

TERMS AND CONDITIONS

PLAYGROUND FITNESS LIMITED

1. TERMS AND CONDITIONS

1. In these Terms and Conditions we have used “we”, “us” and “our” to refer to PLAYGROUND FITNESS LIMITED (“Playground Fitness”) and “you” to refer to the Member. By agreeing and signing the Membership Agreement, you agree to be bound by these Terms and Conditions with Playground Fitness.

2. DEFINITIONS

1. **Minimum Term** means the minimum term of your Membership Agreement.
2. **Opening Hours** means:
 - (a) Monday to Friday: 5:00am to 8:00pm
 - (b) Saturday: 6:00am to 2:00pm
3. **Personal Trainers** means individuals who have a contract for service with Playground Fitness in order to provide personal training services to Members at the Premises of Playground Fitness.
4. **Fitness Class** means gym classes organised by Playground Fitness that are booked online through the MINDBODY Business Management Software on a ‘first come, first serve’ basis.
5. **Premises** means the premises at Retail 201, 143 Newton Road, Eden Terrace, Auckland including 12 carparks at St Benedict Street Carpark.
6. **Membership Agreement** means the main document that is completed online through the MINDBODY Business Management Software and gathers contact information about the Member (name, address, date of birth etc) and also outlines the principal terms and conditions of the membership and is signed by the Member.
7. **Member** means the person completing and signing the Membership Agreement or the person who will be the actual user of the membership paid for by another person.
8. **Start-up Fee** means a fee that is specified on our website and which may change, from time to time.

3. FACILITIES

1. Your Membership Agreement gives you the right to:
 - (a) access and attend the Fitness Classes; and
 - (b) to utilise the Personal Trainers subject to payment of the separate fee charged by the Personal Trainers,at the Premises during the Opening Hours (“Services”) in accordance with these Terms and Conditions. For the avoidance of doubt, your Membership Agreement does not entitle you to use the Premises or the equipment at the Premises unaccompanied or otherwise than in a Fitness Class or with a Personal Trainer.
2. Your Membership Agreement does not cover additional costs, which you must pay for separately, including:
 - (a) Food; or
 - (b) Drink; or
 - (c) Personal Training services.
3. We will take all reasonable care to ensure that the Services and the Premises are available during Opening Hours. However, demand from other Members or circumstances beyond our control may mean that the Services or the Premises may not be available.
4. By utilising the Personal Trainers at the Premises, you agree that you are entering into a separate agreement with the Personal Trainers and must pay the separate fee charged by the Personal Trainer directly to them. We shall not be liable for any loss caused by the wrongful act or omission of the Personal Trainer.

4. TERMINATION OF MEMBERSHIP AGREEMENT FOR HEALTH REASONS

1. You agree not to use the Services or Premises if you are suffering from any injury, illness, disability or other condition where to do so might worsen or cause additional injury, illness, disability or other condition, or pose a risk to our employees or other Members. We may terminate your Membership Agreement at any time by notice in writing to you, if we consider, at our sole discretion, that your use of the Services or Premises breaches the foregoing provisions of this clause 4.1 unless you can provide a medical certificate from a registered medical practitioner that you are able to safely utilise the Services. We will consult with you and act reasonably before we exercise our rights under this clause.
2. If your Membership Agreement is terminated under clause 4.1, we shall refund to you any pre-payments that you have made and, if applicable, will not charge you for our losses under clause 9.2.

5. FITNESS CLASSES

1. If you do not attend a Fitness Class that you have booked or cancel your attendance within 48 hours of the time and date of the relevant Fitness Class, you agree to pay to us a no show / late cancellation fee of \$10 which will be added to the amounts due to us under this Membership Agreement.

6. MINORS

1. An individual aged 15 or under shall not be granted a Membership Agreement for Playground Fitness.
2. An individual over the age of 15 and under the age of 18 shall be granted a Membership Agreement for Playground Fitness if a parent or guardian completes and signs a Consent Form at the Premises of Playground Fitness.

