

TERMS AND CONDITIONS

These are the Terms and Conditions on which Beechworth Fitness (“we” or “us” or “our”) is willing to provide membership to the Fitness Centre to you. Any variation to these Terms and Conditions must be in writing and signed by our authorized officer.

THIS IS AN IMPORTANT DOCUMENT – PLEASE ENSURE YOU READ IT CAREFULLY

THIS IS PART OF YOUR CONTRACT

1. Rectification of the Contract

We have five (5) days after the formation of the Contract to rectify any error or miscalculation provided in the Contract.

2. Comfort Guarantee

At any time up to seven (7) days (“Comfort Guarantee Period”) after the Membership Application is accepted, you may cancel your membership without cause or reason, but you must advise us in writing. We will cancel the Contract and refund to you the Membership Fee and any other amounts paid less the Administration Fee and the cost of any fitness services already supplied within seven (7) days of receipt of your cancellation notice. On cancellation of the Contract you must return to us your membership access key FOB. After the Comfort Guarantee Period ends if you wish to terminate the Contract you will be required to pay certain fees to us. The amount of the fees payable will vary depending upon the reason that you are terminating the Contract. The following termination clauses provide full details in relation to your right to terminate the Contract and any fees payable in such circumstances.

3. Termination within the Minimum Term

You may terminate the Contract without additional fees prior to the expiry of the Minimum Term with immediate effect by providing us with written notice if:

- We make changes to the Contract which adversely affect you (please refer to clause 6);
- We breach our obligations to you (please refer to clause 7); or
- You become subject to medical incapacity (please refer to clause 8);
- You otherwise become entitled to do so under consumer legislation

In any other case you are required to provide us with 30 days’ notice of cancellation of your membership contract during which time any scheduled membership debits are required to be honored. You may continue to use the Centre during those 30 days. At the expiration of 30 days an amount equivalent to 2 months of your current membership fee will be payable.

4. Termination upon expiry of the Minimum Term

If you have an ongoing Contract you may provide written notice of termination at any time prior to the expiry of the Minimum Term and the Contract will then terminate on expiry of the Minimum Term.

5. Termination after the Minimum Term

If you have an ongoing Contract you may terminate the Contract after Minimum Term if you provide us with thirty (30) days written notice. All memberships fee’s due during that time will continue to be debited and you may continue to use the Centre. Membership payments can only be ceased once the access key fob has been

returned. A \$50 fee is payable for lost, damaged or unreturned key fobs. Where either of us terminates the Contract, any unpaid fees will need to be paid by you or we may take action to recover the outstanding payments. We can refuse you entry to the Fitness Centre at any time that your membership payments are not up to date.

6. Termination when Changes made to Terms and Conditions

You are entitled to terminate the Contract with immediate effect at any time by providing us with written notice if:

- we make amendments to these Terms and Conditions and you do not continue to use the Fitness Centre as contemplated by clause or
- higher Membership Fees applicable to your membership are introduced.

No fees will be applicable for terminating in accordance with this clause apart from the Administration Fee, Membership Fees for the time you have been a member and any additional fees for fitness services already supplied.

7. Termination where we Breach our Obligations

If we are in breach of our obligations under the Contract and we have not remedied that breach within a reasonable time after you have notified us of our breach in writing, you are entitled to terminate the Contract with immediate effect at any time by providing us with written notice. No fees will be applicable for cancelling in accordance with this clause apart from, to the extent not impacted by our breach, the Administration Fee, Membership Fee for the time you have been a member and any additional fees for fitness services already supplied.

8. Termination for Medical Reasons

You may terminate the Contract with immediate effect at any time by providing us with written notice if you produce supporting documentation to our satisfaction to demonstrate medical incapacity. In that event, you will only be charged the Administration Fee, Membership Fees for the time you have been a member and any additional fees for fitness service already supplied. No refund will be applicable for any up-front membership payments. Medical incapacity will be deemed such incapacity that you are unable to make use of ANY of the services or equipment at the Centre as determined by Beechworth Fitness with regard to the medical evidence produced.

9. Termination of contract within the Minimum Term

You may terminate the contract within the minimum term as stipulated in your agreement by providing 30 Days written notice during which time you may continue to use the Centre. However, in that event, unless we are in breach of our obligations under the Contract, you will be charged the Administration Fee, Membership Fees for the time you were a member, a Departure Fee (equal to two months membership at your applicable rate) and any other fees payable for any further fitness services already supplied. If you transfer your membership to someone who is not a current member, the Departure Fee will be waived.

