

FFF JUNCTION

MEMBERSHIP AGREEMENT

This is an agreement under which you agree to become a **Member** of our **GYM**. It is made up of this **Important Notice**, the **details** section, the attached **Terms** and any other document attached or referred to, including our **GYM Rules**, our privacy policy and the **Special Conditions for 14-17 year olds** (if applicable).

When you sign this **Agreement** you are entering into a legally binding contract with us.

This **agreement** sets out your rights to use our Facilities and Services and the responsibilities you have to comply with as a Member. These responsibilities, including payment of membership fees do not depend on how often you use our **gymnasium**.

You should read through this agreement fully before signing to make sure it meets your expectations.

This agreement is subject to a 5 day cooling off period.

Direct debit information :IF AN AUTOMATIC DIRECT DEBIT ARRANGEMENT IS IN PLACE, YOUR MEMBERSHIP FEES WILL CONTINUE TO BE DIBITED FROM YOUR ACCOUNT UNTIL YOU OR WE CANCEL THE ARRANGEMENT BY ADVISING YOUR BANK OR CREDIT PROVIDER. If you end the agreement or stop the automatic debit arrangement in a way not described in the agreement you may be liable for damages for breach of contract. You should however cancel any direct debit authorisation when your Agreement lawfully ends.

SUMMARY OF SOME KEY TERMS

Some of the key terms of this agreement are summarised below. You must refer to the noted clause or provision for full details:

Cooling off: you can cancel this agreement within 5 days from the start date by giving us written notice (see clause 3)

Your safety: you agree to give us all relevant health and fitness information before or during any exercise. Each time you use the facilities you must ensure you are in good physical condition and know of no medical or other reason why you should not exercise. If unsure you should seek medical guidance. (see clause 5)

Putting your membership on hold: in any 12 month period you can usually 'freeze' your agreement twice for up to 3 months for both periods combined. If we agree, you may freeze your agreement more than this time for travel, medical or hardship reasons but must give us proof. The minimum freeze period is one billing period (2 weeks). A weekly freeze fee of up to \$2.50 will apply. Your membership will be extended by the freeze period. (See clause 9)

Cancelling in the minimum term for medical reasons: you can cancel you membership in the minimum term if you contract a serious illness or a permanent physical incapacity which is

confirmed by a doctor we reasonably agree to and you pay the administration fee which is the same as your membership fees for 30 days (see clause 10)

Cancelling in the minimum term for other reasons: you can cancel for your convenience if you pay the **cancellation fee** which is the higher of %50 of the balance due for the minimum term or a sum equal to 30 days membership fees. (See clause 10). You can also cancel on notice of 30 days if you relocate more than 35 kms away from our club and give us proof.

Cancelling an ongoing agreement after the minimum term: you may cancel on 30 days written notice.

Not enough money in account when fees are due: your bank or credit provider may charge you a fee for overdrawing your account. Our third-party biller also charges the Biller Administration Fee (see clause 13).

TERMS

1. Definitions

Administration fee: the fee payable under clause 10.3 (b) as set out in the details.

Agreement: this agreement as described in the IMPORTANT NOTICE.

ACL: means the Australian consumer law in the CCA.

Biller: our third party biller- Ezedebit.

Billers administration fee: the fee charged by the biller under clause 13.3 (b) as set out the details.

Cancellation Fee: the fee charged by the biller under clause 12.6 as set out in the details.

CCA: the competition and consumer act 2010.

Gym rules: the rules that are referred to in clause 5.6.

Detail: the part of this agreement described as the “details”.

Direct Debit Payment Agreement: the periodic billing agreement you enter into with ezedebit

Direct debit payment period: the frequency of your direct debit payments as set out in the details.

Facilities and services: includes gym premises and all exercise areas, bathrooms, equipment, weights, benches, machines, mats and any programs, products, services that you may use (excluding services provided by outside providers referred to in clause 14).

