) A subscription continues until it is terminated in accordance with these terms.
- (c) You may terminate a subscription –
 - (i) in the case of a month-to-month subscription, on 1 month's notice; or
 - (ii) in the case of a subscription which has a Minimum Term on 1 month's notice at the end of the Minimum Term.

9. **Support**

- (a) We will provide Services with due care and skill and in accordance with an applicable Law.
- (b) Whilst we endeavour to avoid interruptions to our services, we do not warrant that Services will be free of errors, faults or interruptions.
- (c) We will use reasonable efforts to carry out Scheduled Maintenance at times chosen to minimise disruption to our customers.

10. **Service suspensions**

We may suspend a Service in whole or part:

- (a) where we reasonably believe that we must do so in order to comply with the Law;
- (b) to protect people, or property;
- (c) for an emergency;

- (d) maintenance;
- (e) if you (or anyone you allow to use a Service) breach an Acceptable Use Policy;
- (f) if you fail to pay an Invoice by its due date or a payment is declined more than twice in 12 hours;
- (g) if you do not cure a Default within 7 days.

11. **Other obligations**

You must:

- (a) comply with these terms;
- (b) not allow a Service to be used in a way that is contrary to Law or is a nuisance;
- (c) give us all information, cooperation and assistance reasonably required for the purposes of these Terms;
- (d) follow our reasonable directions in so far as they are reasonably required to enable us to comply with these terms and the law;
- (e) comply with any Acceptable Use Policy issued by us;
- (f) respond to our requests and communications promptly;
- (g) indemnify us against Claim or Loss arising in connection with a negligent or wrongful act by you or a breach of these terms by you;
- (h) ensure that your minor's under your care do nothing that would breach these Terms if done by you; and
- (i) immediately notify us of any hazard or danger at any of our facilities and not use the facility.

12. **Termination – By Us**

We may terminate a Service or subscription:

- (a) if it ceases to be feasible to provide a Service (in which case we will endeavour to provide you with reasonable notice);
- (b) we are required to do so by Law or an Authority;
- (c) you fail to pay money within 7 days of it being due;
- (d) you are in Default of any part of these Terms;
- (e) you use a Service to break the law;
- (f) you breach or are likely to break the law or cause us to breach a contract with a third party; or
- (g) you agree.

13. **Early Termination – You**

You may terminate a subscription by notice:

- (a) if we fail to remedy a Default within 7 days (after receiving written notice of Default); or
- (b) in accordance with clause 8(c).

14. **No representations**

You:

- (a) you have not relied on any information, representation or promise that is not either expressly set out on our website or in our app or is implied by Law;
- (b) indemnify us against a breach of any warrant under these Terms.

15. **Privacy and Authorities**

- (a) You authorise us to:
 - (i) make any disclosure of information about you required by a government authority or by Law;
 - (ii) deal with Personal Information about you in accordance with our Privacy Policy;
 - (iii) do any act on your behalf reasonably required to provision a service for you;
- (b) Subject to compliance with the Privacy Act 1988 (Cth) you consent to:
 - (i) us using your de-identified data for statistical, audit, compliance and marketing purposes;
 - (ii) receiving promotional, marketing material or information updates from us, including by way of email delivery;
 - (iii) disclosure by us of this information to our Related Entities (as defined by section 9 of the Corporations Act 2001 (Cth)).

16. **Policies**

- (a) You must always comply with our Acceptable Use Policy.
- (b) We may amend our policies from time to time, where we do, we will give 14 days prior notice and make the amendments visible on our website or our app.

17. **Intellectual Property**

- 17.1 All intellectual property rights in Only Tans and our goods and services are owned by us, or where relevant our licensors. You must not:

- (a) do anything which may infringe, jeopardise or challenge such rights; and
- (b) commercialise or attempt to commercialise such rights.

17.2 We own all IP Rights:

- (a) and intellectual property (including derivative works) which arise from your use of our services; and
- (b) relating to a service, including knowhow and improvements developed by us.

17.3 Only Tans and the Only Tans logo are trademarks of Only Tans Twenty4Seven Pty Ltd ACN 660 791 426. Other trademarks that may appear on our website are the property of our respective licensors.

