

Welcome to the Munchies® website and e-commerce store. Munchies® are a clinically proven orthodontic enhancement device designed to maximize the accuracy of fit and effectiveness of clear aligner treatment and provide pain relief during all stages of orthodontic treatment. Through this website you can purchase Munchies®, access doctor and patient Munchies® calculators and download Munchies® e-books and Instructions for Use booklets. Please read this document carefully. It sets out legally binding provisions which regulate your use of our website.

## **Operative Provisions**

### **1 Acceptance and modification of these Terms of Use**

- 1.1. You may only access, browse and/or use our Website and purchase Munchies® via our Website if you agree to and accept these Terms of Use. By accessing, browsing and/or using our Website and by purchasing Munchies®, you will be deemed to have confirmed that you have read and understand, and wholly and unconditionally agree to be legally bound by, and accept, these Terms of Use and any information linked to from these Terms of Use (including our Privacy Policy).
- 1.2. We may modify and/or replace these Terms of Use and any information linked to from these Terms of Use (including our Privacy Policy) from time to time without notice.
- 1.3. We will always upload the latest version of these Terms of Use to this webpage.
- 1.4. If you do not wish to accept these Terms of Use, you must not and cannot use the Website or any part thereof.

### **2 Munchies® orders**

- 2.1. Our Website allows you to place orders with us for Munchies®.
- 2.2. The prices for the different Munchies® products that we sell are inclusive of goods and services taxes, value added taxes and other applicable taxes and are subject to change from time to time without notice and in our absolute discretion.
- 2.3. Any Orders that you place via our Website for Munchies® are subject to our approval. This means that if you place an Order, we will have no contractual obligation to deliver your ordered Munchies® until and unless we have sent you a confirmation email for your Order. If we send you a confirmation email, a contract will be deemed to have been formed between you and us for the delivery of the Munchies®, the subject of the Order.
- 2.4. If we do not accept your Order, we will inform you accordingly by email and we will not charge you for the Munchies® you have ordered. In those circumstances, if you have

already paid us for the Order, we will promptly refund the amount you paid, into your nominated bank account. Sometimes we cannot accept an Order for Munchies® that are out of stock, where we identify an error in the price or description advertised and for other reasons (in our absolute discretion).

- 2.5. Once you place an Order, we will assign an order number to you which uniquely identifies the Order. Please quote the order number whenever you contact us about your Order.
- 2.6. We are not required to deliver any Munchies® to you until we receive full payment from you in accordance with your Order, via the payment methods that we specify.

### **3 Payment Gateway**

- 3.1. We utilise a third party payment gateway provided by Shopify, Inc. (**Payment Gateway**) to process payments made to us via the Website.
- 3.2. Each time you make a payment using the Payment Gateway you will be deemed to have acknowledged, understood and agreed:
  - (a) that the Payment Gateway may be affected by delays, defects, faults and/or other matters which render the Payment Gateway unusable. These matters may be caused by factors including technical difficulties with the performance or operation of our or the Payment Gateway's software or hardware or due to problems or malfunctions with the Internet or other telecommunications networks;
  - (b) that except in respect of any Non-Excludable Guarantees, we do not warrant, guarantee or represent that unauthorised access to information and data cannot occur, and that we are not responsible for the performance or non-performance of the Payment Gateway;
  - (c) that you have relied on your own independent assessment and judgment in determining whether the Payment Gateway meets your requirements; and

- (d) to comply with any applicable terms and conditions of, and privacy policy of, the Payment Gateway provider (collectively, the **Payment Gateway Agreement**), copies of which are available on the Payment Gateway provider's website.

- 3.3. You indemnify us in respect of all and any loss or damage we incur as a result of any breach by you of the Payment Gateway Agreement.
- 3.4. You acknowledge and agree that despite selecting an alternative currency, we will charge you in American dollars in accordance with the then current conversion rate.

#### 4 Order changes and cancellations

- 4.1. If you would like to cancel or make a change to your Order, please contact us. If you wish to cancel an Order, we will let you know if we agree to the Order being cancelled. If you wish to make any change to an Order, we will let you know if we agree to make the change to the Order. We are not obliged to accept any request to cancel an Order or for a change to an Order in any circumstances except where we do not dispatch the Order to you within 30 days from the date of your Order – in which case you can cancel the Order by sending an email to us confirming your cancellation of the Order but only where you do so prior to the Order being dispatched.
- 4.2. Notwithstanding the above provisions, once we accept an Order, we will not change or cancel the Order without your approval unless any Munchies® that you have ordered are unavailable or cannot be dispatched to you within 30 days of the date of your Order.
- 4.3. If any Order is cancelled in accordance with these Terms of Use, we will promptly issue a refund to you for the amount paid by you under that Order to the credit card that you paid with.

