

Terms and Conditions

These terms and conditions (Terms and Conditions) regulate the relationship between you, a user of this website www.fertilitywa.com.au (FSWA Website) and CHA SMG Australia Holding Pty Ltd (ACN 624 086 371) and its controlled entities. (“FSWA”, “CF”, “FSWA”, “we”, “us”, “our”).

1. Terms and Conditions

- 1.1. Welcome to the FSWA Website (fertilitywa.com.au) (FSWA Website). The FSWA Website is operated CHA SMG Australia Holding Pty Ltd (ACN 624 086 371) and its controlled entities as defined by s9 of the Corporations Act 2001 (Cth) (“FSWA”, “CF”, “FSWA”, “we”, “us”, “our”).
- 1.2. These Terms and Conditions (together, Terms and Conditions) apply to you as a visitor to the FSWA Website.
- 1.3. The Terms and Conditions govern your use of the FSWA Website, and the supply of any of our services to you through use of the FSWA Website.
- 1.4. We strongly recommend that you read all of the terms in the Terms and Conditions.

2. Use of Website

2.1 As a condition of your use of the Fertility Specialists of Western Australia Website, you warrant to Fertility Specialists of Western Australia that

- (a) you must not use the FSWA Website for any purpose that is unlawful or prohibited by the Terms and Conditions;
- (b) you are legally capable of entering into this agreement, or if you are under the age of 18 have obtained the consent of your parents or guardians to access this Website and enter into this agreement;
- (c) you must not use or attempt to use the FSWA Website in any manner which could damage, disable, overburden, or impair the FSWA Website or interfere with any other party’s use and enjoyment of the FSWA Website;
- (d) you must not obtain or attempt to obtain any materials or information through any means not intentionally made available or provided for through the FSWA Website;
- (e) you must not link to the FSWA Website or any part of the FSWA Website in a way that damages or takes advantage of our reputation, including but not limited to in a way to suggest or imply that you have any kind of association and affiliation with us, or approval and endorsement from us that you do not have.

2.2 All information, advice, articles or other data on the FSWA Website, including but not limited to any information provided by FSWA in any forum, blog or online chat facility, is provided as general information only and should not be relied upon, including but not limited to any medical information. The FSWA Website is provided as a general information service only, and is not intended as a substitute for advice from a registered physician or other healthcare professional. The features, advice and other materials available on the FSWA Website are intended to support the relationship between you and our healthcare providers and not replace it. We are not liable or responsible for any actions taken due to you having read or been told about such advice or other materials.

2.3 Although FSWA has made every reasonable attempt to ensure the accuracy of the information contained within the FSWA Website, FSWA cannot accept responsibility for any error, omission, misrepresentation, or misstatement contained in these pages. FSWA does not guarantee the information is complete, correct or up to date and the information is subject to change without notice.

2.4 FSWA does not guarantee the availability of any services and treatments advertised in the FSWA Website.

2.5 If you are dissatisfied with any portion of the FSWA Website, or with any of the Terms and Conditions, your sole and exclusive remedy is to not use or to discontinue using the FSWA Website.

2.6 If you are dissatisfied with any portion of the FSWA Website, or with any of the Terms and Conditions, your sole and exclusive remedy is to discontinue using the FSWA Website.

3. Chat Rooms

3.1 FSWA provides a live chat facility via WhatsApp (FSWA Chat). If you wish to use FSWA Chat, you may be required to provide us with your personal information which will be collected in accordance with our Privacy Policy.

3.2 In order to use FSWA Chat, you may also be required to set up a username and password in order to access the live chat service.

3.3 You are responsible for all uses of your FSWA Chat account. It is your responsibility to maintain the confidentiality and security of your username and password for your FSWA Chat account. If you become aware of any misuse by an unauthorised third party of your FSWA Chat account, then you should notify us immediately.

3.4 You grant FSWA an irrevocable, perpetual, transferrable, world-wide, royalty free licence to use any Intellectual Property Rights which may exist in any submission or content you provide to FSWA or create via FSWA Chat.

4. Forums and Blogs

4.1 The FSWA Website also provides blogs on the FSWA Website.

4.2 FSWA is not responsible for any material submitted to the public areas by you or any other person (which may include bulletin boards, blogs, hosted pages, chat rooms, or any other publicly accessible area found on the FSWA Website).