17.4 You must not use any trademark without the prior written consent of the relevant owner.

17.5 Except to the extent of any licence expressly granted to you, you obtain no interest in our IP Rights under these terms.

18. **WebSite and App**

- (a) Our website or app may link to websites or third-party services. Unless stated otherwise:
 - (i) we do not control, approve, endorse or sponsor any such services, websites or their content; and
 - (ii) we do not provide any warranty or take any responsibility for any aspect of those services, websites or their content.
- (b) Our app and website are also subject to any additional terms of use.

19. **Acknowledgements**

19.1 As a condition of using our Services you acknowledge and agree:

- (i) that failure to comply with our Acceptable Use Policy and instructions in a spray booth may cause injury or a failure of the tanning;
- (ii) that spray tanning may cause skin irritation or other injury and is not suitable for people with sensitive skin or other medical conditions;

- (iii) that spray tanning can only be used by minors under the supervision of a parent or guardian;
- (iv) we will use our best endeavours to make our facilities available for your use 24 hours per day, but we do not warrant that all facilities will be available at all times.

20. Promotional or Trial Services

20.1 From time to time we may offer promotional or Trial Services.

20.2 Trial Services are subject to these terms except that:

- (a) we will not impose any Charges for these Services;
- (b) we may terminate use of these Services at any time;
- (c) we may impose any other condition we may determine in our absolute discretion.

20.3 Where we agree to provide you with a Trial Service in writing:

- (a) despite anything to the contrary, you are not required to pay any fees for the Trial Service;
- (b) you must otherwise comply with these Terms;
- (c) to the extent permitted by law, we provide no warranties around fitness for purpose or that the Trial Service will operate error free; and
- (d) we may discontinue the Trial Service at any time at our sole discretion, despite anything to the contrary;

21. Liability

21.1 Rights and remedies for PDH goods and services

If we supply goods or services of a kind ordinarily acquired for personal, domestic or household (**PDH**) use or consumption, you may have rights under the Australian Consumer Law (**ACL**) including Consumer Guarantee Rights. Nothing in these terms limits those rights and remedies in any way.

21.2 Rights and remedies

Where we supply goods and services:

- (a) in relation to those goods, our liability for failure to comply with a Consumer Guarantee (other than certain guarantees about ownership and undisturbed use) is limited to:

- (i) replacing the goods or supplying equivalent ones;
- (ii) repairing the goods;
- (iii) paying the cost of replacing the goods or of acquiring equivalent ones; or
- (iv) paying the cost of having the goods repaired; and

(b) in relation to those services, our liability for failure to comply with a consumer guarantee is limited to:

- (i) supplying the services again; or
- (ii) paying the cost of having the services supplied again.

21.3 Exclusion of implied terms and limitation of liability

(a) Any representation, warranty, condition or undertaking that would be implied in these terms by legislation, common law, equity, trade, custom or usage or otherwise is excluded, to the fullest extent permitted by law.

Otherwise -

(b) Neither party is liable for Consequential Loss.

(c) To the extent permitted by law our liability is capped at \$500 for any other Claim or Loss.

22. Obligations after termination

(a) Where you terminate a subscription:

- (i) we may Invoice Charges not previously Invoiced;
- (ii) you must pay all Invoices by their due date/s;
- (iii) accrued rights and obligations survive;
- (iv) Surviving Clauses including clauses 3, 11, 15, 17, 21, 31, and 32 survive

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and otherwise, our agreement with you is at an end for all purposes.

(b) To the extent permitted by law, if you terminate prior to the expiry of the Minimum Term, you are required to pay the Early Termination Charge.

23. Notices

(a) We may send notices to you by Electronic Messaging.

