

## Membership Terms and Conditions

This Agreement is made between Oz Ski Pty Ltd as trustee trading as Oz Fitness ABN 87 361 390 917 (“we”, “us”, “our” or “Oz Fitness”) and the member whose name appears in the Application for Membership (“you”).

These Terms and Conditions together with the Application for Membership and the Rules form the entire agreement between the parties (the “Contract”) and govern your membership with us. What is set out in this Contract overrides anything that anyone may have said to you. If there is something in this Contract different to something that you may have been told, you should tell us before you sign the Application for Membership. This Contract is a legally binding contract between you and us. By entering into this agreement, you purchase a membership or services and you agree to all the terms of this agreement. Any variation to these Terms and Conditions must be in writing and signed by our authorised officer. You acknowledge that you have received a copy of your Membership Agreement.

### 1. Start Date

- 1.1. Your Membership commences on the start date inserted on page 1 of your Application for Membership. You must pay a joining fee when you join or renew your membership. This joining fee is listed in your Application for Membership form.

### 2. Cooling Off Period

- 2.1. You may cancel the Contract at any time before midnight on the second Business Day after signing the Application for Membership. Any cancellation must be in writing and either delivered to us or given by email to our email address. If you cancel your membership during the Cooling Off period, we will refund you the joining fee less 5% for our administrative costs. If you have received any fitness service for which you have not paid before exercising your cooling off termination right, we may deduct that unpaid fee from the amount of the joining fee to be refunded to you.

### 3. Paying for your Membership

- 3.1. Fees and charges payable by you are as set out in the Membership Agreement and are payable in advance.
- 3.2. Fortnightly dues are payable in advance by way of direct debit.
- 3.3. Upon joining Oz Fitness, you authorise us to charge or cause transfers to be made from your nominated direct debit account.
- 3.4. The above authorisation is a continuing authorisation until your membership is terminated or cancelled and continues upon assignment of the Contract to a new owner of the business.
- 3.5. We use a third party as a direct debit billing provider and you may be asked to fill out a direct debit request to allow deductions from your financial institution of choice.
- 3.6. If you fail to pay your fees by the due date we reserve the right to refuse entry to the Club or use of any of the services, facilities or equipment until the outstanding payment is received.
- 3.7. We reserve the right to charge you a processing fee (being the reprocessing fee and any bank charges or administrative charges incurred by the payment provider) in the event of dishonour of your direct debit or any failed payment. These fees are not refundable even if you choose to cancel your application for membership during your cooling off period.
- 3.8. We may recover from you any merchant or other fees attendant upon the credit card use or charged to us as a result of payment by you, whether by credit card or otherwise.
- 3.9. If you default in any payments, we may engage external debt collectors to recover any monies owing to us by you, including our legal costs and expenses related to that recovery action.
- 3.10. If we increase the membership fees we will provide at least 30 days prior notice of the increase by post or email to the addresses provided by you in the Application for Membership. Following such notice, you authorise us to increase any direct debits to your credit card or bank account which you have authorised upon joining. We will not use this right to vary the terms on any special offer which applies to you.

### 4. Cancelling your Membership after Cooling Off Period expires

- 4.1. You may terminate this Contract if you make a cancellation request in writing to us, all instalments and fees due up to the date of termination are paid and the relevant cancellation fee is paid in full at the time of the cancellation request. The cancellation fee is \$75.00. We will not refund any part of the joining fee to you.
- 4.2. If you have elected in your Application for Membership Form for your membership to automatically terminate at the end of its Term as stated on that Application, your membership will terminate automatically upon expiry of that Term.
- 4.3. You may terminate this Contract with immediate effect by providing us with written notice if higher membership fees applicable to your membership after the end of the Upfront Membership term are introduced (see clause 4.9 above). No fees will be applicable for terminating due to the introduction of

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higher membership fees apart from the joining fee, membership fees for the time you have been a member and any additional fees for fitness services already supplied.

- 4.4. However, where either you or we terminate the Contract for any reason, any unpaid fees owing will need to be paid by you or we may take action to recover the outstanding payments.

