

TERMS & CONDITIONS

These are the Terms & Conditions of the Membership Agreement under which you agree to become a member of North Ringwood Gym. 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 the payment of fees, so we can discuss your options with you.

You should now take some time to read through this entire *document* carefully to make sure that it fully reflects your expectations. Please ask us or seek *independent* 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 out in 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.

Plain terms

These Terms use fairly plain language, we want to make sure that the words and concepts used are easily understood.

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 7 *days* of signing this agreement 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. 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 "North Ringwood Gym 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 achieve 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 the course of any exercise program or other activity.

You promise that information you disclose to us will be true and accurate and not misleading in any way. You must not attend and use the facilities and services whilst you are suffering from any illness, disease, injury or other condition that could present a risk to the health or 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 services 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 (**North Ringwood 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.

d) Rules & Regulations

- i) Member is to scan their member ID tag upon entering the gym. Members are not allowed to share their membership tag with any other person. Member must notify NRG management if membership ID tag is lost.
- ii) Member must be in good standing, ie membership paid up-to-date, to use the facilities. A fee may be charged for unfinancial members, and for replacement of ID tag
- iii) Misuse of membership may result in cancellation of membership
- iv) Clean athletic shoes are to be worn at all times. Ensure shoes are not carrying dirt or stones from walking tracks. Suitable comfortable and cool workout clothes are to be worn while training
- v) Personal Hand Towel to be used during training, and may be used to wipe equipment upholstery clean after use as a courtesy to other members.
- vi) The **minimum age** for attendance is 12 years of age, and only with the signed permission of a parent or guardian. Children under the age of 13 years are not permitted to use the weight equipment, but can participate in cardio and non-weight bearing motivation classes. Children 16 years and under must be accompanied by an adult or guardian whilst in the studio.
- vii) Children under the age of 12 years are not permitted on the gym floor at any time. Children accompanying parents to the gym, must sit quietly in the reception area, and not be disruptive to any members or staff. Should a child become distressed or disruptive, the parent must immediately attend to that child, and at times, may need to remove the child from the gym if the child cannot be settled. We may deny a child admittance if they are ill or due to misbehaviour, or any other reason we believe is appropriate. No hot food is permitted to be consumed by children in the gym. Any mess created by a child, **MUST** be cleared away by the parent.
- viii) Bags and personal items should be stored in pigeon holes provided, and not left on floor or walkways.
- ix) Use of Equipment: Member must only use the equipment in the manner it is intended by the manufacturer and authorised by the gym. All hand weights etc. should be returned to its correct place, and not left on the floor or workout area. Members and guests may not bring in their own equipment. **DO NOT USE** the equipment if you are taking any medication that causes drowsiness or have any medical condition which makes such use inappropriate.
- x) Classes offered may have limited numbers. Classes and business hours may change at the discretion of management.
- xi) In the interest of providing a healthy and safe environment for our members and guests, at our gym we adhere to a **NO SMOKING/NO GUM CHEWING** policy
- xii) **MEMBER'S RESPONSIBILITY AS TO USE OF THE GYM:** You should consult with your physician before using our services and facilities. You understand and acknowledge that we have no expertise in diagnosing, examining or treating any medical condition. You agree you will not use the facilities with any medical condition, including open cuts, abrasions, sores, infections, maladies or inability to maintain personal hygiene, if such a condition poses a direct threat to the health or safety of yourself and others and agree you will use the facilities in accordance with all applicable public health requirements. It is your responsibility to consult with your physician to determine if any of these medical conditions exists and, if so, whether such condition poses a direct threat to the health or safety of yourself or others. Management reserves the right, however, to make the final determination in this regard.
- xiii) **ADDITIONAL RULES AND REGULATIONS:** We reserve the right to amend or alter these rules and regulations at any time in our sole discretion. All amendments to these rules and regulations are effective immediately. In accordance with your membership contract and these rules, we may revoke or suspend your membership if you fail to follow the rules and regulations or for any reasons of nuisance, disturbance, moral turpitude or fraud.
- xiv) If you have any questions, please feel free to consult any member of our staff for assistance.

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 on our website, and a copy provided to you on acceptance of membership.

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 monitors 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 or 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, 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 as soon as possible after you become aware of the relevant circumstances. We are entitled to charge you the deferral fee for processing your application. *In any 12 month period, we are not obliged to defer your membership on more than two occasions or for more than three months in total.* While your membership is deferred, the term will be extended and we will freeze any direct debit payments that fall within the deferral period.

Ending (Cancelling) 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 or post. Memberships with North Ringwood Gym ARE NOT TRANSFERABLE.

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 use of the facility up to the end of that 30 day term.

Termination will only take effect if your account is up to date; 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.

b) Paid in Full Memberships (fixed term)

If your membership is for a *pre-agreed number of months (ie 2, 3, 4, 6 or 12 months)*, 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 end 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 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 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;

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. If we cancel this agreement under this paragraph you will be liable for the joining fee, 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 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 membership 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) Joining Fee

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

b) Membership fees

If your membership is for a Fixed Term (Paid in Full) you are required to pay your membership fees up front when you submit the membership form .

If your membership is Ongoing (debit system in place), 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.

c) 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 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.

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. 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.

Issues with outside providers

We will seek to make sure those 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 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.

Sponsorship for the Community

From time to time, North Ringwood Gym offers short term Paid in Full memberships to our local community members to assist them in fund raising and to assist us with recruiting new members to our Studio. These sponsorship packages are not redeemable by existing members.

If you are involved in a local sporting, school or community group that is looking for sponsorship, please forward a request in writing to NRG for consideration.

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.

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).

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 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.

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 Studio, instead the Studio has pigeon holes located in clear view of the fitness facilities. Beyond our compliance with this Agreement generally (including the Due Care and Skill Guarantee 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 on the supplier's part. 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 22(3)(b) of the ACL.

Unexpected events

We are not liable if you cannot use your membership due to anything beyond our reasonable control (for example... power outages, flooding of the premises). 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 the 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.