



TERMS & CONDITIONS

These terms & conditions of the Membership Agreement under which you agree to become a member of One Mind One Body Pty Ltd. When you sign the Membership Agreement Form, you are entering into a legally binding agreement.

This agreement is made up of the Membership Details, Terms & Conditions and Special Conditions contained in the Membership Agreement Form including the Terms & Conditions listed below.

This form sets out your rights to use our exercise facilities and services, and the obligations you have to comply with as a member. Your responsibilities under this agreement, including payment of membership fees, do not depend on how often you use the facilities and services. You promise to tell us if at any time you believe that you may not be able to comply with your obligations under this agreement including payment of fees, so we can discuss your options with you.

Please read through this entire form carefully to make sure that it fully reflects your expectations. Please ask us or seek advice if you are unsure whether any particular statements that you have relied on are part of this agreement. If there is any statement that you have relied on which you think may not be part of this agreement, please write it on the Special Conditions of the Membership Agreement Form. You agree that you will not later say that you relied on any other statements made by us or you.

Plain terms

These Terms use plain language, to ensure 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.

Cooling off

If you change your mind shortly after applying for a membership. You may have an opportunity to cancel. You will need to let us know in writing within 48 hours of signing this agreement 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 below.

Responsibility for members under 18

By signing on behalf of a child, the parent or guardian agrees to be responsible for ensuring the child exercises safely, pays their membership fees and otherwise follows the "One Mind One Body Pty Ltd member rules"

Health & Safety

The health and safety of members is important to us. This clause sets out some of the things we require of you to help reach that objective.

a) Your physical condition

A safe and effective exercise program is dependent upon accurate health and fitness profiling. It is therefore essential that you tell us in writing all relevant personal health and fitness information both before (through our pre-exercise questionnaire or otherwise) and during any exercise program or other activity.

You promise that information you disclose to us will all be true and accurate and not misleading in any way. You must not attend and use facilities and services while you are suffering from any illness, disease, injury, or other condition that could present a risk to the health and safety of other members and guests or yourself.

If you happen to use the facilities and services before disclosing relevant health information 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 use the facilities and service until we have completed your health and fitness profile.

b) Proper use of equipment

We will provide you with an instructional consultation with a staff member before using the facilities and services which you must attend before use. In any case, you promise to take care when using the facilities and services and make sure that you use the facilities and services including equipment appropriately and safely. If you are ever not sure how to operate any equipment properly, please ask a staff member before you use it.

c) Rules of good behaviour

We display rules that apply to everyone using the facilities and services in order to promote health and safety and the protection of property (**One Mind One Body Pty Ltd gym member rules**). A copy of our Rules will be displayed in our studio and on our website. Please make sure that you read our Rules carefully and ask us if there is anything you are not sure about. We may occasionally update our Rules to further promote health and safety or to make other improvements.

Privacy

Our privacy policy

From when you apply for membership we will have access to personal information about you, such as information relating to your health and finances. 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 from reception and on our website.

a) Video monitoring

We may use video monitoring in our facilities for health, safety and security reasons. If you have any queries in relation to the use of monitoring operating in and around our facilities, please contact us.

b) 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 and safety of you or others.

What you get when you join

From the Start Date you are entitled to the membership benefits and use of the facilities and services that apply to the Membership Type you selected.

When can you put your membership on hold?

You may temporarily defer your membership for travel or medical reasons if all amounts payable for your membership are paid up to date and, if your membership is for a Fixed Term, and it has more than two weeks left to run. You will need to produce satisfactory supporting documentation when you apply for a deferral. You must apply for a deferral at least 3 days prior to your requested start date. We are entitled to charge you the deferral fee for processing your application.

Standard Membership (Fixed Term) - In any 12-month period, we are not obliged to defer your membership on more than two occasions or for more than 10 weeks in total. While your membership is deferred, the contract end date will be extended, and we will pro-rata membership fees for any direct debit payments that fall within the deferral period. If 10 weeks deferral is used in any 12 month contract period, a \$2.50 per week membership holding option is available thereafter, and will automatically start, until such time the membership resumes use, or the 12 month contract is paid out. All payments and fees will pro-rata according to membership debit dates.

Flexi Membership (Month to Month) – The same terms apply as above in a standard membership, however the deferral period available annually is five weeks due to the month by month flexibility of this membership. The \$2.50 per week membership holding option is available and will automatically start once the five free weeks has ended. Memberships cannot be put on hold during a 30 day cancellation notice period. Members may upgrade their Flexi Membership to a Standard or Inclusive Membership at any time.

Inclusive Membership (6 month fixed, weekly PT inclusive) – The same terms apply as the Flexi Membership. Five free weeks deferral, and a \$2.50 per week holding option, for the six month fixed term. The contract end date will be extended for the deferral periods approved. Weekly Personal Training sessions included in this term will be credited and available for use multiple times a week until up to date. Weekly Personal Training services cannot be used in advance before their due date.