#### **5. Ongoing Membership**

- 5.1. If you have elected on your Application for Membership form that your membership is not to automatically terminate at the end of its term, then this Contract will continue indefinitely until such time as you make a request for cancellation ("Ongoing Membership"). A minimum of two weeks written notice is required to cancel an Ongoing Membership, either via email or delivered to the Club. This notice period is taken to commence from the next available direct debit date.

#### **6. Termination for Medical Reasons**

- 6.1. You may terminate the Contract with immediate effect at any time by providing us with written notice and producing supporting documentation to our reasonable satisfaction to demonstrate permanent medical incapacity. In that event, you will only be charged the joining fee, membership fees for the time you have been a member, any additional fees for fitness services already supplied and a termination fee of \$75.00.

#### **7. Suspension for medical reasons**

- 7.1. You can suspend your membership for medical reasons upon provision of supporting documentation satisfactory to us. Membership suspension, for a period of up to 3 months, once each calendar year, is available provided that all amounts payable for your membership are paid up to date. All suspensions must be applied for in writing to us at least fourteen days prior to the commencement of the suspension period and we reserve the right to refuse any application for freeze at anytime. Debit payments will only be suspended for the direct debits that fall within the suspension period. Suspension dates must coincide with pre-existing billing dates. For pre-paid memberships of either 6 or 12 months duration, a freeze fee of \$10 per month, up to a maximum of \$30 is payable. For ongoing contract memberships with fortnightly direct debit arrangements, a fortnightly fee of \$5 will be debited.

#### **8. Termination by us**

- 8.1. We may terminate your Membership at any time on the following basis:
- (a) You fail to make any payments of your Membership Fees;
  - (b) We reasonably suspect that you are engaging in illegal activity in the Club;
  - (c) You fail to follow any of our policies or Rules or violate any part of this Agreement; or
  - (d) You engage in inappropriate, threatening or harassing behaviour;
  - (e) You damage equipment or facilities; or
  - (f) Your conduct is improper or harmful to the best interest of other members.
- 8.2. In the event that we terminate your Membership in accordance with the above clause, termination will be effective on the date that we send written notice. You are liable for all financial obligations until that date. We will not refund any unused portion of your fees. Termination is without prejudice to the rights of each party against the other in respect of anything done or omitted under this Agreement prior to that termination or expiration.

#### **9. Membership**

##### **9.1. Entitlements**

Membership is personal to the member. Use of the Club's services and facilities are governed by the type of membership applicable to you, as stated on your Application for Membership form. Membership at Oz Fitness Coolum entitles you to:

- (a) Use exercise equipment located on the gym floor; and
- (b) If you have chosen membership which includes "all inclusive gym and classes", participation in normally scheduled group fitness classes, which may include outdoor classes, boot camp training style classes, spin classes and stand up paddle board classes on the lake.

##### **9.2. Obligations**

Membership at Oz Fitness Coolum requires you to:

- (a) Update your contact details when they change so that we can keep in touch;
- (b) Comply with all conditions of entry (see our on premises signage) and the guidelines in this document, and follow direction from all of our employees and their agents when requested.
- (c) Pay all agreed fees, ensure sufficient funds are available to cover all fees and advise us in advance if your bank account or credit card is closed or changed.

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(d) Inform us in advance if there are any risks to your health if you participate in fitness services and, if required, seek approval from your doctor or general practitioner.

You acknowledge that it is your responsibility to cancel direct debit facilities in respect of your membership when this agreement expires or is terminated.

**9.3. Clothing Attire**

For your comfort and safety appropriate footwear (sports joggers/runners) must be worn at all times whilst in the gym. Thongs or sandals are not permitted within the gym. All members are required to carry a towel at workouts at all times and wipe down equipment after use.

**9.4. Additional Fees**

Members should be aware that there may from time to time be additional services offered which may require payment of additional fees.

**10. Access**

- 10.1. Upon becoming a member you will be given an access card which must be shown on every visit to gain entry. If you lose your card we may charge you a card replacement cost. Entry may be refused as a result of unpaid or outstanding membership fees.
- 10.2. Entry will be refused or you may be requested to leave if you are using abusive or threatening language or behaving in a threatening way towards other members, staff or other parties, or if you are under the influence of drugs or alcohol, or if you are damaging or destroying the equipment or any part of the Club.
- 10.3. We may restrict your Membership at any time on the following basis:
  - (a) Concern for the health and or safety of you or your fellow members; or
  - (b) non-compliance with the terms of this Contract; or
  - (c) improper or harmful conduct engaged in by you.