#### 5 Delivery of goods to you

- 5.1. Our charges for the delivery of goods to you are as set out on our Website.
- 5.2. Where we accept an Order, we will use our best endeavours to dispatch the goods the subject of the Order as soon as reasonably possible, and in any event within 30 days from the date that you place your Order.
- 5.3. Orders for goods are delivered by third parties and may be subject to delays outside of our control. If an Order for goods is not delivered to you within 60 days from the date that you placed your Order, please contact us.
- 5.4. You will be responsible for any loss or damage that occurs to your ordered goods from the time that it is delivered to the Delivery Address. In accordance with our delivery and returns

policy, you must contact us within seven (7) days after delivery of the goods if there are any missing items or if any goods that you receive from us are damaged or defective when delivered and provide us with evidence of the missing, damaged and/or defective goods. We will arrange for the delivery of any missing goods and for the replacement of any goods that were damaged or defective at the time they were delivered to the Delivery Address.

- 5.5. If, for any reason, you are not completely satisfied with your purchase we will give you a 7 day money-back guarantee from the time you receive the goods. Please email us at [info@EOCAmerica.com](mailto:info@EOCAmerica.com) within that time period if you are not satisfied with your purchase so that we can resolve any problems. We do not otherwise provide any refunds for change of mind.

- 5.6. You will not receive a refund for any reason if (in our absolute discretion) we determine that goods have been worn, used, damaged or any attempt has been made by you to alter the goods or if the goods have been dropped, broken or tampered with. In the event that particular goods are damaged or defective, please contact us immediately. You must not operate or supply, or permit or encourage any person to operate, any damaged or defective goods. Any request for a refund or replacement of a defective or damaged product will be subject to our approval and must be requested by email to [info@EOCAmerica.com](mailto:info@EOCAmerica.com) within 14 days of the date of the invoice that we issue to you for that product.

- 5.7. Munchies® may be supplied to you with manufacturing specifications, instructions for use (**IFUs**) and/or safety guidelines (collectively, **Documentation**). You must only use Munchies® in accordance with the Documentation.

- 5.8. You indemnify us for all and any loss or damage that we may suffer as a result of your use or misuse of any goods that we supply to you contrary to any Documentation.

#### 6 Munchies® Tools

- 6.1. If you use any of our Tools for (among other things) the purposes of determining which Munchies® to purchase, your clear aligner therapy protocol or for any other reason, you do so at your own risk. We do not warrant that the information produced by any of the Tools is accurate, error-free or up-to-date. You must not rely on, or represent to any person that they should rely on, any product recommendations or anything else produced by any Tool, without independently verifying the validity and accuracy thereof.

- 6.2. The information on the Website and/or displayed via or produced from any Tool is not

our professional, healthcare or orthodontic advice. You agree that you will seek all appropriate healthcare, dental, orthodontic, professional and other advice as applicable before relying on any information you obtain from the Website and/or any Tool.

## 7 Warranties

- 7.1. Your purchase of Munchies® from us will be subject to the Australian Consumer Law where applicable. The Australian Consumer Law provides 'consumers' (as defined by the Australian Consumer Law) with certain rights that cannot be excluded. The exclusions and limitations of liability set out in these Terms of Use shall apply to the maximum extent permissible at Law, but we do not exclude or limit liability which may not be excluded or limited by Law. Without limiting the foregoing provisions, we do not exclude liability under the Australian Consumer Law which is prohibited by Law from being excluded.
- 7.2. Any warranties against defects provided by us to you in your capacity as a 'consumer' under the Australian Consumer Law are in addition to your other rights and remedies under Law in relation to the goods to which the warranty relates.
- 7.3. Except in respect of any Non-Excludable Guarantees, all conditions, warranties and guarantees implied in these Terms of Use are excluded, to the extent possible by Law.
- 7.4. Our Warranty Card sets out the relevant manufacturer's warranty for each of the goods that we supply and the method of claiming under any applicable warranty.

