

Air Liquide Healthcare - Vital360 & TPP Agreement

This Agreement (**Agreement**) sets out the terms and conditions between Air Liquide Healthcare Pty Ltd ABN 41 002 653 045 (collectively Air Liquide, we, us, our) and the customer (collectively, the Customer, You, your), being the person named in the Direct Debit Request. All products and services are supplied by Air Liquide in accordance with this Agreement and the Air Liquide 'Standard Terms of Sale' available at <https://au.healthcare.airliquide.com/legal>. To the extent of any inconsistency between the Air Liquide Standard Terms of Sale and the express terms of this Agreement, the terms of this Agreement will prevail.

1. Vital Sleep COMPLETE CARE Plan

A. Summary of the Vital Sleep Complete Care Plan key terms

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| Total Cost | \$3.80 per day (Care Plan Fee) plus the cost of a mask of your choice for the amount of \$99.00 . Total minimum cost over a 12 month period: \$1,486.00 including GST. |
| Duration | Minimum duration of 12 months (Agreement Period). |
| Agreement Renewal | At the end of the initial Agreement Period, the Agreement renews automatically for successive 12-month terms unless you give notice of termination at least 14 days prior to the end of the 12-month term then underway (Termination Period). Air Liquide will issue a written notice of the pending renewal no later than 30 days before the end of each 12-month term. This notice may be in the form of a pro forma invoice. |
| What's Included | <ul style="list-style-type: none"> • 1 (rented) continuous positive airway pressure (PAP) machine. • 1 compatible mask (with consumables set out below). • Ongoing connected care monitoring (with compatible devices) with unlimited access to the Care Team for support and eligibility for an Adherence Discount. • PAP machine servicing (Machine Service). |
| What consumables are included and when are they supplied? | <ul style="list-style-type: none"> • At commencement – 3 sets of cleaning wipes, 1 soap and 1 tubing brush. • At each 6 month interval (upon renewal) – 3 sets of cleaning wipes, 1 soap and 1 machine filter replacement pack. • At 12 month intervals (upon renewal) – you will receive the batch of the consumables described above for the 6 month interval <i>plus</i> 1 new humidifier tub, 1 set of replacement tubing and 1 replacement mask of the same model and size (unless unavailable, in which case we will liaise with You about an appropriate and equivalent substitute) |
| Cooling Off Period | You may terminate the Agreement by written notice within 14 days of the start of the initial 12-month term (Cooling Off Period). In circumstances where you terminate during the Cooling-Off period, you must: <ul style="list-style-type: none"> • Return the PAP machine to Air Liquide within 7 days of termination; • Retain the mask and pay the current recommended retail price for the mask up to a maximum of \$99 (unfortunately, used masks cannot be returned for health and safety reasons); and • Pay the Care Plan Fee for the period up to the date upon which the Rented Equipment is returned. |

B. Vital Sleep Complete Care Plan Payment Terms

- In consideration for participation in the Complete Care Plan, you agree to pay Air Liquide the Total Cost for the Care Plan Fee set out in the table above.
- All amounts quoted above are inclusive of GST.
- Unless You opt to pay Care Plan Fee for the entire Agreement Period upfront, the Care Plan Fee will be charged on a per day basis and invoiced on a weekly basis. It will be invoiced every Friday and debited from your nominated account the following Monday in accordance with the Direct Debit Request.
- The Establishment Fee will be charged in advance prior to the Rented Equipment being released to you.
- If you terminate the Agreement during the Cooling-Off Period or a Termination Period but do not return the Rented Equipment to us within 7 days of that termination, you will be charged the Care Plan Fee, on a pro rata basis, for each month until the Rented Equipment is returned.
- Rented Equipment cannot be purchased at any time during the Agreement Period. If you determine during an Agreement Period that you would like to purchase an equivalent machine, then Air Liquide will endeavour to assist You to do so but You will nonetheless need to complete the Agreement Period then underway (or pay the Cancellation Fee as set out in clause 4(a) if you return the Rented Equipment early).