4.3 Any material (whether submitted by you or any other user) is not endorsed, reviewed or approved by FSWA.

4.4 FSWA reserves the right to moderate all comments and remove any material submitted or posted by you in the public areas, without notice to you, if it becomes aware and determines, in its sole and absolute discretion that you are or there is the likelihood that you may (including but not limited to):

(a) defame, abuse, harass, threaten or otherwise violate the rights of other persons or any third parties;

(b) publish, post, distribute or disseminate any defamatory, obscene, indecent or unlawful material or information;

(c) post or upload files that contain viruses, corrupted files or any other similar software or programmes that may damage the operation of FSWA's and/or a third party's computer system and/or network;

- (d) violate any copyright, trade mark, other applicable laws or Intellectual Property Rights of FSWA or any other third party; or
- (e) submit content containing marketing or promotional material which is intended to solicit business.

4.5 You further agree not to use the FSWA Website to send or post any message or material that is unlawful, harassing, defamatory, abusive, indecent, threatening, harmful, vulgar, obscene, sexually orientated, racially offensive, profane, pornographic or violates any applicable law and you hereby indemnify FSWA against any loss, liability, damage or expense of whatever nature which FSWA or any third party may suffer which is caused by or attributable to, whether directly or indirectly, your use of the FSWA Website to send or post any such message or material.

4.6 Some of the content on the FSWA Website is provided by FSWA or its suppliers, and other content is provided by persons who use the FSWA Website ("Users"), such as User opinions and views provided via posts to chat rooms or blogs. While FSWA strives to keep the content that it posts on the FSWA Website accurate, complete, and up-to-date, FSWA cannot guarantee, and is not responsible for, the accuracy, completeness, or timeliness of any content, whether provided by FSWA or its suppliers, or by Users of the FSWA Website.

4.7 You are responsible for all content that you submit, post, or otherwise make available to or through the FSWA Website. By doing so, you:

- (a) represent and warrant to FSWA that such content is not confidential and that you have all necessary permission to submit, post and otherwise make available such content;
- (b) grant to FSWA a worldwide, nonexclusive, perpetual, sub-licensable, royalty-free right and license to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute (including, without limitation, making available on-line, electronically transmitting or otherwise communicating to the public), perform, and display such content (in whole or part) worldwide via the FSWA Website or otherwise, and/or to incorporate it in other works in any form, media, or technology now known or later developed; and
- (c) you give your complete and genuine consent to all relevant acts or omissions in relation to your moral rights in such content, for which our use of all or any portion of such content may or might otherwise constitute a breach or infringement of those moral rights (as that term is defined in the Copyright Act 1968 (Cth)) and to the extent permitted by law, waive all your moral rights in such content.

5. Fertility Window Ovulation Calendar

5.1 FSWA provides an ovulation calendar called "Fertility Window" on the FSWA Website accessible [here](#) Fertility Awareness Window

5.2 Fertility Window is provided for information purposes only and is an indicator as to the days in which a woman may ovulate. The information provided from the calendar should not be relied upon as advice and is provided as a general information service only. It is not intended as a substitute for advice from a registered physician or other healthcare professional, and does not take into account your individual circumstances.

5.3 The Fertility Window tool provides approximate dates only and assumes a regular menstrual cycle. If your menstrual cycles are irregular, you may have trouble pinpointing your day of ovulation based on the Fertility Window calendar alone.

6. Security of Website

Unfortunately, no data transmission over the Internet can be guaranteed as totally secure. Whilst FSWA strives to protect such information, FSWA does not warrant and cannot ensure the security of any information which you transmit to us. Accordingly, any information which you transmit to us via the FSWA Website is transmitted at your own risk.

7. Downtime, suspension and limitations

7.1 You agree that:

- (a) the FSWA Website will not be available at all times and without disruption;
- (b) access to the FSWA Website may occasionally be limited due to scheduled and unscheduled maintenance;
- (c) access to the FSWA Website is reliant upon various factors outside our control, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider or equipment used to access the FSWA Website;
- (d) we may choose to suspend your access to the Website for any reason whatsoever, including without limitation, if:
 - (1) there is a malfunction, fault or breakdown of any equipment we use, or any repairs or maintenance services are required;
 - (2) we are required to do so by any law;
 - (3) an Event of Exceptional Circumstance occurs, which affects or may affect our ability to provide the Website and any related services;
 - (4) you or another has engaged in prohibited conduct under clause 4;
 - (5) if someone claims that the Website infringes their Intellectual Property Rights; or
 - (6) if someone makes a Claim that exposes us to Liability.
- (e) although we will use reasonable endeavours to ensure you have continuous access to the FSWA Website we are not liable to you or any other person for any claim or to any extent for loss or damage caused by such factors; and
- (f) you will have no claim against us in respect of loss or access or functionality to the FSWA Website referred to in this section 7.1.

8. Liability of FSWA

Exclusion of Liability

8.1 FSWA does not give any warranty nor accept any liability in relation to performance or non-performance of its obligations under these FSWA Terms and Conditions except to the extent, if any, required by law or specifically provided for in these FSWA Terms and Conditions.

