



## Welcome to the FIRM Fitness Centre

These are the Terms and Conditions on which The FIRM Fitness Centre ("FIRM Fitness" or "we" or "us" or "our") is willing to provide membership of the Fitness Business to you. Any variation to these Terms and Conditions must be in writing and signed by our authorised officer. You should read this document carefully before you agree to become a member of FIRM Fitness and keep it in a safe place to refer back to from time to time. **Note: If, after agreeing to become a member of FIRM Fitness, you decide you do not wish to proceed, please refer to Clause 2 (Cooling Off Period).**

If you do not understand something in these Terms & Conditions, please ask the FIRM Fitness Manager, or call 02 4423 4334. They will be happy to assist you.

**THIS IS AN IMPORTANT DOCUMENT - PLEASE ENSURE YOU READ IT CAREFULLY THIS IS PART OF YOUR CONTRACT**

### 1. Contract Rectification

We have seven (7) days after the formation of the Contract to rectify any error or miscalculation provided in the Contract.

### 2. Cooling Off Period

After applying for membership, you have a seven day period ("Cooling Off Period") during which you may cancel your membership. Notice must be given in writing. A refund equal to the Membership Fee and any additional amounts paid minus the Administration Fee and the cost of any fitness services already supplied will be applicable. If you terminate your Contract after the Cooling Off Period, different conditions will apply. The following termination clauses outline your right to terminate the Contract and any fees payable in such circumstances. Not applicable to terms less than three months or visit passes.

### 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);
- you become subject to medical incapacity (please refer to clause 8); or
- you otherwise become entitled to do so under consumer legislation.

### 4. Termination on expiry of the Minimum Term

If you have a Pre-paid Fixed Term Contract it will terminate automatically 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 the Minimum Term if you provide us with thirty (30) days written notice. Any unused Membership Fees after the 30 day period will be refunded. However, 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 Business 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 Business as contemplated by clause 26; 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 Fees 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 reasonable 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 services already supplied.

### 9. Termination for Relocation or Convenience

You may terminate the Contract with immediate effect at any time by providing us with written notice without cause or if you relocate to an area not proximate to the Fitness Business. 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 referable to any amount of the Minimum Term remaining and any other fees payable for any further fitness services already supplied. If you transfer your membership to someone who is not a member, the Departure Fee will be waived.

### 10. Fitness Business Rules

You must ensure you read, understand and abide by the Rules which are notified to you through signage, hand-outs or our website.

### 11. Right of Exclusion

We can refuse entry to the Fitness Business, cancel your membership and/or terminate the Contract without warning or notice for inappropriate threatening or harassing behaviour, damaging equipment or facilities or use of illegal or performance enhancing drugs in the Fitness Business.

### 12. Direct Debit Payments

**Direct Debit Service Provider:** You acknowledge that, if you choose the periodic billing option, payment will be made in advance via the direct debit service provided by EZYPAY ("Direct Debit Service Provider"). You acknowledge that you have been provided with a copy of the Direct Debit Service Provider terms and conditions. You acknowledge that the Direct Debit Service Provider may amend those terms and conditions from time to time by giving 30 days notice by communicating an updated version on the Direct Debit Service Provider website, being [www.ezypay.com.au](http://www.ezypay.com.au). You acknowledge that the Direct Debit Service Provider is not a party to the Contract and its only role is to provide direct debit services to us. You may have separate rights against the Direct Debit Service Provider pursuant to the Direct Debit Service Provider terms and conditions. You otherwise agree not to hold the Direct Debit Service Provider liable for any actions, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs and expenses arising from or in connection with your involvement in fitness activities in the Fitness Business or otherwise in connection with the Contract. You may contact the Direct Debit Service Provider on 1300 300 553.

**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 us or the Direct Debit Service Provider. If a Membership Fee payment remains outstanding, you agree that, unless we are in breach of our obligations under the Contract, we or the Direct Debit Service Provider may continue to debit the nominated credit/debit account for the total amount due without notice to you.