2. Vital Sleep SUPPORT Plan

A. Summary of the Vital Sleep Support Plan key terms

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| Total Cost | \$1.00 per day (Support Plan Fee) plus the cost of a mask of your choice for the amount of \$99.00. You will also need to pay the purchase price of the PAP machine (amount of which will depend upon your device choice). Total minimum cost over a 12 month period (excluding cost of PAP device): \$464.00 including GST |
| Duration | Minimum duration of 12 months (Agreement Period). |
| Agreement Renewal | At the end of the initial Agreement Period, the Agreement renews automatically for successive 12-month terms unless you give notice of termination at least 14 days prior to the end of the 12-month term then underway (Termination Period). Air Liquide will issue a written notice of the pending renewal no later than 30 days before the end of each 12-month term. This notice may be in the form of a pro forma invoice. |
| What's Included | <ul style="list-style-type: none"> • 1 compatible mask (with consumables set out below). • Ongoing connected care monitoring (with compatible devices) with unlimited access to the Care Team for support. |
| What consumables are included and when are they supplied? | <ul style="list-style-type: none"> • On the date of PAP machine purchase – 3 sets of cleaning wipes, 1 soap and 1 tubing brush. • At each 6 month interval (upon renewal) – 3 sets of cleaning wipes, 1 soap and 1 machine filter replacement pack. • At 12 month intervals (upon renewal) – you will receive the batch of the consumables described above for the 6 month interval <i>plus</i> 1 replacement mask of the same model and size (unless unavailable, in which case we will liaise with You about an appropriate and equivalent substitute). <p>In addition, at any time during the term of the Agreement, you may purchase a new tube or new humidifier tub at a 20% discount off recommended retail prices.</p> |
| Cooling Off Period | You may terminate the Agreement by written notice within 14 days of the start of the initial 12-month term (Cooling Off Period). In circumstances where you terminate during the Cooling-Off period, you must: <ul style="list-style-type: none"> • Retain the PAP machine purchased (subject to any legal rights you may have under the Australian Consumer Law as detailed at clause 13); • Retain the mask and pay the mask price of \$99 (unfortunately, used masks cannot be returned for health and safety reasons); and • Pay the Support Plan Fee for the period up to the date upon which you terminate. |

B. Vital Sleep Support Plan Payment Terms

- You will be eligible to participate in the Support Plan upon purchasing a new PAP machine from Air Liquide.
- In consideration for participation in the Support Plan, you agree to pay Air Liquide the Total Cost for the Support Plan Fee as set out in the table above (in addition to the PAP machine purchase price).
- All amounts quoted above are inclusive of GST.
- Unless You opt to pay Support Plan Fee for the entire Agreement Period upfront, the Support Plan Fee will be charged on a per day basis and invoiced on a weekly basis. It will be invoiced every Friday and debited from your nominated account the following Monday in accordance with the Direct Debit Request.
- The Establishment Fee and the PAP machine purchase price will be charged in advance prior to the items being released to you.
- Unlike the VITAL360 "Complete Care" Plan, the "Support" Plan will not constitute an equipment rental agreement.

3. VITAL360 Machine Service

- The Machine Service is available to both Complete Care Plan and Sleep Support Plan Customers (**Plan Customers**), free of charge.

- (b) The Machine Service consists of a consultation with an Air Liquide Consultant who will:
- check that your PAP machine is achieving and maintaining the desired PAP pressure;
 - assess the PAP air filter and PAP tubing integrity and functionality; and
 - provide an external clean of the PAP Machine.
- (c) Machine Service is not redeemable for cash or available for use with other Air Liquide products.