## 8 Availability of our Website

- 8.1. We do not represent that our Website will be available on an uninterrupted or error-free basis. We may need to take down the Website from time to time, in our absolute discretion.
- 8.2. You agree and acknowledge that the accessibility and use of the Website is highly dependent on the proper function of the Internet and any other computer and telecommunications networks and infrastructure upon which the Website operates, interfaces with or connects to, and that we are not responsible for any non-performance of the Website associated with any of those matters.

## 9 Website usage restrictions

- 9.1. You may not make any use of our Website except as permitted by these Terms of Use and may not do or authorise the commission of any act that would or might invalidate or be inconsistent with our Intellectual Property Rights in our Website. Without limiting the foregoing provisions, you must not, under any

circumstances, sell or resell access to our Website or scrape, republish, mirror or otherwise rent, lend, lease, sell, redistribute, sublicense, copy or duplicate our Website or any content you obtain via our Website. In addition, you must not, nor must you permit any person or third party to:

- (a) copy, alter, modify, adapt, reproduce, republish, frame, translate, reverse assemble, reverse engineer, reverse compile, transfer, sell, licence, create derivative works from or enhance our Website and/or any content in our Website (except as expressly permitted by the *Copyright Act 1968* (Cth));
- (b) do any act that would or might invalidate or be inconsistent with our Intellectual Property Rights or those of our licensors;
- (c) infringe any patent that we may have, or any of our other Intellectual Property Rights in Munchies® or our Website;
- (d) use our Website or Munchies® to create any product or service that competes with our Website or Munchies®; or
- (e) take any steps to circumvent any technological protection measure or security measures in our Website or in Munchies®.

9.2. You must not use our Website or any part of our Website in any way which is in breach of any Law or legal right of any person or third party.

9.3. You must not use our Website or any part of our Website in breach of these Terms of Use.

## 10 Acceptable Use Policy

- 10.1. You agree that the following is strictly prohibited:
- (a) using our Website to violate all or any legal rights of any person or company or other entity in any jurisdiction;
  - (b) using our Website in relation to crimes such as theft and fraud;
  - (c) using our Website in breach of laws relating to the protection of copyright, trade secrets, patents or other intellectual property;
  - (d) using our Website to carry out security breaches or disruptions of network communication is strictly prohibited by these Terms of Use. Security breaches include accessing data of which you are not an intended recipient or logging

into a server or account that you are not expressly authorised to access or corrupting any data;

- (e) using our Website to circumvent user authentication or security of any of our hosts, networks or accounts or those of our customers or suppliers;
- (f) using our Website to interfere with or deny service to anyone;
- (g) using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any person's use of Website;
- (h) using our Website to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages; and
- (i) use of our Website in breach of any person's privacy (such as by way of identity theft or "phishing"),

(collectively, our **Website Acceptable Use Policy**).

10.2. You must comply with our Website Acceptable Use Policy.

10.3. We may terminate and/or suspend your access to the Website, if you:

- (a) repeatedly infringe our Website Acceptable Use Policy; or
- (b) commit a material breach of our Website Acceptable Use Policy.

10.4. For the purposes of clause 10.3(a), you will be deemed to have repeatedly infringed our Website Acceptable Use Policy if we notify you that you have infringed our Website Acceptable Use Policy and you infringe it again after being so notified.

## 11 Intellectual Property Rights

11.1. You agree and acknowledge that these Terms of Use do not transfer or assign any Intellectual Property Rights to you.

11.2. As between you and us, we own all Intellectual Property Rights in the Website and in all of our products, including in any Munchies® that are listed on, or that you order, via the Website.

11.3. You have no rights in the Website or in any part thereof or in any modification or enhancement thereof, other than the rights temporarily granted to you pursuant to these Terms of Use.

11.4. You agree that any Intellectual Property Rights in any comments that you may provide to us in connection with the Website or Munchies®

(each, an **Improvement Suggestion**) become our sole and exclusive property immediately upon you disclosing that Improvement Suggestion or otherwise providing the Improvement Suggestion to us, and you hereby assign all Intellectual Property Rights in all and any such Improvement Suggestions to us effective as soon as you disclose or otherwise provide each Improvement Suggestion to us. The assignment pursuant to this clause includes an assignment of future copyright pursuant to section 197 of the *Copyright Act 1968* (Cth) and in equity.