8.2 You acknowledge and agree that, to the maximum extent permitted by applicable law, in no event shall we, our directors, employees, contractors or other representatives, be Liable for any Loss or damage howsoever caused or arising, including but not limited to any Loss or damage you may suffer as a result of:

- (a) the use or performance of the FSWA Website;
 - (b) the delay or inability to use the FSWA Website or related services, the provision of or failure to provide services;
 - (c) any errors, mistakes or inaccuracies on the FSWA Website;
 - (d) you acting or failing to act on any information contained on or referred to on the Website and / or any third-party websites;
 - (e) personal injury, death or property damage of any kind resulting from your access or use of the FSWA Website;
 - (f) any fraud;
 - (g) any unauthorised access to or use of the FSWA Website's secure servers;
 - (h) any interruption or cessation of transmission to or from the FSWA Website;
 - (i) any bugs, viruses, Trojan horses or other harmful code or communications which may be transmitted to or through the FSWA Website to any third party;
 - (j) the quality or fitness for any purpose of any third party websites;
 - (k) any information, goods, service and related graphics obtained through the FSWA Website,
 - (l) the information supplied on the "Fertility Window" ovulation calendar; or
- otherwise arising out of the use of the FSWA Website, and you acknowledge that the existence of any of the above in sections 8.2(a)-0 will not be a breach of this agreement.

Implied Terms

8.3 Without limitation to your rights under the Australian Consumer Law and to the full extent permitted under law, to the extent such rights apply in connection with this Website:

- (a) any term which would otherwise be implied into these Terms and Conditions is excluded (subject to section 8.4);
- (b) you acknowledge that FSWA has not made any representations or warranties or representations (whether express or implied) in relation to the FSWA Website, and the Website is provided on as "as is where is" is basis.

8.4 Notwithstanding section 8.3, nothing in these Terms and Conditions excludes liability for:

- (a) a compulsory consumer guarantee which applies under the Competition and Consumer Act 2010 (Cth) and which cannot be excluded, restricted or modified as applicable to any service;
- (b) any other term which cannot lawfully be excluded,

such terms will apply, save that our Liability will be limited in accordance with the remainder of this section 8.

Consequential Loss

8.5 To the maximum extent permitted by law, we (and any of our Related Entities) do not accept responsibility for any Loss or damage (whether in contract, tort, statute or otherwise) for any consequential, incidental, special, exemplary or indirect damages of any kind, or for any loss of

profits, revenue or opportunity arising out of or in connection with this agreement, your use of this Site or reliance on any information contained in this Site, or use of any linked web site, however caused, even if we have been advised of or should have known the possibility of such damages.

Limitation of Liability

8.6 Despite anything else in these Terms and Conditions, to the extent that we are Liable in connection with these Terms and Conditions (whether in contract, under a right of indemnity, tort or statute), FSWA's Liability is capped cumulatively in the aggregate, to the sum of AUD \$10.00.

8.7 All limitations of Liability under these Terms and Conditions shall apply for the benefit of the employees and agents of FSWA to the same extent as they apply for the benefit of FSWA against you or anyone claiming through or under you.

9. Indemnity

You agree to indemnify us and our Related Entities (as that term is defined under the Corporations Act 2001 (Cth) and agents against any Claims, Liabilities or expenses or demand, including reasonable legal fees arising in any way out of:

- (a) your use (or misuse) of the FSWA Website in breach of these terms and conditions;
- (b) your breach of any warranty provided by you to us under clause 2.1;
- (c) your breach of any applicable law or third party rights (including the infringement by you, or by any other person using your computer, of any Intellectual Property Rights).

10. Intellectual Property Rights

You acknowledge that:

10.1 FSWA or its Related Entities own or are licensed to use all Intellectual Property Rights in the FSWA Website (including, but not limited to, any images, photographs or text which appears on the FSWA Website). You agree that you will not make any representations to the contrary, and that you will not use or copy the FSWA Website in any manner that is inconsistent with the rights of the owner or licensee of such Intellectual Property Rights, including reproducing, transmitting, communicating, adapting, distributing, selling, modifying or publishing any of the material on our Website without our prior written authorisation.

10.2 Any trade marks or logos, brand or product names which appear on the FSWA Website are owned by or licensed to FSWA or its Related Entities, and that you must not do anything to prejudice the rights of the trade mark owner or licensee to such trade marks or logos.

10.3 The FSWA Website is protected under the Copyright Act 1968 (Cth) and international copyright and other laws governing the protection of Intellectual Property Rights. You must not in any form or by any means (except as expressly authorised by the Copyright Act 1968 (Cth) or these terms and conditions):

- (a) adapt, reproduce, store, distribute, print, display, perform, publish or create derivative works from any works or other subject matter or any part of this FSWA Website generally; or

commercialise any works or other subject matter, information, products or services obtained from any part of this FSWA Website, without our written permission.