**Direct Debit Service Provider Fees:** Membership Fees may include a fee payable for the service provided by the Direct Debit Service Provider.

**Changes to the arrangement:** If you want to make changes to or stop the drawing arrangements, written notice of this must be forwarded to the Centre and your financial institution including details of all changes requested.

**Enquiries and Disputes:** Should you wish to discuss these arrangements, including any possible disputed amounts, please call the Centre or your financial institution directly. Where disputes are referred to us, we will endeavour to respond to them within seven days. If you do not receive a satisfactory response from us in relation to your dispute, you may contact your financial institution. They will respond to you with an answer to your claim in accordance with their published processes.

**Your commitment to us:** It is your responsibility to ensure that:

- Your nominated account can accept direct debits (your financial institution can confirm this);

- on the drawing date (and for 5 subsequent days) there is sufficient cleared funds in the nominated account; and

- that you advise us in advance if the nominated account is to be transferred or closed. That if you are paying your fees by credit card, you advise us of any changes to your credit card information, i.e. expiry date, or number.

### 13. 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 Cooling Off Period.

### 14. Membership Fee Increase

If you have an Ongoing Contract or a Periodic Agreement then, subject to your rights in clause 6, we reserve the right at any time after the Minimum Term of the Contract, to increase the Membership Fees to be charged. If we increase Membership Fees we will provide at least two weeks prior notice of the increase by post or email to the addresses provided by you in the Membership Application. 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.

### 15. Suspension (Time Hold)

Membership suspension is available provided that all amounts payable for your membership are paid up to date. You can suspend your membership for travel, medical or other reasons permitted by Clause 36 upon provision of satisfactory supporting documentation. All suspensions must be applied for in writing to us at least fourteen (14) days prior to the commencement of the suspension period. Debit payments will only be suspended for the direct debits that fall within the suspension period.

### 16. Damages/Personal Injury

**Warning:** Whilst in the Fitness Business 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 you slipping on wet flooring.

**Limitation of Liability, Release and Indemnity:** We will, unless excused from liability by operation of statute, 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 services 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:

- agree, to the extent permitted by law, to not hold us liable for any actions, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs and expenses however arising that you may have had but for this clause arising from or in connection with your involvement in fitness activities in the Fitness Business or using our facilities, services or products;

- agree that you will indemnify us to the extent permitted by law in respect of all actions, suits, proceedings, claims, demands, losses, damages, penalties, fines, costs or expenses however arising as a result of or in connection with your involvement in fitness activities in the Fitness Business or from using our facilities, services or products.

### 17. Risk Management

To mitigate risk and 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, you are required to undertake an instructional consultation with a member of our staff before use.

### 18. Responsibility for Damage

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

### 19. Disclosure of your Physical Condition

Provision of a safe and effective exercise program is dependent upon accurate health and fitness profiling. You

agree to disclose to us all relevant personal health and fitness information both prior to and during engagement in any exercise program, service or facility we provide to you, as a part of your membership. This is inclusive of any health risk assessment, initial and periodic fitness assessment and relevant information or recommendations provided by your medical or allied health practitioner/s. You further warrant and represent that you will not use the Fitness Business 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.

#### 20. Change of Details

You must keep us promptly informed of any change of address, phone 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.

#### 21. Contractors

Contractors and franchisees may provide services at the Fitness Business. Fees for such services are paid directly to the contractors and franchisees. We take no responsibility for the fees paid to these contractors and franchisees. You hereby agree not to hold us liable and you agree to indemnify us and keep us indemnified for any claims suffered by you as a result of an act or omission by a contractor or franchisee in the Fitness Business.

#### 22. 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 any time without notice to you. However, we will remain liable to meet our obligations to you under these Terms and Conditions and the Contract.

#### 23. Intellectual Property

These Terms and Conditions do not give you any intellectual property rights in the Fitness Business, or in our facilities, services or products.