Fees: fees that apply under this agreement as set out in the details and referred to in clause 12.

Fixed Term Agreement: an agreement which automatically ends at the end of the Minimum Term.

Swipe Key: the access key that allows you access to our Gym.

Swipe key fee: the fee payable under clause 12.4 as set out in the Details.

Member: a gym member.

Membership: another word used to refer to this agreement.

Membership fees: the fees you pay to access the facilities and services as referred to under clause 12 and set out in the details.

Minimum age: the minimum age to become a member and use the facilities and services and referred to in clause 4

Minimum term: the minimum term as set out in the details.

Ongoing agreement: an agreement that continues on an ongoing basis after the minimum term until terminated under clause 10.

Pre-exercise questionnaire: the questionnaire or other screening we may require you to answer before using the facilities and services.

Pro rata fee: the fee/s that may be applicable under clause 12.3 and set out in the Details.

Replacement Swipe key: the amount payable under clause 5.2 (d) as set out in the details

Start date: when this agreement starts as set out in the details

Special conditions for 14-17 year olds: the special conditions set out in the document headed “special conditions for 14-17 year olds” and referred to in clause 4.

Staffed hours: the times the club is staffed. These times may not be fixed and will also vary.

Tailgate fee: the fee you will be charged if you allow another person to access a club without permission.

Terms: the part of this agreement describes as the “terms”.

2. JOINING, ACCESS AND RECIPROCITY

2.1 When you join our gym, you will need to give us information noted in the details and provide us with photographic identification. If you join under a particular offer, such as sporting group offer, you will also need to give us proof that you are eligible for that offer.

2.2 On joining we will give you a swipe key that will let you access and use our gym and the facilities and services.

3. COOLING OFF

3.1 If you change your mind after joining, you have 5 days to cool off or cancel your membership starting on the start date. To be effective, you must let us know in writing at any time during this 5 day period. Your written cancellation can be given to us personally, by post or email.

3.2 If you cancel your membership under clause 3.1 we will charge you the swipe key fee and fees for any services or products already supplied but the joining fee and membership fees will be refunded.

4. MINIMUM AGE

4.1 For safety and security reason you must be at least 18 years to become a member. However if you are 14-17 years of age and both you and your parent or guardian agree to the **special conditions for 14-17 year olds** (which are for your protection) you may join us.

4.2 Your membership may be immediately cancelled if you break one of the **special conditions for 14-17 year olds**.

4.3 SPECIAL CONDITIONS FOR MINORS –

- A) If you join as a minor member (14-17 years of age) you can only train when supervised by either a parent or guardian or gym instructor.
- B) You are required to fill in the pre-exercise questionnaire.
- C) You are required to follow ALL gym rules at ALL times.
- D) All minors must be inducted on all gym equipment and sign a waiver with their parents signature also included.

5. HEALTH AND SAFETY AND ACCEPTABLE CONDUCT

5.1 YOUR PHYSICAL CONDITION

- a) When you sign this agreement and each time you use the facilities and services, **you must** ensure you are in good physical condition and know of no medical or other reason why you should not exercise. If unsure, you should not use the facilities and services until you have sought appropriate medical guidance and been given the go-ahead.
- b) You agree to give us all relevant personal health and fitness information both before and during the course of any exercise program or the activity. You also agree to complete our Pre Exercise Questionnaire. In some cases, responses you give will require that you get medical guidance before exercising. You acknowledge that pre-exercise or other screening is no substitute for medical advice and does not guarantee against injury or death.
- c) You promise that information you give us will be true and accurate and not misleading in any way.
- d) You must not use the facilities and services if you are suffering from any illness, disease, injury or other condition that could be a risk to your health or safety or that of other members and others
- e) We may suspend or cancel your membership if we have reason to suspect that you have not compliant with clause 5.1