4. VITAL360 Plan Termination

- (a) You may terminate your VITAL360 Support or Complete Care plans at any time, however, if you terminate after the Cooling Off Period (but before the end of your current Agreement Period) then you will be liable to pay the total plan cost for the remainder of your Agreement Period, less 30% (**Cancellation Fee**). For example, if you are on the Complete Care Plan with an Agreement Period that ends on 31 December, and you cancel on 30 November, then your Cancellation Fee will be \$82.46 (being 31 days remaining multiplied by \$3.80 per day, less 30%). The Cancellation Fee represents a genuine pre-estimate of Air Liquide's reasonable commercial and administrative costs arising from your plan termination and the early return of equipment. Notwithstanding the above, we understand that circumstances change. If you are experiencing financial hardship, we encourage you to contact us to discuss how we can assist you before you terminate.
- (b) All terminations must be by notice in writing via email to Air Liquide.
- (c) If you terminate your VITAL360 Sleep Support or Complete Care plans during the Cooling Off Period, a charge equivalent to the current recommended retail price for the CPAP mask will be applied (up to a maximum of \$299). For health and safety reasons, used masks cannot be returned (subject to any legal rights you may have under the Australian Consumer Law as detailed at clause 13).
- (d) If you hold Rented Equipment at the time of your termination, you must return it to Air Liquide Healthcare within 7 days. If you do not return the Rented Equipment to us within 7 days of that termination, you will be charged a daily equipment holding fee of \$3.00 per day for each item of Rented Equipment not returned until the Rented Equipment is returned.
- (e) In circumstances where, following termination, Rented Equipment is not returned within 30 days of a written request by Air Liquide, then you will be liable for the full replacement cost of that Rented Equipment.

5. Adherence Discount

- (a) Success in CPAP therapy is often determined by therapy adherence. Therefore, on day 300 of your VITAL360 Complete Care plan, we will assess your adherence to see if you are eligible for an "**Adherence Discount**" whereby the Care Plan Fee will be reduced to \$3.04 per day.
- (b) To qualify for the Adherence Discount, your CPAP usage data must indicate a machine usage of 2 hours or more continuous use per day during the 30 day period prior to assessment (Eg. between day 270 and day 300).
- (c) You may only qualify for the Adherence Discount once. If you are not eligible for the Adherence Discount when assessed on day 300 in the initial year of your plan, you may be eligible on day 300 in subsequent years.

6. Therapy Partnership Program (TPP)

A. Summary of the Therapy Partnership Program key terms

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| Total Cost | \$10.00 per day <u>or</u> discounted to \$6.00 per day if Customer is in possession of a prescription for CPAP therapy from a registered sleep physician (TPP Fee). |
| Minimum Agreement Duration | No minimum commitment. The duration of your participation in the Therapy Partnership Program (TPP Period) is entirely at your discretion. |
| What's Included | <ul style="list-style-type: none"> 1 rented continuous positive airway pressure (PAP) machine; and 1 rented compatible mask (no consumables). |
| Are consumables included? | No, consumables are not included as part of the Therapy Partnership Program and are required to be purchased separately. Consumables (such as soaps, cleaning wipes, tubing brushes or filters) are available for purchase from Air Liquide upon request. |
| Can I purchase the Rented | No, you cannot purchase the equipment you are renting during your Therapy Partnership Program. |

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| Equipment during the TPP Period? | All Rented Equipment must be returned if the TPP is concluded. |
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B. Therapy Partnership Program (TPP) Payment Terms

- (a) You agree to pay Air Liquide the TPP Fee set out in the table above for the entire duration of your participation in the Therapy Partnership Program. Amounts quoted are inclusive of GST.
- (b) The TPP Fee will be charged on a per day basis and invoiced on a weekly basis.
- (c) The TPP Fee will be invoiced every Friday and debited from your nominated account the following Monday in accordance with the Direct Debit Request. If you choose to pay for an agreed Therapy Partnership Program period in advance, then the full amount will be debited and invoiced immediately.
- (d) If you terminate your participation in the Therapy Partnership Program but do not return the Rented Equipment to us within 7 days of that termination, you will be charged, on a pro rata basis, for each month as follows until the Rented Equipment is returned: \$300 per PAP machine and \$100 per mask.