10. Fitness Centre Etiquette

You must comply with the Rules. Certain areas of the Fitness Centre have facilities with higher risk areas (including but not limited to, play zones / junior care) You must ensure you read, understand and abide by the rules for the Fitness Centre which are notified to you through signage hand-outs or website and the Rules. In

acceptance of this contract you agree to abide by all conditions associated with the unsupervised access to the Centre. See annexure "A" for full list of Centre rules and Etiquette.

11. Membership Entitlement

You may use the Fitness Centre, and our other facilities, services and products only during the specified opening times and only for the term of your membership, subject to you meeting these Terms and Conditions and the Rules.

12. Minimum Age

Membership is limited to persons who are at least 14 years of age. A member must be at least 14 years of age to participate in weight-based group exercise of resistance training. Members aged between 14 and 16 MUST only follow the program for which they have been prescribed.

13. Membership FOB

You will be issued with a Membership key FOB. Entry to the Fitness Centre without a valid Membership Fob is at our discretion and photo identification will be expected. You must not loan you Membership FOB or permit its use by anyone other than you. Your Membership FOB remains our property and must be returned to the Fitness Centre on termination. If your Membership Card is lost or misplaced, we will issue a replacement FOB to you at a charge of \$50.

14. Right of Exclusion

We can refuse entry to the Fitness Centre or cancel your membership without any warning or notice for inappropriate threatening or harassing behavior, damaging equipment or facilities or use of illegal or performance enhancing drugs in the Fitness Centre.

15. Payment of Fees

Ezypay: You acknowledge that, if you choose the periodic billing option, payment will be made in advance via the direct debit service provided by Ezypay Pty Limited ("**Ezypay**"). You acknowledge that you have been provided with a copy of the Ezypay terms and conditions via email. You acknowledge that Ezypay may amend those terms and conditions from time to time by giving 30 days' notice to us by communicating an updated version on the Ezypay website, being www.ezypay.com.au You may contact Ezypay on 300 762 726.

Payment: All Membership Fees may be recovered from your nominated credit/debit account (as provided from time to time). Any bank fees charged to us because of a rejection when collecting your due membership fees may be charged directly to you by Ezypay. If a Membership Fee payment remains outstanding you agree that, unless we are in breach of our obligations under the Contract. Ezypay may continue to debit the nominated credit/debit account with the total amount due without notice to you. If a second collection is rejected, your access will be suspended until your account is bought up to date. Any suspension of access to the Centre due to arrears will still accrue as membership time. Should you default on any payments and/or charges, you agree to pay all collection costs including agency fees and administration charges, court or arbitration costs and reasonable attorney fees, which may be paid or incurred by the Centre.

Ezypay Fees: You acknowledge that Membership Fees payable by you will include a fee payable for the Ezypay direct debit service, whether included in the Membership Fee quoted to you or added as a surcharge.

Up Front Memberships: Memberships that have been paid in full up front are not the subject of a refund unless we are in breach of our agreements or obligations. A discount has been applied to upfront memberships to account for this provision and no refund will be issued under section 3 conditions unless required under Australian Consumer legislation.

Administration Fee

The Administration Fee is a fee used for all set up costs of a new or a renewing membership. The Administration Fee is not refundable, even if you choose to cancel your Membership Application during your Comfort Guarantee Period.

16. Membership Fee Increase

If you have an ongoing Contract then, subject to your rights in clause 6, we reserve the right at any time after the Minimum Term on the Contract, to increase the Membership Fees to be charged. If we increase Membership Fees and we have used reasonable endeavors to provide prior notice to you, you hereby authorize us to increase any direct debits to your cred card or bank account which you have authorized upon joining. We will not use this right to vary the terms on any special offer which applies to you.

17. Time Freeze

Membership time freeze is available for a maximum of 1 month per calendar year (or at the discretion of management) provided that all amounts payable for your memberships are paid up to date. All time freezes must be applied for in writing to us. Written notice of a time freeze must be provided to us at least fourteen (14) days prior to the commencement of the time freeze period. NOTE: no pro-rata of direct debits will occur. Time freeze is not available for Contract memberships of less than three (3) months.

18. Damages/ Personal Injury

Warning: Whilst in the Fitness Centre you may suffer injuries including broken bones, soft tissue injuries and joint injuries. Any injuries suffered by you may occur as a result of weights striking you, collision with equipment or other members or as a result of slipping on a wet floor.