10.4 Unless we agree otherwise in writing, you are provided with access to the FSWA Website only for your individual use. You can print a copy of any information contained on the FSWA Website for

your personal, non-commercial use, unless such printing is expressly prohibited. Without limiting the foregoing, you may not without our written permission (including to others within your organisation) on-sell or distribute information obtained from the FSWA Website.

11. Privacy

11.1 In some instances when you are using the Website, such as (but without limitation) filling out survey questionnaires, booking an appointment, requesting further information or sending us an enquiry, you will have provided personal information to FSWA.

We maintain a Privacy Policy that sets out how we handle your personal information. We recommend that you read FSWA's Privacy Policy.

11.2 Our Privacy Policy is a non-contractual document prescribed by the Privacy Act 1988 (Cth). It does not impose any contractual obligations on us, and we disclaim any such contractual obligations.

11.3 We may transfer or store your personal information at a destination outside of Australia. By accepting these Terms and Conditions and our Privacy Policy, you expressly acknowledge, consent and agree to the disclosure, transfer, storing or processing of any of your personal information outside of Australia. The Privacy Act requires us to take such steps as are reasonable in the circumstances to ensure that any recipients of personal information outside of Australia do not breach the privacy principles within the Privacy Act.

12. Linked Sites

12.1 The Website may contain links to other websites. The Linked Sites are not under the control of FSWA and FSWA is not responsible for the contents of any Linked Site, including without limitation any link contained within a Linked Site, or any changes or updates to a Linked Site.

12.2 FSWA does not make any warranty, representation or endorsement with respect to any Linked Site or the products or services advertised on a Linked Site.

12.3 FSWA is not responsible for the privacy practices of sites linked to it via hyperlinks, banner advertising or other means. Please take care at all times to check the privacy policy of the site you are visiting.

13. General

Jurisdiction; Governing Law

13.1 These Terms and Conditions are governed by the laws in force in Queensland, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

Severability

13.2 If anything in this document, or any part of a particular term or condition is or is determined to be unenforceable, illegal, voidable or void in a jurisdiction for any reason then it is severed for that jurisdiction and the rest of this document and terms remain in full force and effect.

Notices

13.3 You can give us notice under this agreement by email at contactus@cityfertility.com.au.

13.4 We can give you notice under these Terms and Conditions by emailing posting on the FSWA Website.

Assignment

- 13.5 You must not assign, transfer or novate all or any part of your rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it.
- 13.6 FSWA may assign, transfer or novate all or any part of its rights or obligations under or relating to these terms and conditions in its sole discretion and without prior notice to you.

Variation

- 13.7 An amendment or variation to these Terms and Conditions is effective from the date it is published on the Site.

Waiver

- 13.8 If we waive any rights available to us under these terms and conditions on one occasion, this does not mean that those rights will automatically be waived on any other occasion.

14. Consent

- 14.1 By browsing, accessing or using the FSWA Website you are agreeing to these Terms and Conditions.
- 14.2 You agree that we may modify or update our Terms and Conditions at any time. We will post such changes on the FSWA Website, after which, your later agreement under clause 14.1 to these terms shall be deemed to be your agreement to the modified terms. You should periodically check this page to ensure that you are aware of the latest Terms and Conditions.

15. Definitions and interpretation

- 15.1 Claim means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether:
- (a) it is present, unascertained, immediate, future or contingent;
 - (b) it is based in contract, tort, statute or otherwise; or
 - (c) it involves a third party or a party to this agreement.
- 15.2 Exceptional Circumstance means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:
- (a) adverse changes in government regulations;
 - (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
 - (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyber-attacks, viruses or malware, data loss as a result of the actions of a third party;
 - (d) strikes or industrial disputes;
 - (e) materials or labour shortage; and
 - (f) acts or omissions of any third-party network providers (such as internet, telephony or power provider).

15.3 Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trademarks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

15.4 Liability means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

15.5 Loss means any loss (including Consequential Loss under section 8.5), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

15.6 Unless the contrary intention appears, a reference in this agreement to:

(1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;

(2) one gender includes the others;

(3) the singular includes the plural and the plural includes the singular;

(4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;

(5) an item, recital, section, sub-section, paragraph, schedule or attachment is to an item, recital, section, sub-section, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;

(6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;

(7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;

(8) money is to Australian dollars, unless otherwise stated; and

(9) a time is a reference to Brisbane time unless otherwise specified.

15.7 The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.

15.8 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

15.9 Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.

15.10 A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.