7. Rented Equipment maintenance and safe custody

- (a) Note that, for the purposes of this Agreement, "**Rented Equipment**" means:
- for the VITAL360 Vital Sleep Complete Care Plan, the PAP machine;
 - for TPP, both the PAP machine and the mask; and
 - any mask trialed, loaned or rented outside of a VITAL360 Plan or TPP.
- (b) Air Liquide will rectify any faults or defects in the Rented Equipment arising from fair wear and tear. To assist us to properly diagnose and remedy such faults and defects, it is optimal that you notify us as soon as reasonably practicable after you become aware of them.
- (c) You bear all risk in relation to the Rented Equipment from its delivery to you until its return to Air Liquide or Air Liquide's Representative including:
- the risk of damage to any item (including any damage to, or removal of, Air Liquide's identification marks on the Rented Equipment) and will indemnify Air Liquide for any such damage (except for any fair wear and tear); and
 - the risk of loss of any item, in which case, a Lost Equipment Fee shall be applied.
- (d) You acknowledge that you are wholly responsible for the care and secure storage of the Rented Equipment while it is in your possession, custody or control and you will take reasonable steps to prevent loss, damage or theft of the Rented Equipment.
- (e) A Lost Equipment Fee may be charged by Air Liquide where you fail to return any Rented Equipment when duly required to do so by Air Liquide and Air Liquide determines, acting reasonably, that such Rented Equipment is unable to be located. The Lost Equipment fee shall be equal to the full cost of purchasing a new replacement item of equipment (or if an equivalent is not reasonably available, a reasonable substitute of equivalent functionality) being a genuine pre-estimate of Air Liquide's loss in terms of replacing the relevant equipment).
- (f) You agree to:
- maintain the Rented Equipment in good operating order, repair, condition and appearance, and must comply with the specifications and recommendations of the manufacturer as advised from time to time (with the exception of normal wear and tear);
 - keep the Rented Equipment properly housed in a secure location that suits the type of Rented Equipment and is in accordance with any accompanying instruction manual and/or instructions from Air Liquide;
 - comply with all applicable laws, regulations, requirements and rules concerning the safe and lawful operation of the Rented Equipment.
- (g) You must not:
- deface the Rented Equipment, or deface, remove or conceal any Air Liquide logo, identifying mark or serial number on the Rented Equipment;
 - permit the Rented Equipment to be used or operated unlawfully, carelessly or in any manner which may be unsafe or endanger the condition of the Rented Equipment or which may be likely to breach the terms of any insurance policy held for the Rented Equipment;
 - repair, modify, tamper with or allow or cause the Rented Equipment to become contaminated; and

- iv. part with possession of the Rented Equipment or grant a security interest over the Rented Equipment without the prior written consent of Air Liquide.

8. Instructions and safety

- (a) You acknowledge and confirm that Air Liquide personnel have explained and provided you with (and recommended you read) comprehensive instructions in respect of the safety, maintenance, possession and use of the PAP machine, mask, accessories and consumables, including (without limitation) written and verbal instructions regarding your therapy, safe use of our goods and services. You agree that you will:
 - i. only use the PAP machine, mask, accessories and consumables strictly for their intended purpose and in accordance with those instructions;
 - ii. maintain the Rented Equipment in accordance with those instructions;
 - iii. be the only user of the Rented Equipment, mask, accessories and consumables and that you will not allow or encourage others to use them;
 - iv. immediately advise us of any defect in the Rented Equipment, mask, accessories and consumables.

9. Medical advice

- (a) You acknowledge that:
 - i. Air Liquide does not provide medical advice; and
 - ii. Any representations made by Air Liquide in relation to its products, services or medical conditions are general in nature and are not intended to constitute (or be a substitute for) advice from a registered medical practitioner.
- (b) By participating in the Complete Care, Support or TPP Plans, You warrant that:
 - i. You have obtained and will comply with medical advice from a qualified medical practitioner in relation to your use of the PAP machine, accessories and consumables; and
 - ii. You will inform Air Liquide immediately of any changes made to your prescription by your physician.

10. Liability and release

- (a) You acknowledge that you are solely responsible for payment of any amounts owing to Air Liquide except to the extent you authorise, and Air Liquide receives payment in respect of your transaction with Air Liquide under this Agreement from a government, insurer or other payer agency. While Air Liquide may provide you with administrative assistance, you acknowledge that it is your responsibility to ensure You qualify for any such coverage.
- (b) You acknowledge that Air Liquide assumes no responsibility or liability for the success, failure or effect of any treatment service prescribed by your treating medical practitioner.
- (c) To the extent permissible, and subject to any rights you have under the Australian Consumer Law, You release Air Liquide from liability for any damage, expense, loss or liability suffered or incurred in respect of your possession or use of the PAP machine, accessories and consumables, unless caused by (and only the extent of) our negligence.
- (d) You warrant that you have conducted your own independent assessment of the PAP machine and its suitability for your needs (without limiting any rights you may have under the Australian Consumer Law).
- (e) You agree to comply promptly with your payment obligations under this Agreement. You also agree that you must reimburse Air Liquide for the full amount of any:
 - i. bank or other fees associated with any dishonoured payments; and
 - ii. reasonable legal, debt recovery or other expenses associated with any action which is necessary to recover from you any Air Liquide owned Rented Equipment or outstanding payments.