Warning: (Victoria Only)

WARNING UNDER THE FAIR TRADING ACT 1999 Under the provisions of the *The Fair Trading Act 1999* several conditions are implied to contracts for the supply of certain goods and services. These conditions mean that the supplier named on this form is required to ensure that the recreational services it supplied to you are – rendered with due care and skill; and as fit for the purpose for which they are commonly bought as it is reasonable to expect in the circumstances; and reasonably fit for any particular purpose or might reasonably be expected to achieve any result you have made known to the supplier. Under section 32N of the *Fair Trading Act 1999*, the supplier is entitled to ask you to agree that these conditions do not apply to you. If you sign the Contract, you will be agreeing that your rights to sue the supplier under the *Fair Trading Act 1999* if you are killed or injured because the services were not rendered with due care and skill or they were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in the Membership Terms and Conditions. NOTE: The change to your rights, as set out, in these membership Terms and Conditions, does not apply if your death or injury is due to gross negligence on the supplier's part. "**Gross Negligence**" is defined in the *Fair Trading (Recreational Services) Regulations 2004*.

Acknowledgements (VICTORIA ONLY): You acknowledge that you will use your best endeavors to exercise safely and that you will not take valuables into the Fitness Centre. We will comply with the statutory conditions

set out above by ensuring that the services supplied to you are rendered with due care and skill; and as fit for the purpose for which they are commonly bought as it reasonable to expect in the circumstances; and reasonably fit for any particular purpose or might reasonably be expected to achieve any result you have made know to us. The exclusion of liability below applies to death and personal injury but does not operate to excuse any breach by us of the statutory conditions referred to above that result in loss or damage to your personal property.

Limitation of Liability, Release and Indemnity: We will compensate you for death, personal injury, illness or property damage caused by gross negligence on our part and for loss and damage to your personal property arising from our failure to supply service to you with due care and skill and in a manner fit for the purpose which is reasonable to expect in all the circumstances. In consideration of the grant of membership to you, entitling you to engage in fitness activities, you hereby otherwise:

- Release and forever discharge us to the extent permitted by law from all actions, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs, and expenses however arising that you may have had but for this release arising from or in connection with your involvement in fitness activities in the Fitness Centre or using our facilities, service or products;
- Indemnify us to the extent permitted by law in respect of all actions, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs and expenses however arising as a result of or in connection with your involvement in fitness activities in the Fitness Centre or from using our facilities, services or products.

Ezypay not liable: You acknowledge that Ezypay is not a party to the Contract and its only role is to provide direct debit services to us. You may have rights against Ezypay in respect of the direct debit service under your agreement with them. However, you otherwise hereby release and forever discharge Ezypay of all actions, suites, proceedings, claims, demands, losses, damages, penalties, fines, costs and expenses however arising that you may have had but for this release arising from or in connection with your involvement in fitness activities in the Fitness Centre or otherwise in connection with the Contract.

19. Risk Warning

It is your responsibility to ensure that you correctly operate or use any of our facilities, services, products or equipment, including the adjustments of levels or settings on any equipment. If you are in any doubt as to how to correctly operate any of our facilities services, products or equipment you should consult a member of our staff prior to use.

20. Responsibility for Damage

You are solely responsible for any damage which you may cause to the Fitness Centre, facilities, services, products or equipment, if such damage is caused by your willful act and/or negligence.

21. Your Physical Condition

You warrant that on the date of the Contract, and on each date that you use our Fitness Centre, facilities, service or products, that you are in good physical condition and that you are not aware of any medical or other reason why you are not capable of engaging in active or passive exercise and that such exercise would not be detrimental to you health, safety, comfort or physical condition. We and our staff and contractors are not medically trained and therefore are not qualified to assess whether you are in good physical condition and whether you are able to engage in active or passive exercise without detriment to your or their health, safety, comfort or physical condition. We strongly advise that you take expert advice prior to commencing any

exercise program if you are in any doubt about your ability to engage in active or passive exercise. You further warrant and represent that you will not use the Fitness Centre or any of 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.

22. Change of Details

You must keep us promptly informed of any change of address, contact numbers, email address, bank account and credit card details for payment and any other personal information that is relevant to your membership with us.

23. Image

By completing the Membership Application, you consent to us using your image in any promotion or other material in relation to the Fitness Centre, facilities, services and products.

24. Contractors

Contractors and franchisees may provide services at the Fitness Centre. Fees for such services are paid directly to the contractor and franchisees. We take no responsibility for the fee paid to these contractors and franchisees. You hereby release and indemnify and keep indemnified us for any claims suffered by you as a result of an act or omission by a contractor or franchisee in the Fitness Centre.