5.2 YOUR SWIPE KEY

- a) You will need your swipe key to access the club and must swipe this each time you use the facilities and services. (even if the door is unlocked)
- b) If you lose or forget your swipe key you may access the gym during staffed hours if you show photo ID to gym staff but this will be at the discretion of the gym. You should not ask or expect another person to let you into the gym **AT ANY TIME.**
- c) You must not let anyone else into the gym without the approval of gym staff or let anyone else use your swipe key. If you break this term, you may be charged the tailgate fee and / or your membership may be suspended or cancelled.
- d) If your swipe key is lost or stolen you must let us know immediately and get a replacement in 14 days or you may be refused access to the gym. A replacement swipe card fee will apply.**

5.3 Orientation

You will be required to participate in a member orientation to familiarise yourself with the facilities and services before you use them.

5.4 Proper use of equipment

You promise to take care to use the facilities and services safely and properly. If you are ever not sure how to operate any equipment properly, you agree to ask a gym staff member first.

5.5 Guests

You may bring a guest into the gym but only if they register with the gym staff, pay a guest fee and meet our other reasonable conditions. For example they will need to be the minimum age, show photo id, complete the pre-exercise questionnaire and other standard forms.

5.6 GYM rules

- A) Gym rules apply to everyone using facilities and services. They are usually displayed in the gym.
- B) Gym rules form part of this agreement so you must make sure you read, understand and follow them at all times.
- C) If you break any of the rules we will respond in a way we consider fair and appropriate. For example, in less serious cases, we may give you a warning but in serious case or where you have repeatedly broken gym rules we may suspend or cancel you membership. If your breach causes us or another person's costs, loss or damages, you agree to pay for these.

5.7 Illegal performance enhancing or other illicit substances

You acknowledge that the distribution or use of illegal or performance enhancing drugs is prohibited and promise that you will not use or distribute these substances in or near our gym

5.8 Commercial activity

You acknowledge that engaging in any commercial or business activities in the gym, such as offering training services or selling goods in the gym is prohibited unless we grant you written permission to do so. If we do give you written permission, we can revoke this at any time.

5.9 Action for risky or inappropriate conduct

If you behave in a risky or seriously inappropriate way, for example, if you threaten or harass others, damage equipment, distribute or use illicit substances, or train other members without authorisation, appropriate action will be taken. For example, your membership may be immediately suspended or cancelled (with a cancellation fee potentially applying). If your conduct causes us or another person costs, loss or damage you agree to pay for these.

6. Security

6.1 24 HOUR CCTV CAMERAS

The gym has CCTV security cameras recording 24hours a day (except in bathrooms) and may have remote video guarding services. This system is used for security purposes but does not guarantee against harm.

6.2 **Emergencies**

- A) The gym has personal security lanyards for safety and security reasons, and an emergency panic button on the wall. If you are, or feel, threatened or need medical help you must use this equipment to notify the relevant authorities.
- B) If you deliberately use emergency apparatus inappropriately, you agree to pay for any costs, loss or damages incurred because of this inappropriate use.

6.3 **Be cautious**

You must be cautious when entering or leaving the gym. You must wear security lanyards when appropriate, for example if exercising alone or outside staffed hours.

6.4 **Following directions**

You agree to follow any reasonable direction of gym staff relating to health, safety or security matters or related matters.

7 **PRIVACY**

7.1 **Your personal information**

From when you apply for membership, you will need to provide us with and we will have access to personal information about you, including information relating to your health and finances.

7.2 **General consent**

By signing this agreement, you consent to us collecting, using, disclosing and dealing with your personal information in accordance with our privacy policy.

7.3 **Up to date contact information**

You must tell us promptly if you change your contact or payment details or if there is a change to other relevant personal information, including anything that may affect health or safety.

7.4 **Consent to use your image**

You understand that photos, films, videos or audio recordings are sometimes taken of members for promotional purposes. Your permission will first be obtained if this is done. By signing this agreement you agree to allow your image, recording or likeness to be used for any legitimate purpose by us.