#### 24. 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 your personal information, such as information relating to your health and financial position. We will only use and the Direct Debit Service Provider will only use, disclose or deal with such information in accordance with our Privacy Statement. A full copy of our Privacy Statement is shown on our website, [www.firmfitness.com.au](http://www.firmfitness.com.au).

#### 25. 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.

#### 26. Variation

We may, subject to your rights in clause 6, alter these Terms and Conditions or the Rules at any time upon thirty (30) days written notice. All use of our Fitness Business 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 Business and its facilities, services and products after the date such alterations 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.

#### 27. 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 may be unable to perform or comply with your obligations under these Terms and Conditions;
- you are unable to pay your Membership Fees, including any instalment of Membership Fees, as they fall due for payment;
- a cheque received from you is dishonoured;
- you are or become bankrupt; or
- your 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.

#### 28. Severability

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

#### 29. Membership Entitlement

Your membership entitles you to use the Centre in accordance with these terms and the rules of the Centre. Your obligations are not dependent on the amount of times you utilise the Centre. Memberships are non-assignable, non-transferable and non-refundable except as permitted in these Membership Terms and subject to law.

#### 30. Minimum Age

Please refer to Kids in Gyms Summary.

#### 31. Access to Centre

You will be issued with an Access Card when joining which is attached to your account. Entry to the Centre without a valid Access Card is at our discretion. You must not loan your Access Card or permit its use by anyone other than yourself. Any member involved in the transference of their Access Card may have their membership suspended or cancelled. Your Access Card remains our property and should be returned to the Centre on termination. Lost, stolen or damaged cards will incur a replacement fee.

#### 32. Pre-paid Membership

**Up-front Membership:** As an alternative to direct debit memberships you may choose to purchase an upfront membership.

**Roll Over Period:** You have a 'Roll Over' period of one month commencing on the date a Contract expires. If you wish to utilise this period to restore your membership you will not incur an administration fee.

#### 33. Termination within the Minimum Term

You may terminate the Contract prior to the expiry of the Minimum Term with 30 days written notice. However, in that event, unless we are in breach of our obligations under the Contract, or those outlined in Clause 3, you will be charged the Administration Fee, Membership Fees for the time you were a member, a Departure Fee referable to any amount of the Minimum Term remaining and any other fees payable for any further fitness services already supplied. If you transfer your membership to someone who is not a member, the Departure Fee will be waived.

#### 34. Change in GST Rate

All fees payable under the contract are "GST inclusive". If the rate at which GST is charged changes then the fees payable under the contract will increase or decrease by the amount by which GST increases or decreases. This increase or decrease will occur even if you are within your minimum term.

#### 35. Consumer Price Index (CPI) Adjustments

The CPI is provided by the Australian Government to ensure that businesses can meet the increased costs associated with running their operations. All scheduled fees listed by the Centre may be adjusted annually to reflect current CPI adjustments. CPI affects all fees regardless of contract periods. A minimum of 14 days notice will be given via, signage, website, email or letter.

#### 36. Time Hold

Membership Time Hold is available to all Direct Debit memberships. A minimum of two weeks Time Hold is available for Fortnightly Direct Debit to a maximum of 12 weeks per calendar year with a fee applied for each fortnight. A minimum of one month Time Hold is available for Monthly Direct Debit to a maximum of three months per calendar year with a fee for each month. Additional periods (no longer than 16 fortnights or four months) are available for travel or medical reasons upon production of supporting documentation to our reasonable satisfaction. **NOTE: No pro-rata of direct debits will be done; the debit will only be frozen for the direct debit/s that falls within the Time Hold period. For Up-Front Quickstart memberships Time Hold is not available.**

#### 37. Operating Hours

The Centre's operating hours may differ and are available upon request at the Centre, by calling (02) 4423 4334 or visit our website, [www.firmfitness.com.au](http://www.firmfitness.com.au) **Note: FIRM Fitness will be closed on all Public Holidays.**