Ending your membership

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

a) Debiting membership (ongoing)

If your membership is ongoing, it will continue unless you tell us in writing at any time that you do not wish your membership to continue. You can terminate at any time by giving us at least 30 days prior written notice. Within 7 days of receiving such notice, we will send you written confirmation of cancellation. If you do not receive the written confirmation, you should contact us immediately. In the event of you terminating, a termination fee equivalent to 30 days membership will be charged. You can continue the use of the facility up to the end of that 30-day term. Where neither you nor we terminate this agreement, any unpaid fees will need to be paid by you and in addition to our rights we may have including our taking action to recover the outstanding payments.

b) Paid in Full Memberships (fixed term)

If your membership is for a Fixed Term, and you wish to terminate your membership on or after the fixed term you do not need to do anything. As it will automatically end on the date of the membership. We will seek to remind you before the end of your membership in these circumstances in order that we can discuss renewal of your membership.

If your membership is for a fixed term and you wish to terminate your membership before the end date of the membership, we will deduct a cancellation fee (50% of the fees for the remainder of the term) and for any other fees due (if any) and refund the unused portion of your pre-paid membership fees (ie. from after the cancellation takes effect) within 7 days of receiving notice.

Cancellation fees will not be charged 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.
- If you cannot exercise for the remainder of the Minimum term due to an illness or a physical incapacity and you produce supporting documentation to our reasonable satisfaction.
- We make changes to this agreement that adversely affect you.
- You otherwise become entitled to cancel your membership under consumer legislation;

c) 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 to failure within a reasonable time of us giving you written notice requiring you to do so. However, we will not seek to end your membership 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 joining fee, membership fees for the time that you were a member, the cancellation fee, and any other fees pre-paid for further fitness services.

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 and any other fees for other fitness services already provided. No cancellation fee will apply.

Fees you have to pay for your membership

The fees you have to pay are specified in the membership details of the agreement. This clause 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 defer your membership and refuse you access to the facilities and services until all outstanding amounts have been paid in addition to our other rights under these terms. Fees and charges continue to accrue during the deferral.

a) Start-Up fee

We may charge you a fee to cover the set-up costs for a new membership and the services and the products provided to induct you into the fitness centre. The start up fee is not refundable except in limited circumstances relating to clauses above.

b) Membership fees

If your membership is for a Fixed Term you can pay your membership fees up front when you submit the membership form.

If your membership is ongoing, membership fees must be paid periodically in advance until your membership ends.

c) 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 last address you gave us (which may be an email address). 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.

d) 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.

e) When you pay by direct debit

i. 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.

ii. 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 where banks do not process payments.

Any bank fees charges to us because of 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.

iii. Direct debits

If you choose to pay fees by direct debit, then this will be through the Direct Debit Provider named in the direct debit form. 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 via email. Those terms and conditions are entirely separate to this agreement and you may have rights and obligations under these 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.

Issues with outside providers

We will seek to make sure those franchisees, contractors and other authorised persons who provide services at the facilities (**outside providers**) are appropriately qualified before granting them access. Examples of outside providers include services such as coaches, physiotherapists, masseurs, and personal trainers who may offer additional services from the facilities that are not included with your Membership type. Please note that outside providers are neither employed by us nor are they our agents, even if they happen to be wearing clothes displaying our name and logo. You will know that they are outside providers because they will require a payment of their fee direct from you when you engage them.

This is important because we are not liable for any injury, loss or other claims arising from breach of contract, negligence or otherwise that are suffered by you in connection with any outside provider services, other than to the extent caused by our negligence. In addition, you release us and hold us harmless in relation to any such claims.

We have no responsibility in respect of the fees that you must pay directly to outside providers nor for any associated costs or refunds. However, please advise us if you have a problem with an outside provider and we will try to help if we can. Nothing in this clause limits our liability for the actions of our employees or agents.

Other services

There may be other services offered at the facilities that do not form part of your membership type but are available for you to purchase separately. These are not part of the services provided under your membership and you will be advised at the time if any additional terms apply to these services

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 a payment of a cancellation fee by telling us in writing before the due 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.

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 applied to you:

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

b) 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 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 a 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.

c) 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)

d) 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.

e) Loss of property

You promise that you will not unnecessarily bring valuables in to the facilities. We do not provide lockers at the fitness centre, instead the fitness centre has pigeon holes located in clear view of the fitness facilities. Beyond our compliance with this Agreement generally (including the Due care and Skill and the Fit for Purpose Guarantee) we are not liable for the loss or damage to any property of yours.

f) Your responsibility for damage

You agree to pay for any damage to the facilities caused by you or your guests through a wilful act or negligence.

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR-TRADING ACT 2012

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that recreational services it supplies to you-

- Are rendered with due care and skill; and
- 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.

Under section 22 of the Australian Consumer Law and Fair-Trading Act 2012 (ACL), the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the ACL if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE:

The change to your rights as set out in this form, does not apply if your death or injury is due to gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law and Fair-Trading Regulations 2012 and section 23(3)(b) of the ACL

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 we can cancel this agreement with immediate effect by informing you in writing. We are entitled to make part or all of the facilities 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 our facilities.

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.

Transferring this agreement

We can transfer the rights or benefit under this agreement or sub-contract our obligations under this agreement to a third party at any time without notice to you but in doing so we will make sure that the transferee agrees to honour the terms of your membership.

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.