7.5 **Other**

- A) As noted in clause 6.1 CCTV camera recording is used in the gym (except in bathrooms)
- B) Members and guests are not allowed to take photos and/or videos in the gym unless specific permission is granted by the gym staff.

8. **Transfer**

Your membership cannot be transferred to another person

9. Putting your membership on hold

9.1 you may temporarily suspend or freeze your membership for any reason if your account is up to date. In any 12 month period you may freeze your membership 2 times for up to 3 months for both periods combined.

9.2 we may agree to freeze your membership for more than the period noted in clause 9.1 for travel, medical or hardship reasons but you must give us proof (such as supporting documents) to our reasonable satisfaction.

9.3 The freeze fee usually applies during any freeze period.

9.4 While your membership is frozen, the minimum term will be extended for the same time as the freeze period. Direct debit payments that fall in the freeze period will also be frozen (except freeze fee).

10. When you can end this agreement

10.1 Notice

If you need to notify or tell us anything in writing under this clause:

- A) You can give this to us in person, by email or post
- B) Your notice must include your name, address, phone , email ID details and signature and explain why you wish to cancel and;
- C) You must also attach any required proof such as a medical certificate.

10.2 Cancelling your membership on or after end of the minimum term

a) If this is a fixed term agreement, you do not need to do anything, as your membership will end when the minimum term ends. We may contact you before your agreement ends to discuss renewal. If you chose to renew your membership, or sign a new agreement before the minimum term ends, a joining fee will **not** apply.

b) If this is an ongoing agreement, it will continue after the minimum term unless you tell us in writing at any time (but at least 30 days) before the end of the minimum term that you wish to cancel your membership. If you tell us before the end of the minimum term but it is less than 30 days before, your membership will continue for another 30 days before it ends.

c) If this is an ongoing agreement and it has continued beyond the minimum term you can cancel any time by giving us at least 30 days prior written notice.

10.3 Cancelling for medical reasons

a) You can cancel your membership at any time by telling us in writing if you cannot use the facilities and services because you contract a serious illness or a permanent physical incapacity during the term of your membership. This must be confirmed in writing by a doctor or other medical professional we reasonable agree to and you agree that we may contact the doctor or other professional for verification purposes.

b) If you cancel under clause 10.3 (a) we can charge you the administration fee. You will also be liable for fees incurred i.e. your membership fees for the time you were a member, the joining fee, the swipe key and for services already supplied.

10.4 Cancelling for your convenience in the minimum term

During the minimum term, you can cancel your membership at any time by telling us in writing and paying a cancellation fee.

10.5 Other ways you can cancel this agreement in the minimum term

a) When prior notice is **not** required

You may cancel without giving us prior notice if:

- i) We break **an essential term** and have not fixed this in a reasonable time of you asking us in writing.
- ii) You become bankrupt and give us proof (such as supporting documents) to our reasonable satisfaction.
- iii) We change this agreement in a way that adversely affects you or
- iv) You become entitled to cancel under consumer laws.

b) When prior notice **is** required

You may cancel by giving us 30 days written notice if you relocate more than 35 kms away from the gym and give us proof.

c) Applicable fees

If you cancel your membership under clause 10.5 (a) or (b), you will be liable for Fees incurred i.e. your membership fees for the time you were a member, the joining fee, and swipe key fee and fees for services already supplied. These fees are not refundable except in very limited circumstances related to clauses 10.54 (a) (i) and (iv)

11. WHEN WE CAN END THIS AGREEMENT

11.1 in addition to our other rights under this agreement, we may cancel your membership if you breach any obligation under this agreement that can't be fixed or if you breach an obligation that can be fixed but you do not fix it in a reasonable time.

11.2 If we cancel your membership under clause 11.1, you will be liable for fees incurred i.e. your membership fees for the time you were a member, the joining fee, the swipe key fee, and fees for services already supplied. We may also charge a cancellation fee and recover costs, loss or damages caused by your breach.