25. Assignment

You must not assign any rights or benefits under these Terms and Conditions unless you have obtained our prior written consent. We may assign or transfer any rights or benefits under these Terms and Conditions at anytime without notice to you however we will remain liable to meet our obligations to you under these Terms and Conditions and the Contract.

26. Your Relationship with Us

Nothing in these Terms and Conditions creates any relationship of employment, agency or partnership between you and us.

27. Intellectual Property

These Terms and Conditions do not give you any intellectual property rights in the Fitness Centre, or in our facilities, services or products. Your details and information that you provide us about yourself may be retained by us on our database. You have no rights in that database. We may use such database in the conduct of our business and we may allow Ezyapp to use the database in conduct of our business, subject to privacy and other relevant laws.

28. Privacy Statement and Acknowledgement

During the process of entering into the Contract with you and during the term of the Contract we will obtain access to certain types of personal information, such as information relating to your health and financial position. We will only use and Ezyapp will only use, disclose or deal with such information in accordance with our Privacy Statement. A full copy of our Privacy Statement is available on our website.

29. Governing Law

These Terms and Conditions are governed by, and you agree to submit to, the laws applicable in the state or territory of Australia in which the Contract was formed.

30. Variation

We may, subject to your rights in clause 6, after these Terms and Conditions or the Rules at any time upon thirty (30) days written notice. All use of our Fitness Centre and its facilities, services and products after the date specified in such notice will be subject to such altered Terms and Conditions or Rules. IF you continue to use our Fitness Centre and its facilities, services and products after the date such alteration become effective or otherwise demonstrate by your conduct that you agree to the altered Terms and Conditions or Rules, you will be deemed to have agreed to the altered Terms and Conditions or Rules.

31. Your Obligations

You acknowledge that the Consumer Credit Code does not apply to these Terms and Conditions.

If, at any time:

- You believe that you may not or by be unable to perform or comply with your obligations under these Terms and Conditions;
- You are unable to pay your Membership Fees as they fall due for payment;
- A cheque received from you is dishonored;
- You are or become bankrupt; or
- You Membership Fees are overdue and are not paid in accordance with these Terms and Conditions in circumstances where we have not breached our obligations under the Contract;

You agree that;

- You will immediately notify us that one or more of the above notifiable events has occurred and you will keep us notified on a monthly basis until such notifiable event no longer exists.
- We have no obligation and will cease to allow you to use any of our services or products available to you under your membership while a notifiable event exists;
- We may terminate the Contract with immediate effect by providing you with written notice;
- We may request payment in advance for the remainder of the term of your membership; and
- We have no obligation to respond to any offer you make to extend or renew your membership while a notifiable event exists.

32. Severability

If any part of this Contract is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Contract.

ANNEXURE A

- Harassment and / or intimidation will not be tolerated
- No photos or video in gym to be taken by members without prior approval
- No selling or promoting of products or services not related Beechworth Fitness allowed in the Centre. If this occurs, immediate cancellation of the persons membership will apply.
- Members must not intentionally drop weights on the floor at any time.

- No alcohol or drugs are permitted in the Centre and you must not be under the influence of drugs or alcohol
- You must exit the gym prior to 11pm. A \$50.00 call out fee applies for failure to do so
- All members must scan key fob for entry
- You MUST NOT allow access to anyone else even if they are a gym member
- You must wear clean covered footwear and clothes always. Dirty work boots/shoes/runners will incur a \$25 cleaning fee.
- No excessive swearing or profanity
- Full size towel must be used always – no exceptions
- The use of mobile phones should be kept to a minimum and ring tones must be kept to low or silent.
- Put rubbish in bins and return weights and bars to correct place after use
- Do not lift heavy weights over our head if no one is spotting
- You MUST report lost fob immediately – Replacement fee applies of \$50
- Unauthorized use of a member's fob to access the Centre may make the member liable for any damage / loss caused. A \$50 unauthorized access fee will be charged.
- Theft / Damage and / or any other criminal conduct will be reported to police. A \$50 call out fee will be applied for unnecessary use of the duress alarm.
- Inappropriate conduct should be reported to management
- Anyone found conducting personal training (in the opinion of Beechworth Fitness Management) without approval will be excluded from the gym and may be charged a PT access fee.
- Any incidents, including any use of the first aid kit should be recorded in the incident book for follow up by Beechworth Fitness staff.
- No children permitted in the Centre during unsupervised hours.
- Please ensure you turn off treadmills, televisions and air conditioning if you are the last person to leave
- Have fun