



Terms and Conditions

Virtual Vitality

1. Plain terms

These Terms use fairly plain language, so we want to make sure that some of the words and concepts used are easily understood. For instance, we have included clause headings as a guide but these do not form part of this agreement. Certain recurring words are defined in the details and elsewhere in this agreement and other forms of those words have equivalent meaning.

2. Cooling off

If you change your mind shortly after applying for membership, you may have an opportunity to cancel. You will need to let us know in writing within the time specified in the details for it to be effective. We will charge fair amounts for fitness services we have already provided, but will otherwise refund you any other amounts you have paid to us within 7 days. If you wish to end your membership otherwise, different terms apply as set out in these Terms.

3. Safety first!

The health and safety of members is important to us. You promise that you are in good physical condition and you do not know of any reason why you may not be able to exercise safely. If you feel unsure that you can make this promise, we ask that you do not engage in this services until you have seen your GP or other health provider.

4. We take your privacy seriously

(a) Our privacy policy

From when you apply for membership we will have access to personal information about you. We will protect this information and only use, disclose or deal with this information in accordance with our Privacy Policy. The latest version of the Privacy Policy will be available at Vitality Health Club.

(c) Please keep your contact details up to date

You promise to tell us promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to your membership with us. This includes any matters that affect the health or safety of you or others.

5. What you get when you join

From the Start Date you are entitled to access the members portal on the website. You will be provided with personalised log-in details and unlimited access to our library of workouts. New workouts are added on a regular basis.

6. Ending your membership

For the purposes of any requirements in this agreement to tell us in writing or give us written notice, we will accept notification by email.

6.1 On or after expiry of the Minimum Term

Your membership is Ongoing, it will continue after the Minimum Term of 4 weeks unless you tell us in writing at any time before the expiry of the Minimum Term that you do not wish your membership to continue.

If you have not told us that you wish your membership to end at the expiry of the Minimum Term, you can terminate any time after the end of the Minimum Term by giving us at least 7 days prior written notice. Any unused membership fees after the required notice period will be refunded.

Where neither you nor we terminate this agreement, any unpaid fees will need to be paid by you and in addition to our other rights we may have including our taking action to recover the outstanding payments.

6.2 Other ways that you can end your Membership

You can also cancel your membership where:

(When no cancellation fee will apply)

- we don't keep our end of the deal (please see paragraph (a) below);
- you become subject to medical incapacity (please see paragraph (b) below);
- we make changes to this agreement that adversely affect you (please see clause 11);
- you otherwise become entitled to do so under consumer legislation;

(When a cancellation fee may apply if inside the minimum term)

- you relocate or simply wish to cancel for any other reason (please see paragraph (c) below); or

(a) If we don't keep our end of the deal

You can cancel your membership by written notice to us if we breach any of our obligations under this agreement and we have not remedied that breach within a reasonable time after you have given us a written request that we do so.

No fees will be applicable for cancelling in accordance with this clause apart from, to the extent not impacted by our breach, the membership fees for the time you have been a member calculated on a pro-rata basis and any outstanding fees for other services already supplied to you.

(b) You can cancel for medical reasons

You can end your membership by telling us in writing if you cannot exercise for the remainder of Minimum Term due to an illness or a physical incapacity and you produce supporting documentation to our reasonable satisfaction.

In that event, you will only be charged the membership fees for the time you have been a member calculated on a pro-rata basis and any outstanding fees for other services already supplied to you.

(c) If your membership is no longer convenient

Otherwise, you can end your membership during the Minimum Term with immediate effect at any time by simply telling us in writing. We understand that circumstances change and so you do not need to give any reason.

In any case if your membership ends under this paragraph (c), you will be liable for the membership fees for the time you were a member calculated on a pro-rata basis, any outstanding fees for other services already supplied to you and, except as mentioned above, the cancellation fees.

6.3 **When can we end your membership?**

In addition to our other rights under this agreement, we can terminate your membership by written notice to you if you fail to act in accordance with any obligation under this agreement and if capable of remedy you do not remedy the failure within a reasonable time of us giving you written notice requiring you do so. However, we will not seek to end your membership in this way if you have failed to make a payment and we are also in breach of a material condition of this agreement. If we cancel this agreement under this paragraph you will be liable for the membership fees for the time you were a member, the cancellation fee and any other fees payable for further fitness services already supplied.

On rare occasions we may cancel a membership by written notice to the member without the need to give a reason. If we cancel your membership under this paragraph you will only be liable for the membership fees for the time you were a member. No cancellation fee will apply. You agree that this payment is your sole entitlement to compensation for cancellation of your membership under this paragraph.