11.3 You promise you are not bankrupt or insolvent and are able to pay applicable fees at the time of signing. You agree that you will tell us promptly if you believe you will be unable to pay your membership fees for an extended period. We may cancel your membership if you become bankrupt or insolvent.

11.4 If we cancel your membership under clause 11.3 you will be liable for fees incurred i.e. your membership fees for the time you were a member, the joining fee, the swipe key fee, and fees for services already supplied.

12. FEES

12.1 General

A) The fees you have to pay are set out in the Details. Some rights and obligations that apply in relation to particular fees are set out in this clause.

b) If you do not make any payment when it is due, your membership may be suspended and you could be refused access to the gym until all outstanding amounts have been paid.

c) Your membership may also be terminated if any fees remain unpaid for an extended period. You will still be liable for all unpaid amounts. A CANCELLATION FEE will also apply.

12.2 Joining fee

We will charge you the joining fee to cover the set up costs for your membership. This is non-refundable except in very limited circumstances related to clauses 3 and 10.5(a) (i) and (iv)

12.3 Pro rata fee

If you pay by direct debit and your start date begins after the first day of the relevant direct debit payment period, you will only be charged the applicable portion of the direct debit amount. The same applies if you have a fixed term agreement and the direct debit payment period ends after the last day of the agreement.

12.4 Swipe key fee

This is the fee charge to buy a swipe key. It is not refundable except in very limited circumstances related to clauses 3 and 10.5 (a) (i) and (iv). If you need a replacement swipe key, a replacement fee will apply.

12.5 Membership fees

a) If this is a fixed term agreement you can prepay your membership fees (pay them up front) when you sign this agreement.

B) If this is an ongoing agreement you must pay membership fees periodically in advance until your agreement ends (direct debit with ezedebit)

12.6 Cancellation Fee

a) A cancellation fee is payable if you want to cancel your membership for your convenience in the minimum term. It is an amount equal to 50% of the balance of your membership fees for remainder of the minimum term or a sum equal to 30 days membership fees (whatever is higher).

b) A cancellation fee may also be payable by you if your membership is ended by us under clause 5.9, clause 11.1 or clause 12.1 (c)

12.7 If you do not pay a fee when due

a) If you do not pay a fee or other amount you owe when due, we can suspend your membership until all amounts have been paid. This is in addition to our other rights under this agreement, including those under clause 11.1. Other consequence may also apply with respect to late or rejected direct debit payments (see clause 13.3).

b) Fees and charges continue to accrue during a suspension under clause 12.7 (a).

12.8 Fee increases

a) **During the minimum term:**

i) Your membership fees will not be increased

ii) Other fees may, however be varied.

b) **After the minimum term**, all fees may be increased.

c) We will make reasonable efforts to tell you of any fee changes

d) If your fees are varied, you authorise any debits from you nominated account to also be varied.

12.9 refunds and the credit code.

We can deduct all fees and charges that you must pay under this agreement from any refund we give you.

13. Direct debit

13.1 Direct debit payment agreement

a) If you pay any fees including ongoing membership fees, by direct debit then this will be through our biller (not us).

b) You will be provided with a copy of direct debit payment agreement of the biller which applies to any direct debit services. The direct debit payment agreement, which we are not a party to, is entirely separate to this Agreement.

13.2 Authority to deduct fees

By nominating a credit or debit account, you authorise our biller, to deduct from that account all Fees and other charges you are responsible for under this agreement, you must keep your account details up to date.

13.3 Late or rejected direct debit payments (also see clause 12.7)

- A) You must ensure there is enough money in your nominated account on the usual payment, or the next working day if that falls on a day when banks do not process payments.
- b) If there is not enough money in you nominated account on the usual payment day, or there is another reason that your account was unable to be debited (except one within the billers control), you will be charged the billers administration fee. This will be added to you next debit amount. Prior arrears may also be included.
- C) You authorise our biller to deduct any unpaid arrears outstanding on your account
- d) Your bank or credit provider may charge you a fee for overdrawing your account if you do not have enough money in you account when payment is due.