7. PAYMENT

1. You agree to make all payments, applicable to your Membership Agreement, either by Direct Debit or Credit Card, as shown on the MINDBODY business management software which may be processed on or after the date due, but not before.
2. You agree to pay a Start-Up Fee when you become a Member. We may waive payment of the Start-Up Fee, at our sole discretion, in certain circumstances which include (but is not limited to) Playground Fitness membership promotions. The Start-Up Fee is non-refundable.
3. You cannot terminate your Membership Agreement except as set out in clause 9.
4. If you hold a Membership Agreement that is subject to a Minimum Term:
 - (a) Your payments and Membership Agreement will end at the expiry of the Minimum Term unless you renew your Membership Agreement in accordance with clause 15.
 - (b) Your regular payments are guaranteed not to increase during the Minimum Term.
5. If you hold a Membership Agreement that is not subject to a Minimum Term:
 - (a) Your payments and Membership Agreement shall end on the date of termination in accordance with clause 9.1.
 - (b) We may change the price of your Membership Agreement by notice to you in accordance with clause 13.
6. You must continue making payments even if you do not use the Services.
7. It is your responsibility to make sure that there are sufficient funds in your nominated bank account.
8. When payment(s) are missed, any overdue amount will be added to the next direct debit or credit card charge. All costs associated with the recovery of any missed payments will be added to any amounts due. This may include:
 - (a) A \$7.50 (including GST) administration charge; and
 - (b) All reasonable collection agency costs.
9. When payment(s) are dishonoured, any overdue amount will be added to the next direct debit or credit card charge. All costs associated with the recovery of any dishonoured payments will be added to any amounts due. This may include:

- (a) A \$14.95 (Including GST) EziDebit Charge; and
- (b) A \$7.50 (Including GST) administration charge; and
- (c) All reasonable collection agency costs.

8. RULES AND PROCEDURES

- 1. You must comply with our rules and procedures at all times, which may change from time to time, while using our Services at the Premises.
- 2. You must not carry out any illegal acts at the Premises and you must comply with our health and safety requirements.
- 3. You must respect our employees and other members, and you must not take photographs at the Premises without our permission and the permission of every person in the photograph.

9. TERMINATION AND TRANSFER

- 1. If your Membership Agreement is subject to a Minimum Term, you may terminate your Membership Agreement at any time by providing us with written notice of your intention to terminate your Membership Agreement (a "Termination Notice"). If your Membership Agreement is not subject to a Minimum Term, you may terminate your Membership Agreement at any time by providing us with written or verbal notice of your intention to terminate your Membership Agreement (a "Termination Notice"). Termination of your Membership Agreement shall take effect after we provide written notice to you of receipt of your Termination Notice, but in any event, no longer than 10 Business Days after we receive your Termination Notice.
- 2. Where this Membership Agreement is terminated by you or us in accordance with its terms, if your Membership Agreement is subject to a Minimum Term, unless specified otherwise in these Terms and Conditions, you must pay us an amount to cover our losses. This amount shall be calculated by the following formula:

$$(33\%) \times (\text{Weekly Price of your Membership Agreement}) \times (\text{Remaining weeks of the Minimum Term})$$

- 3. If your Membership Agreement is subject to a Minimum Term, you can ask us to transfer your Membership Agreement to another person with our written consent for the remainder of the Minimum Term providing you pay a transfer fee of \$49 and provided that person complies with our usual Membership Agreement requirements.
- 4. Where this Membership Agreement is terminated by you or us in accordance with its terms, if your Membership Agreement is not subject to a Minimum Term you shall not be required to pay us any amount for our losses as specified in clause 9.2.
- 5. On expiry or termination of your Membership Agreement for any reason:
 - (a) we will be entitled to recover all amounts that you owe us up to the date of expiry or termination as a debt due and payable and/or deduct all or part of such amounts from any sums that would otherwise be due to you; and
 - (b) subject to clause 9.5(a), we shall refund to you any pre-payments that you have made.
- 6. If we terminate your Membership Agreement because of your default or other reason permitted under these Terms and Conditions, we will not be liable to you in any way for any loss or cost incurred by you as a result of that termination.

10. DEFAULT

- 1. You will be in default of your Membership Agreement if:
 - (a) You carry out any activity which is illegal, offensive, dangerous to other people or to you; or
 - (b) You act in breach of our rules and procedures or otherwise breach this Membership Agreement; or
 - (c) At any time four or more regular payments are overdue or any other amount payable to us by you under your Membership Agreement is overdue by 4 weeks; or

- (d) You, acting deliberately or recklessly, cause any damage to our equipment or Premises.
- 2. Clause 10.3 will apply where you are in default of your Membership Agreement under clause 10.1 and:
 - (a) Where the default is capable of remedy, if the default is not remedied or rectified within 10 Business Days of us giving notice to you to remedy or rectify the default; or
 - (b) Where the default is not capable of remedy.
- 3. Where this clause applies (refer to clause 10.2):
 - (a) You will remain liable for all amounts due to us under your Membership Agreement; and
 - (b) We may, at our election, terminate your Membership Agreement by providing written notice to you; and
 - (c) You agree to pay us any loss, liability, damage, cost or expense that we incur as a result of or arising from your default.