11.5. You irrevocably consent to the infringement by us and any third party we authorise, of all Moral Rights that you may have in any Improvement Suggestions.

11.6. You must not take any step to invalidate or prejudice our (or our licensors') Intellectual Property Rights in the Website, Munchies® or otherwise.

11.7. You must not:

(a) use any of our trademarks, domain names, business names, company names, product names, service names, Website names or other marks (collectively, **Marks**); or

(b) contest any Mark, apply for registration of any Mark or use or apply for registration of any trade mark, trade name, business name, company name or domain name which is or incorporates any element that is confusingly similar to any Mark.

11.8. You have no rights in respect of any Marks or their associated goodwill. All such rights and goodwill inure for the benefit of, and are (and will remain) vested in us or our licensors.

## 12 Responsibility for use and misuse of the Website

12.1. We do not accept responsibility for the conduct of any user or visitor of our Website.

12.2. We do not represent, recommend or endorse any websites to which we have linked from the Website via hyperlink or otherwise (unless expressly specified by us).

12.3. You agree and acknowledge that you are solely responsible for and you indemnify us in respect of any loss and damage we may incur in connection with any claims and/or complaints made by any third party where the claim is caused directly or indirectly by your use or misuse of the Website.

## 13 Liability

13.1. Neither party is liable to the other party for any loss of profits, loss of business opportunity,

loss of revenue, loss of savings or loss of data and whether arising in contract, tort (including negligence) or otherwise, and whether the loss or damage is foreseeable or not.

13.2. We shall not be liable for any non-performance of our obligations under these Terms of Use where caused by our delivery suppliers, partners, contractors and/or a Force Majeure Event.

13.3. Except in respect of any Non-Excludable Guarantee, we do not represent that the information on the Website, Tools or otherwise made available by us in connection with the Website or Tools is accurate, correct, up-to-date or error free. The information on the Website and Tools is not our professional, healthcare or dental advice. You agree that you will seek all appropriate professional, healthcare, dental and other advice as applicable before relying on any information you obtain from the Website and Tools.

13.4. If you use Munchies®, you do so at your own risk. We do not provide any medical advice, recommendations or diagnoses. All such medical advice, recommendations and diagnoses that involve using Munchies® must be provided by a competent healthcare practitioner. We do not provide, or represent that we provide, any healthcare service and we are not a party to any contract for the provision or receipt of any healthcare service. Further, we do not represent or warrant that use of Munchies® will produce successful results for your aligner therapy or that they are suitable for your specific requirements.

13.5. To the extent we may not as a matter of applicable Law exclude any condition, guarantee or warranty, the scope and duration of such condition, guarantee or warranty shall be the minimum permitted under such Law and we limit our liability for breach of any such condition, guarantee or warranty as follows, at our option:

(a) in the case of goods, to: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of such goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (iv) the payment of the cost of having the goods repaired; and

(b) in the case of services, to: (i) the supplying of the services again; or (ii) the payment of the cost of having the services supplied again.

13.6. To the extent that our liability is not otherwise excluded by these Terms of Use, subject to any Non-Excludable Guarantees, our liability to you is limited to \$250.

## 14 Export Control

14.1. You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 15 Termination

15.1. We may terminate these Terms of Use and your access to the Website or any part of it at any time without notice.

15.2. We may take down the Website or any part thereof or take the Website or any part thereof offline at any time without notice.

15.3. Termination of these Terms of Use and access and/or use of the Website does not affect any accrued rights of either party.

## 16 Notices

16.1. Any notice issued to you from us or from us to you shall be in writing and sent by hand delivery, post or email. Where sent from us to you, we shall use any of your contact details that you provide to us.

16.2. You may contact us or send a notice to us using our contact details on our Website at <https://www.orthomunchies.com/> or by sending an email to us at [info@orthomunchies.com](mailto:info@orthomunchies.com).

16.3. Any notice issued by hand shall be deemed delivered upon delivery.

16.4. Any notice issued by post shall be deemed delivered 6 Business Days after posting if posted domestically, or 20 Business Days after posting if posted internationally.

16.5. Any notice issued via email shall be deemed to be delivered upon receipt by the sender of an electronic read receipt or delivery receipt, or upon receipt of a reply to the email.