**11. Minors and Age Restrictions**

- 11.1. All members must be a minimum of 14 years of age. All members aged 14 to 17 years ("Minors") must have a parent or guardian co-sign this Agreement.
- 11.2. All members who are Minors must undertake a gym induction prior to participating in any gym or fitness activity.
- 11.3. Minors must comply with the Rules and access to any gym or fitness activity can only occur when they are accompanied by a parent or guardian or are participating in a staffed activity.
- 11.4. For members aged under 16 years of age there will be no access to weight space training areas or group exercise classes which include resistance training, unless supervised one on one by a personal trainer.
- 11.5. Any member under 18 years of age understands that usage restrictions may apply and that this may change at any time as required by legislation and/or Oz Fitness policy.
- 11.6. Children up to and including 13 years of age are not permitted anywhere within the gym except for child minding facilities during normal supervised child minding hours.

**12. Physical Condition/Medical Advice**

- 12.1. It is up to you to let us know if you have any medical or physical condition which might prevent or affect your use of our facilities.
- 12.2. By entering into this Agreement you are representing that you have no such adverse medical or physical condition and that you are not aware of any health or medical reason why you should not use our facilities and services.
- 12.3. You also acknowledge that we have not given you medical advice and cannot in the future give you medical advice in respect of your condition and your ability to use the facilities.
- 12.4. You should check with your doctor before using the facilities if you have any doubts or concerns in that regard.
- 12.5. If your medical condition changes after you join you must inform us prior to using the facilities.
- 12.6. We reserve the right to restrict, suspend or terminate your membership if we are of the reasonable opinion that you are unfit to use our facilities. If your membership is restricted or suspended for this reason, your membership will not be reinstated until you provide us with a medical certificate confirming that you are fit to train or exercise using our facilities.
- 12.7. You further warrant and represent that you will not use our facilities, services or products whilst you are suffering from any infections, or contagious illness, disease or other ailment or whilst you are suffering from any physical ailment such as open cuts, or sores, or minor infections where there is a risk, however small, to other members and guests. We reserve the right to refuse entry or terminate memberships based on health reasons for the safety of our members.

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- 12.8. You acknowledge that any physical benefit or loss attributed to exercises can only be attained by your own actions and efforts. Any potential outcome identified by us, our staff, contractors and associates cannot be guaranteed.

### 13. Contractors

- 13.1. Contractors may provide services to members at the Club. Additional fees may apply to those services and if so, those fees are payable directly by you to the Contractors. We take no responsibility for the fees paid to these Contractors. You agree not to hold us liable and you agree to indemnify us and keep us indemnified for any claim suffered by you as a result of negligence by a Contractor.

### 14. Facilities and Services

- 14.1. You acknowledge that equipment and services are available on a "first come, first served" basis. No member is permitted to allow a non-Member to use the gym, equipment, services or facilities provided by the Club.
- 14.2. From time to time we may make changes to the operation of the Club which may include amongst other things:
- (a) Changing the operating hours to suit demand;
  - (b) Changing the availability of facilities or services offered by the Club;
  - (c) Changing or varying the equipment;
  - (d) Closing off part of the Club or equipment for maintenance or safety reasons;
  - (e) Changing conditions of entry or Club Rules;
  - (f) undertaking repairs;
  - (g) Reserving the use of some or all of our facilities for special events, competitions and private functions.
- You acknowledge that there will be no reduction, suspension, abatement, or apportionment of membership fees or other charges during such time when the above mentioned occurs. We will endeavour to provide reasonable notice of any changes on our notice boards and at reception.