- (b) Otherwise, any notice or consent to be given under these terms must be in writing.
24. **Relationship**
We are an independent contractor and these Terms do not create a partnership, joint venture or agency. No Party may enter any agreement or make any representation on behalf of another.
25. **Entire Agreement**
Subject to clause 18(b), your Agreement with us is made up of these Terms and your Order for Services (or goods) and are the entire agreement of between the Parties with respect to its subject matter and supersedes and excludes all previous agreements, understandings, commitments, representations and warranties, whether written or verbal.
26. **Variation**
These terms may be varied by us on 7 days notice on our website or app.
27. **Assignment**
(a) You may not assign or novate a subscription (or Agreement) without our prior written consent which will not be unreasonably withheld.
(b) We may assign or novate a subscription or Agreement without your prior written consent where we sell or restructure any part of our business or shares.
28. **No waiver**
A Party that delays exercise of or partially exercises a right does not waive it.
29. **Force Majeure**
We are excused from our obligations under the Service Agreement to the extent that a Force Majeure prevents or hinders us.
30. **Agents**
We may delegate our roles and responsibilities to an agent or subcontractor but are liable for their performance as if there was no delegation.
31. **Reading down**
A term that is invalid, illegal or unenforceable shall be read down, to the point of severance if necessary.
32. **Governing law and courts**
These terms are subject to and must be interpreted under the law of the exclusive jurisdiction of the State of Victoria, Australia and the Parties irrevocably submit to the courts of the State of Victoria.
33. **Dictionary**
Acceptable Use Policy means any acceptable use policy that we may introduce from time to time which we will post on our website or otherwise bring to your attention.
Charges means any charge or fee applicable to Services (exclusive of any Taxes or withholdings except where otherwise stated).
Claim means any claim, demand, action, proceeding or legal process (including by way of set off, cross-claim or counterclaim).
Consequential Loss means (a) economic loss; (b) business interruption; (c) loss of revenue, profits, actual or potential business opportunities or contracts; (d) anticipated savings; (e) loss of profits; (f) loss of data; (g) an obligation to indemnify another person; (h) an obligation to contribute to the compensation of loss or damage suffered by another person and (i) consequential loss within the meaning of *Environmental Systems Pty Ltd v Peerless Holdings Pty Ltd [2008] VSCA 26*.
Customer means the person or persons who use or acquire goods or Services from us.
Default means, a breach of these Terms for which either party has issued a Default notice outlining the breach.
Default Rate means a rate which is 2% higher than the penalty rate fixed under s3 of the *Penalty Interest Rate Act 1983 (Vic)* from time to time.
Direct Debit Authority means a form of direct debit authority required by our payment gateway or a relevant financial institution to enable us to debit your bank account or credit cards for Charges under these Terms.
Early Termination means termination of a subscription before the end of any Minimum Term, except where the termination is due to our breach of these Terms.
Early Termination Charge means the aggregate of fees that would have been payable for the remainder of the Minimum Term, which is a reasonable pre-estimate of our loss.

Electronic Messaging means Email, website and app alerts, SMS and MMS.

Force Majeure means anything beyond the reasonable control of a party and includes an act of God, a pandemic and a public health declaration.

Terms means this document.

Invoice means a statement of Charges that have accrued and/or are payable in advance.

IP Rights means all industrial and intellectual property rights of any kind which may subsist in Australia or anywhere else in the world, including without limitation: (a) patents, copyright, rights in circuit layouts, designs, trademarks (including goodwill in those marks) and domain names; (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) of this definition; and (c) all rights of a similar nature to any of the rights in paragraphs (a) or (b) of this definition – whether or not such rights are registered or capable of being registered; and (d) Future IP Rights.

Loss means loss or damage suffered by a person and arising in connection with or out of a Service Agreement or any supply made under them (whether pleaded in contract, tort, breach of statutory duty or on any other basis, and whether arising from acts or omissions, and whether or not loss or damage the risk of which another person was or should have been aware), including but not limited to Consequential Loss and an obligation to contribute to or indemnify against loss or damage suffered by a third party.

Minimum Term means a minimum term specified for a subscription.

Price List means our then current schedule of fees for our services and can be used interchangeably in these terms.

Scheduled Maintenance means maintenance, upgrade, adjustment or repair of Equipment and booths or anything else used to deliver a Service in accordance with our planned maintenance program as updated from time to time.

Service means a service provided by us to you.

Trial Service means a limited or promotional subscription which we may provide for the purposes of evaluation or testing or as a loyalty bonus.

'We', 'Us' and 'Our' is a reference to Only Tans Twenty4Seven Pty Ltd ACN 660 791 426.

'You', and Your' is a reference to the Customer.