
WORKOUT INDOOROPILLY

TERMS AND CONDITIONS OF USE

TERMS AND CONDITIONS OF USE

1 About the Website

- 1.1 Welcome to www.workout.net.au (the “**Website**”). The Website provides individuals with the opportunity to purchase membership health and fitness services (the “**Services**”).
- 1.2 The Website is operated by M.A. & C.B. Burke Pty. Ltd. (ACN 010 510 988) t/as Workout Indooroopilly (“**Workout**”). Access to and use of the Website, or any of its associated products or services, is provided by Workout. Please read these terms and conditions (the “**Terms**”) carefully. By using, browsing and/or reading the Website, this signifies that you have read, understood and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website, or any of its products or services, immediately.
- 1.3 Workout reserves the right to review and change any of the Terms by updating this page at its sole discretion. When Workout updates the Terms, it will use reasonable endeavours to provide you with fourteen (14) days’ notice of same. Any changes to the Terms take immediate effect from the date of their publication. Upon your purchase of the Services, Workout will provide you with an electronic copy of the Terms, however, it is recommended that you check the Terms available on the Website from time to time and make a copy for your records.

2 Acceptance of the Terms

- 2.1 You accept the Terms by registering for the Services and/or making any payment as required under the Terms. You may also accept the Terms by clicking to accept or agree to the Terms where and if this option is made available to you in the user interface.

3 Membership to use the Services

- 3.1 In order to access the Services, you must first purchase a membership through the Website (the “**Membership**”) and pay the applicable fee for the selected Membership (the “**Membership Fee**”).
- 3.2 In purchasing the Membership, you acknowledge and agree that it is your responsibility to ensure that the Membership you elect to purchase is suitable for your use.
- 3.3 Once you have purchased the Membership, you will then be required to register for an account through the Website before you can access the Services (the “**Account**”).
- 3.4 As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including:
 - (a) an email address and/or preferred username;
 - (b) a mailing address;

- (c) a telephone number
 - (d) bank account and/or credit card details; and
 - (e) a password.
- 3.5 You warrant that any information you give to Workout in the course of completing the registration process will always be accurate, correct and up to date.
- 3.6 Once you have completed the registration process you will be a registered member of the Website (“**Member**”) and agree to be bound by the Terms. As a Member you will be granted immediate access to the Services from the time you have completed the registration process until the membership period expires (the “**Membership Period**”).
- 3.7 Workout may, at its sole discretion, elect to offer you a free trial period of the Services. Workout will only provide you with such a trial period where you have completed and accepted the relevant documentation available on the Website in relation to same.
- 3.8 You may not use the Services and may not accept the Terms if:
- (a) you are not of legal age to form a binding contract with Workout; or
 - (b) you are a person barred from receiving the Services under the laws of Australia or other countries including the country in which you are resident or from which you use the Services.

4 Your obligations as a Member

- 4.1 As a Member, you agree to comply with the following:
- (a) you will use the Services only for purposes that are permitted by:
 - (i) the Terms; and
 - (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions;
 - (b) you have the sole responsibility for protecting the confidentiality of your password and/or email address. Use of your password by any other person may result in the immediate cancellation of the Services;
 - (c) any use of your registration information by any other person, or third parties, is strictly prohibited. You agree to immediately notify Workout of any unauthorised use of your password or email address or any breach of security of which you have become aware;
 - (d) access and use of the Website is limited, non-transferable and allows for the sole use of the Website by you for the purposes of Workout providing the Services;
 - (e) you will not use the Services or the Website in connection with any commercial endeavours except those that are specifically endorsed or approved by the management of Workout;

- (f) you will not use the Services or Website for any illegal and/or unauthorised use which includes collecting email addresses of Members by electronic or other means for the purpose of sending unsolicited email or unauthorised framing of or linking to the Website;
- (g) you agree that commercial advertisements, affiliate links, and other forms of solicitation may be removed from the Website without notice and may result in termination of the Services. Appropriate legal action will be taken by Workout for any illegal or unauthorised use of the Website; and
- (h) you acknowledge and agree that any automated use of the Website or its Services is prohibited.

5 Payment of the Membership Fee

- 5.1 Payment of the Membership Fee is made by way of fortnightly direct debit payments using Workout's Direct Debit User ID 068877 and pursuant to the Direct Debt Request completed as part of the registration process.
- 5.2 Payments by direct debit may be delayed in the event that the payment date occurs on either a weekend or public holiday. You acknowledge and agree that where this occurs then the Membership Fee will be deducted on the next available business day.
- 5.3 You acknowledge and agree that where a direct debit request for the Membership is returned by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the same.
- 5.4 You agree and acknowledge that Workout can vary the Membership Fee at any time and that the varied Membership Fee will come into effect following the conclusion of the existing Membership Period.