### 15. Equipment and personal property

- 15.1. You understand and acknowledge that we purchase or lease the equipment from a third party and therefore do not manufacture any of the fitness or other equipment used in or about the Club.
- 15.2. You understand and acknowledge that we are not liable for defective products or equipment.
- 15.3. You agree to undertake the proper and safe use of the equipment provided and undertake not to use equipment in any manner contrary to instruction from our staff, contractors, associates or that attached to the equipment.
- 15.4. If you use any lockers provided by us, you acknowledge that they are not security lockers and valuables are left in there at your own risk. All belongings must be removed from the lockers prior to close of the Club or they will be removed and we take no responsibility for these items.
- 15.5. Any items of lost clothing will be held for one month and then donated to charity.
- 15.6. We are not liable to you for any personal property that is damaged, lost, or stolen while on or around the Club including but not limited to a vehicle or its contents or any property left in a locker.
- 15.7. If you cause damage to the Club or any equipment you are liable to us for its cost of repair or replacement.

### 16. Creche

- 16.1. If you wish to use any child minding crèche facilities provided by us whilst engaging in any physical activities at the Club, you agree to abide by the rules and guidelines set out by us (details of which are available at the child minding facility). You acknowledge and agree that you must remain on the premises whilst your child is being cared for and your child is not to be left for more than 2 hours on each occasion. You acknowledge that your child may not be offered care should the crèche ratio of staff to child be exceeded. You agree that the health, safety and wellbeing of your child is ultimately your responsibility and you accept that there are risks and dangers that may result from leaving your child in care.

### 17. Release and Limitation of Liability

- 17.1. You acknowledge that that whilst you are on our premises using our Club and fitness areas, including any water based activities, you are at risk of suffering physical harm or personal injury including broken bones, soft tissue injuries, joint injuries, muscle strains, permanent disability or death. These injuries may occur from you:
- Slipping on wet flooring;
  - Being struck by weights;
  - Colliding with equipment or other members;
  - Engaging in strenuous exercise and activities;
  - Failing to follow your instructor's directions; or

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- Incorrectly using equipment.
  - 17.2. You acknowledge that any such injury may result in not only from your actions but from the action, omission or negligence of others.
  - 17.3. You acknowledge and agree that the above mentioned injuries and potential courses of injuries are not exhaustive, and there are other unknown or anticipated risks that may result in injury, illness or death. If you are pregnant, you specifically acknowledge that this includes risks to your unborn child.
  - 17.4. You acknowledge that whilst every attempt is made to ensure that the services and facilities provided by us are safe, there are some significant and inherent risks involved, and you agree that you are participating voluntarily at your own risk and responsibility, thereby exposing yourself to certain risks.
  - 17.5. You also park in the car park at your own risk. We are not liable for any loss or damage to your vehicle or its contents.
  - 17.6. To the extent permitted by law, we exclude any liability to you in contract, tort, statute or in any other way for any injury, incapacity, damage, or loss of any kind whatsoever (including, without limitation, any liability for direct, indirect, special or consequential loss or damage), sustained by you, your child and/or any other person, or for any costs, charges or expenses incurred by you, arising from or in connection with this Contract and/or the services, products, equipment and crèche care provided by us and/or any act or omission of us or our employees or agents. This release does not apply if your death or injury results from gross negligence on our part.
- 18. Rules**
- 18.1. You acknowledge that we have in place membership policies, rules and regulations for the use of the equipment, the use of the premises and facilities and your membership. A copy of the Rules can be obtained from our reception. We reserve the right to vary such policies, rules and regulations from time to time.
  - 18.2. We follow the Queensland Fair Trading (Code of Practice – Fitness Industry) Regulation 2003, a copy of which can be obtained from our reception.
- 19. Assignment**
- 19.1. You must not assign any rights or benefits under this Membership Agreement unless you have obtained our prior written consent;
  - 19.2. We may assign or transfer any rights or benefits under this Membership agreement at anytime without notice to you without your prior consent.
- 20. Privacy Statement and Acknowledgment**
- 20.1. During the process of entering into this Membership Agreement with you and during the term of the Contract we will obtain access to certain types of your person information, such as information relating to your health and financial position. We will only use, disclose or deal with such information in accordance with our privacy policy. A copy of our privacy policy is available at reception and is shown on our website.
- 21. General**
- 21.1. This Membership Agreement is governed by, and you agree to submit to, the laws of Queensland.
  - 21.2. If any part of this Contract is or become illegal, void or unenforceable, this does not invalidate the rest of the Contract.
  - 21.3. If we do not enforce our Contract rights at any time, it does not mean that we have waived those rights. Those rights may still be exercised later.