11. COOLING OFF PERIOD

- 1. Subject to the following sentence of this clause 11.1, you may cancel your Membership Agreement without cost or any requirement to pay losses under clause 9.2 by providing written notice to us of your wish to do so within 5 Business Days of you having received a copy of your initial receipt upon signing this Membership Agreement. We may require you to pay for the days that you have had access to the Services and for any goods you have received on joining up.

12. SUSPENSION

- 1. You may suspend your Membership Agreement for one period of no greater than 6 months if:
 - (a) you would suffer financial hardship if the regular payments under your Membership Agreement had to be paid; or
 - (b) you cannot use the Services on the grounds of ill health or physical or mental incapacity.
- 2. In order to suspend your Membership Agreement under clause 12.1(a), you must provide evidence that such payment would cause you financial hardship.
- 3. In order to suspend your Membership Agreement under clause 12.1(b), you must provide a medical certificate from a registered medical practitioner that the suspension of your Membership Agreement on medical grounds is necessary.
- 4. The Minimum Term (if applicable) of your Membership Agreement shall be extended by the length of suspension provided that you shall have no payment obligations or rights to use the Services during the period of suspension.
- 5. If you use the Services during your suspension, the suspension will be removed and your payments will restart immediately.

13. ALTERATIONS

- 1. We may make changes to your Membership Agreement or these Terms and Conditions from time to time. We will give you one month's notice of any changes using email or text. Where you reasonably believe that a change will be detrimental to you and we agree, acting reasonably that such change is detrimental to you (unless it is required by law), we will offer you the right to terminate your Membership Agreement in accordance with clause 9 by providing written notice to us prior to the date that the change is to take effect. On any such termination we shall not charge you any losses under clause 9.2.
- 2. Termination of your Membership Agreement shall occur on the date of the proposed alteration.

14. LIMITATION OF LIABILITY

- 1. You shall use the Services and the Premises and any equipment in the Premises at your own risk. Except to the extent that the law prevents us from excluding liability or as provided under clause 14.2, we will not be liable for any injury, theft, loss or damage suffered or

incurred by you (or to your property) except to the extent that it is caused by a deliberate act or omission by us or our employees. Your use of the car parks at the Premises is at your own risk and we are not liable for any loss or damage to your vehicle or its contents.

2. Nothing in these Terms and Conditions shall exclude any warranties, conditions or obligations imposed by the Consumer Guarantees Act 1993 and the Fair Trading Act 1986.

15. RIGHT OF RENEWAL

1. It is your responsibility to renew your Membership Agreement using the MINDBODY business management software.
2. The price of a Membership Agreement shall be at the rate that applies at the time of renewal.

16. PERSONAL INFORMATION

1. We shall at all times treat as confidential all personal information received from you.
2. We will collect, hold, use and disclose that information in accordance with the principles set out in the Privacy Act 1993. This means we will:
 - (a) use personal information only for the purpose we collect it for;
 - (b) retain that information only for so long as necessary to fulfil the purpose for which we have collected it; and
 - (c) disclose or release it to a third party only where we are required to or we are permitted by law to do so, if you have authorised the release or disclosure, or where it is the purpose (or a directly related purpose) for which the information was collected.
3. It is your responsibility to update your contact information and make sure that this is true and accurate.

17. NOTICES

1. Any notice or communication under or in connection with this Membership Agreement shall be given in writing and, unless otherwise stated, may be made by personal delivery, letter or email. Notices to us shall be sent to hello@playgroundfitness.co.nz.
2. Notices to you may be sent to your address or email address that you provided when completing your Membership Agreement.
3. Any notice which has been served on a Saturday, Sunday or public holiday is deemed to be served on the first Business Day after that day. Notices are deemed served at the following times:
 - (a) when given personally, on delivery;
 - (b) when sent by post, 5 Business Days after posting; and
 - (c) when sent by email, at the time of transmission provided no error message was received by the sender.