11. Privacy, Disclosure & Connected Care

- (a) The personal information you provide in this Agreement and which Air Liquide collects as a result of your entry into this Agreement is to assist us to facilitate your treatment. You acknowledge that Air Liquide may review this personal information and send a copy of this information to your treating medical practitioners.
- (b) The Air Liquide Privacy policy contains information on how we handle your personal information, how you can request access to or correct personal information we hold about you and who to contact if you have a privacy complaint. That policy can be viewed at: <https://au.healthcare.airliquide.com/privacy-policy>
- (c) The Air Liquide Credit Reporting Policy details how we collect, use and disclose your credit related personal information. The policy can be viewed at: <https://au.healthcare.airliquide.com/legal>

- (d) By entering into this Agreement, you acknowledge that you have read and agree to our:
 - i. Privacy Policy; and
 - ii. Credit Reporting Policy.

- (e) Air Liquide may supply you with medical devices and accessories with connected care functionality that store and transmit data (including personal information) electronically. These devices are manufactured by third party suppliers. If you opt to be supplied with such a device, you authorise Air Liquide to collect and disclose your personal information, which includes your health information and data obtained electronically from your device, to the applicable device supplier(s) and to your treating medical practitioners. You acknowledge that this may involve the transfer of your personal information to servers located outside of Australia. Air Liquide has taken reasonable steps to ensure these suppliers handle your information in a manner consistent with the Australian Privacy Principles.

- (f) By participating in the Vital Sleep Complete Care Plan or the Vital Sleep Support Plan, You:
 - i. consent to the ongoing connected care monitoring of your compatible device;
 - ii. agree to our Care Team contacting you to offer support, including (but not limited to) occasions when we identify difficulties you may be having with therapy adherence; and
 - iii. acknowledge that any information, guidance, or support provided by Air Liquide as part of this monitoring does not constitute medical advice and is not a substitute for advice from your registered medical practitioner.

- (g) The Air Liquide Connected Care Agreement contains specific information in relation to the collection and use of personal information we hold about you for the purposes of providing connected care services. A copy of that agreement is available to be viewed at:

<https://au.healthcare.airliquide.com/connected-care-agreement>

- (h) You acknowledge that the device suppliers may use and disclose your personal information in accordance with their own respective privacy policies which, depending upon the relevant manufacturer, can be found at:

- Philips: <https://www.philips.com.au/a-w/privacy-notice.html>
- ResMed: <https://www.resmed.com.au/privacy-policy>
- Lowenstein: <https://loewensteinmedical.com/au-en/privacy-policy/>
- Fisher & Paykel: <http://www.fpinfosmart.eu/terms/privacypolicy>
- BMC: <https://en.bmc-medical.com/privacy-policy-app.html>

12. Mask Trial, Loan or Rental

- (a) Any masks trialled, loaned or rented outside of a VITAL360 or TPP Plan shall be charged at a rate of \$2.00 per day.

(b)

13. Australian Consumer Law

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

14. Fee Review

- (a) Air Liquide may review the fees under this Agreement once per 12-month period. Following a review, Air Liquide may increase the fees by an amount no greater than the percentage increase in the Consumer Price Index (CPI) over the preceding 12-month period. Air Liquide may separately adjust the fees at any time to meet the amount of any new or increased tax, government levy or third party cost that is directly applicable to providing the goods or services under this Agreement and over which Air Liquide has no control. Air Liquide will provide you with at least 30 days' written notice of any fee increase. If you have any questions or concerns regarding any fees under this Agreement, we encourage you to discuss them with us as soon as possible.
- (b) A reference to "CPI" in this Agreement means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia, published from time to time by the Australian Bureau of Statistics, or if that index is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.