7. **Fees you have to pay for your membership**

The fees you have to pay are specified in the details. This clause 6.3 sets out some further rights and obligations that apply in relation to particular fees.

If you fail to make any payment when due, we can suspend your membership and refuse you access to the member portal until all outstanding amounts have been paid in addition to our other rights under these Terms. Fees and charges continue to accrue during the suspension.

(a) **Membership fees**

Membership fees must be paid periodically in advance until your membership ends.

(c) **Cancellation fee**

The cancellation fee based on a payout figure equal to the membership fees that you would have paid for the remainder of the Minimum Term as at the cancellation date less 50%.

(d) **Fee increases**

We will not increase the membership fees during the Minimum Term. However, we may increase your membership fees or any other fees with effect any time after that. We will make a fair effort to tell you at least 30 days before by writing to you at the email address you gave us. Where we have done so, you authorise us to increase any debits from your nominated account in line with this increase. We will not use this right to vary the terms of any special offer which applies to you.

(e) **Refunds and the Credit Code**

We are entitled to deduct all fees and charges that you must pay under this agreement from any refund we give you. The National Credit Code does not apply to this agreement.

8. **When you pay by direct debit**

(a) **Authorisation to deduct fees**

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under this agreement. Accordingly, it is essential that you keep your account details up to date.

(b) If your payment is late or rejected

You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.

Any bank fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the Direct Debit Provider).

If a payment remains outstanding, you agree that, unless we are in breach of our obligations under these Terms, we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you. If the amount owing is more than one periodic membership fee we will seek to contact you first.

(c) Direct debits

If you choose to pay fees by direct debit, then this will be through the Direct Debit Provider. The Direct Debit Provider may be us (if we are authorised) or a third party provider who is not a party to this agreement and whose only role is to provide direct debit services.

We will provide you with a copy of the terms and conditions that apply to the direct debit services. Those terms and conditions are entirely separate to this agreement and you may have rights and obligations under those terms and conditions. As such, the Direct Debit Provider acting in its capacity as such has no liability to you in connection with your involvement in exercise activities under this agreement.

11. Changes to your membership agreement

We may need to make changes to this agreement including our Rules during your membership. However, we will always try to do this in a way that is fair by giving you an opportunity to cancel your membership if you do not agree to the change as described in this clause below.

We will tell you in writing of the proposed change in advance and tell you the date that it will come into effect. This effective date will be at least 30 days from the date of our notification unless it is impractical for us to do so. Your membership will be amended with effect from the effective date. If however, you are adversely affected by the change, you may cancel your membership without payment of a cancellation fee by telling us in writing before that date. Please note you cannot cancel under this clause if we are required to make the change in order to comply with a law or any direction of a competent authority.

12. Our liability to you

(a) Statutory guarantees

ACL: The Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides certain guarantees in sections 60 to 62 (**statutory guarantees**) which generally require that services supplied to you:

- are rendered with due care and skill,
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier and might reasonably be expected to achieve any result you have made known to the supplier and
- are supplied within a reasonable time (when no time is set).

Permitted exclusion: However, the CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from a failure by us to comply with any statutory guarantee.

In the previous sentence, “injury” means:

- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- the contraction, aggravation or acceleration of a disease; or

- the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.

Reckless conduct: This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

(b) State based notices

Please refer to the attached ACL Exclusion Notice which contains complementary information about the statutory guarantees and the limitations that we are allowed to place on them. These are without prejudice to the limitations contained in this clause.

(c) General exclusions

Please note that nothing in this agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.

Otherwise, and except as expressly included in this agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this agreement. In particular, but subject to the preceding paragraph, we are not liable for:

- negligence; or
- breach of terms implied that services will be provided with reasonable care and skill, at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection with or under this agreement, but to avoid doubt we do not exclude liability for our reckless conduct.

14. General legal guff

(a) Unexpected events

We are not liable if you cannot use your membership due to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, then either you or we can cancel this agreement with immediate effect by telling the other in writing. We are entitled to make part or all of the services unavailable for up to two weeks during each calendar year to undertake maintenance, repairs or improvements, in which case we will extend your membership by the time you are unable to use the service.

(b) Our logo and intellectual property

No rights in relation to our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under this agreement, except that any exercise program created for you may be used while you are a member for the purpose of your exercise activities.

(d) Severability and waiver

If a court finds that any part of any term of this agreement is or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of this agreement. If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so on future occasions.

(e) Applicable law

The law of the State/Territory specified in the details applies to this agreement.