14. OTHER SERVICES

14.1 There may be other services, including personal training services, offered at the gym by contractor, licensees and others which are offered separately to services provided under this agreement. You will need to pay applicable fees directly to the providers of the service and agree to separate terms and conditions.

14.2 We are not responsible for these third party provided services including fees or any associated costs claims or refunds.

15. CHANGES TO YOUR AGREEMENT

15.1 We may sometimes make changes to this agreement, including our gym rules. If we do this, we will try to do this fairly and by giving you a chance to cancel your membership if you are adversely affected by the change and do not agree to it.

15.2 We will make reasonable efforts to tell you of any change in advance and when it will take effect. Subject to the terms, the effective date will generally be at least 30 days from the date we tell you about the change unless it is not practical for us to talk to you at this time. Your membership will be amended from the effective date.

16. OUR LIABILITY TO YOU

A) Under the **ACL** we guarantee that the services we supply:

- i) Are provided with due care and skill;
- ii) are reasonably fit for any purpose you have told us you are using the services for or told us you wish to achieve; and/or
- iii) Are supplied in a reasonable time.

b) Under certain legislative provisions, however, we can ask you to accept some limitations to the ACL guarantees.

c) If you sign this agreement, you agree, to the extent allowed by section 139A of the CCA, to exclude or modify our liability to you for death or injury from our failure to comply with the ACL guarantees.

d) This exclusion does not apply if your death or injury is caused by our “reckless conduct” (as defined in the CCA).

16.2 OTHER IMPLIED TERMS

Nothing in this agreement excludes, restricts or modifies any terms, conditions, warranties, guarantees, rights or remedies which cannot lawfully be excluded, restricted or modified. Otherwise, unless expressly included in this agreement, all implied terms, conditions, warranties, guarantees rights or remedies that can be lawfully excluded are excluded. In particular, but subject to clause 16.1 we are not liable for death or injury caused by our negligence or breach of implied terms that services will be provided with reasonable care and skill at common law. This does not exclude our liability for reckless conduct.

16.3 LOSS OF PROPERTY

You promise not to unnecessarily bring valuables into the gym and agree that it is not the obligation of the gym (FFF Junction) to look after unattended property.

17. YOUR RESPONSIBILITY FOR DAMAGE

You agree to pay for any loss or damage to the gym or the facilities and services caused by you or your guest through a wilful, wrongful or negligent act or as a result of your, or their, breach of this agreement.

18. CLUB CLOSURES

A) We may need to close the gym for a period of time, for example, due to an emergency, or if required by a court order or by law.

b) We may close our gym up to 14 days in any 30 day period under clause 18(a) and keep charging membership fees.

c) If we close for between 15 and 30 days under clause 18(a) in any 30 day period, clause 18(e) applies.

d) We may also close the gym for up to 30 consecutive days if it is being refurbished or relocated.

e) if we close the club under clause 18(c) or 18(d) we will freeze your membership at no cost you and extend your agreement for a time equal to the closed period.

f) We will try, but cannot promise we will be able, to tell you about any gym closures in advance.

19. COMPLAINTS AND FEEDBACK

19.1 If you have any concerns about the facilities and services or anything else in relation to your membership, you should raise it with gym staff or owners of FFF Junction.

20. GENERAL LEGAL MATTERS

20.1 Unexpected events

We are not responsible if members cannot use our gym because of an event caused by a natural force (such as fire or flood) or a road or building closure or something similar beyond our reasonable control. If this continues for more than 30 days, then either you or we may cancel this agreement immediately by written notice. No fee will apply

20.2 Severability

If a court decides that any part of this agreement is or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of this agreement.

20.3 WAIVER

If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so in the future.

20.4 Entire agreement

You agree that we have not made any representations or promises that you have relied that are not in this agreement.

20.5 Applicable law

The law of NSW set out in the details applies to this agreement.