#### 38. Change of Rules/Operations

We cannot guarantee that we will not need to add to, change or remove rules, conditions of membership, including but not limited to the Membership Terms and Conditions, opening and closing hours and the services and facilities offered by the Centre from time to time. Any such additions, deletions or changes will be notified to you through either the newsletter/magazine published from time to time by us and/or notice in the Centre or to your last known address in writing or by phone with at least 30 days notice. If at any time the Centre's operations or services are temporarily or

permanently suspended for any reason, we may (subject to availability) by written notice to you offer either complimentary Time Hold or you may cancel your membership as outlined in Clause 6. Subject to any applicable law, you won't have any other claim against us if this happens. **NOTE: We won't use this right to vary the terms of any special offer which applies to you unless within the five day period after signing where a miscalculation has occurred.**

#### 39. Unavailability of Facility or Services

You agree to accept the fact that a particular facility or service in the premises may be unavailable at any particular time due to mechanical breakdown, fire, condemnation, loss of lease, catastrophe or any other reason. Further, you agree not to hold the FIRM Fitness Centre responsible or liable for such occurrences.

#### 40. Image

By signing this Contract you consent to us using any or all Photos, Videos or Films either taken individually or groups can be used by FIRM Fitness Centre or its Associates and Agents for Promotional purposes.

#### 41. Claims

From time to time we may have to close the Centre for refurbishment. If the Centre is closed for more than two days for these reasons, you may, without charge place your membership on Time Hold for the period of closure of the Centre. You cannot seek any reduction in your membership fees because the Centre is closed either for renovations or on a public holiday.

#### 42. Valuables

Lockers are provided for use whilst exercising & will be cleared daily once the Centre is closed. Whilst care is taken to safeguard locker contents, thefts can occur. Please be aware that we do not accept responsibility for any loss or damage to property that occurs as a result of unknown persons breaking into lockers or where items are not placed in lockers. When using lockers, please ensure that the locker key is secure at all times on your person. Should a locker key be lost or contents be left in a locker overnight, there is a \$15 charge for replacement of the key. If your belongings are left in a locker, they may be removed and we will take no responsibility for loss or damage. **Note: all lost property and locker belongings may be given to charity if uncollected.**

#### 43. Clothing & Hygiene

We require all members and guests to wear suitable clothing (non-offensive) and appropriate enclosed sporting footwear, BODY BALANCE excluded, when visiting any of the exercise areas. Clothing bearing offensive images or inappropriate advertising is not permitted. It is also paramount that personal hygiene is considered when visiting FIRM Fitness, so it is appreciated that everyone wears deodorant and is aware of their own body odour.

#### 44. Class Bookings

Members may pre-book for selected group fitness classes three days in advance. Bookings will be held until the commencement of the class. You must notify staff if you are unable to make your booking.

#### 45. Towels

We require all members to use clean towels to lie on when using equipment (including mats) at all times. If you don't have a towel, you may be advised to purchase an environmentally friendly disposable towel from reception for a small fee.

#### 46. Personal Training

A cancellation fee of 50% of appointment value will apply if you fail to give at least 12 hours notice for cancellation of your Personal Training or Fitness Assessment/Personalised Program appointment. Only FIRM Fitness Centre Registered Exercise Professionals may instruct/train members whilst in the facility.

#### 47. Additional Services

We may offer additional services at FIRM Fitness such as Kids Fitness, Martial Arts, Pilates Programmes, Boot Camp, Weight Loss Programmes, etc. These services do not form part of the Contract and may incur separate fees and have separate agreements.

#### 48. Child Minding

Refer to our Child Minding Policy.

#### 49. Guests

Guests may enter the Centre on payment of a causal visit fee determined by us. Guests must, complete a 'Pre-Exercise Questionnaire' form (on their first visit) and show a form of photo identification. Guests are subject to these Terms and Conditions and Pre-Exercise Questionnaire.

#### 50. Group Fitness and Weights Area Etiquette

Please refer to signage in Group Fitness and Weights Area.