16.6. We may send you emails or other electronic messages concerning the Website and your Orders from time to time.

## 17 General

17.1. You may not assign, transfer, license or novate your rights or obligations under these Terms of Use without our prior written consent. We may assign, transfer, license or novate our rights or obligations under these Terms of Use at any time without notice to you.

17.2. If any provision of these Terms of Use is deemed invalid by a court of competent jurisdiction, the remainder of these Terms of Use shall remain enforceable.

17.3. These Terms of Use do not create any relationship of partnership, joint venture,

fiduciary, or employer and employee or otherwise.

- 17.4. These Terms of Use and our terms of use and policies available on the EOCA website at <https://www.eocamerica.com> and any information linked to from these Terms of Use constitute the entire agreement between you and us and to the extent possible by Law, supersede all prior understandings, representations, arrangements and agreements between you and us regarding its subject matter.
- 17.5. These Terms of Use may be amended by us at any time, in our absolute discretion.
- 17.6. These Terms of Use are governed by the laws of New South Wales and each party submits to the exclusive jurisdiction of the courts located in the State of New South Wales and the courts of appeal from them in relation to any dispute or proceedings concerning these Terms of Use.

## 18 Definitions

- 18.1. In these Terms of Use, words defined in parentheses and that are bold have the meanings given therein. In addition, the following words have the following meanings:

**Australian Consumer Law** means schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Business Day** means Monday – Friday excluding public holidays in New South Wales.

**Business Hours** means 9:00am – 5:00pm on Business Days.

**Delivery Address** means the address that you specify for delivery of any goods that you Order from us via our Website.

**Website** means the Munchies® website owned and/or provided by us at the homepage URL at <https://www.orthomunchies.com/> and also includes any content, images, text and other information appearing on any page or screen of that website and any source code and object code in that website.

**Force Majeure Event** means a circumstance beyond our reasonable control which results in our inability to observe or perform on time an obligation under these Terms of Use.

**Intellectual Property Rights** means all copyright, trademark rights, patent rights, and design rights, whether registered or unregistered, and all other rights to intellectual property as defined under article 2 of the convention establishing the World Intellectual Property Organization, and all rights to enforce any of the foregoing rights.

**Law** means any applicable legislation (including data protection laws), rule of the general law, including common law and equity, judicial order or consent or requisition from, by or with any governmental agency in any applicable jurisdiction.

**Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth).

**Non-Excludable Guarantee** means a non-excludable guarantee implied into these Terms of Use by the Australian Consumer Law.

**Order** means an order for Munchies® placed by you on our Website.

**Privacy Policy** means our privacy policy located at <https://www.orthomunchies.com/pages/privacy-policy>, as amended from time to time.

**Terms of Use** means the terms and conditions set out on this webpage as amended by us from time to time.

**Tool(s)** means the online calculator services that we make available on the Website at the following URLs: <https://www.orthomunchies.com/munchies-doctor-calculator> and <https://www.orthomunchies.com/munchies-patient-calculator> and the Munchies® eBooks available at the following URL <https://www.orthomunchies.com/ebook>, including any content, images, text and other information appearing on any such page or screen of those URLs and any source code and object code in those URLs.

**Warranty Card** means our Munchies® warranty card that we supply with an Order.

**we, our and us** means the Esthetic Orthodontic Company of America, LLC, a company incorporated and located in Florida, United States of America (Registration Number 3011191212).

**you and your** means you, the person who visits, accesses and/or uses the Website for any reason.

- 18.2. Unless the context requires otherwise:

- (a) headings and underlinings are for convenience only and do not affect the construction of these Terms of Use;
- (b) a provision of these Terms of Use will not be interpreted against a party because the party prepared or was responsible for the preparation of the provision, or because the party's legal representative prepared the provision;
- (c) a reference to a statute or regulation includes amendments thereto;

- (d) in the body of these Terms of Use, a reference to a clause, subclause or paragraph is a reference to a clause, subclause or paragraph of these Terms of Use;
- (e) a reference to time is to time in New South Wales unless expressly specified otherwise;
- (f) a reference to a person includes a reference to an individual, a partnership, a company, a joint venture, government body, government department, and any other legal entity;
- (g) the words “includes”, “including” and similar expressions are not words of limitation; and
- (h) a reference to the singular includes the plural and vice versa.