6 Refund Policy

- 6.1 Workout will only provide you with a refund of the Membership Fee in the event they are unable to continue to provide the Services or if the manager of Workout makes a decision, at its absolute discretion, that it is reasonable to do so under the circumstances. Where this occurs, the refund will be in the proportional amount of the Membership Fee that remains unused by the Member (the "**Refund**").

7 Copyright and Intellectual Property

- 7.1 The Website, the Services and all of the related products of Workout are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties. Unless otherwise indicated, all rights (including copyright) in the content and compilation of the Website (including but not limited to text, graphics, logos, button icons, video images, audio clips, Website, code, scripts, design elements and interactive features) or the Services (the "**Content**") are owned or controlled for these purposes, and are reserved by Workout or its contributors.
- 7.2 All trademarks, service marks and trade names are owned, registered and/or licensed

by Workout, who grants to you a worldwide, non-exclusive, royalty-free, revocable license whilst you are a Member to:

- (a) use the Website pursuant to the Terms;
- (b) copy and store the Website and the material contained in the Website in your device's cache memory; and
- (c) print pages from the Website for your own personal and non-commercial use.

Workout does not grant you any other rights whatsoever in relation to the Website, the Services. All other rights are expressly reserved by Workout.

7.3 Workout retains all rights, title and interest in and to the Website and all related content. Nothing you do on or in relation to the Website will transfer any:

- (a) business name, trading name, domain name, trade mark, industrial design, patent, registered design or copyright, or
- (b) a right to use or exploit a business name, trading name, domain name, trade mark or industrial design, or
- (c) a thing, system or process that is the subject of a patent, registered design or copyright (or an adaptation or modification of such a thing, system or process),

to you.

7.4 You may not, without the prior written permission of Workout and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Content or third party content for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website which are freely available for re-use or are in the public domain.

8 Privacy

8.1 Workout takes your privacy seriously and any information provided through your use of the Website, Services or the registration process are subject to Workout Privacy Policy, which is available on the Website.

9 General Disclaimer

9.1 You acknowledge and agree that, prior to you using the Services, you have had an opportunity to seek independent medical advice in respect to your use of the Services.

9.2 Nothing in the Terms limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the Australian Consumer Law (or any liability under them) which by law may not be limited or excluded.

9.3 Subject to this clause 9, and to the extent permitted by law:

- (a) all terms, guarantees, warranties, representations or conditions which are not expressly stated in the Terms are excluded; and

- (b) Workout we will not be liable for any special, indirect or consequential loss or damage (unless such loss or damage is reasonably foreseeable resulting from our failure to meet an applicable Consumer Guarantee), loss of profit or opportunity, or damage to goodwill arising out of or in connection with the Services or these Terms (including as a result of not being able to use the Services or the late supply of the Services), whether at common law, under contract, tort (including negligence), in equity, pursuant to statute or otherwise.

9.4 Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you “as is” and “as available” without warranty or condition of any kind. None of the affiliates, directors, officers, employees, agents, contributors and licensors of Workout make any express or implied representation or warranty about the Content (as defined in clause 7.1 of these Terms) or any products or services (including the products or services of Workout) referred to on the Website. This includes (but is not restricted to) loss or damage you might suffer as a result of any of the following:

- (a) failure of performance, error, omission, interruption, deletion, defect, failure to correct defects, delay in operation or transmission, computer virus or other harmful component, loss of data, communication line failure, unlawful third party conduct, or theft, destruction, alteration or unauthorised access to records;
- (b) the accuracy, suitability or currency of any information on the Website, the Services, or any of its Content related products (including third party material and advertisements on the Website);
- (c) costs incurred as a result of you using the Website, the Services or any of the products of Workout;
- (d) the Content or operation in respect to links which are provided for your convenience;
- (e) any failure to complete a transaction, or any loss arising from e-commerce transacted on the Website; or
- (f) any defamatory, threatening, offensive or unlawful conduct of third parties or publication of any materials relating to or constituting such conduct.

10 Limitation of liability

10.1 Workout’s total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the resupply of the Services to you.

10.2 You expressly understand and agree that Workout, its affiliates, employees, agents, contributors and licensors shall not be liable to you for any direct, indirect, incidental, special consequential or exemplary damages which may be incurred by you, however caused and under any theory of liability. This shall include, but is not limited to, any loss of profit (whether incurred directly or indirectly), any loss of goodwill or business reputation and any other intangible loss.

11 Termination of Contract

11.1 The Terms will continue to apply until terminated by either you or by Workout as set out below.

11.2 If you want to terminate the Terms, you may do so by:

- (a) not renewing the Membership prior to the end of the Membership Period;
- (b) providing Workout with fourteen (30) days' notice of your intention to terminate; and
- (c) closing your accounts for all of the services which you use, where Workout has made this option available to you.

Your notice should be sent, in writing, to Workout via the 'Contact Us' link on our homepage.

11.3 Workout may at any time, terminate the Terms with you if:

- (a) you do not renew the Membership at the end of the Membership Period;
- (b) you have breached any provision of the Terms or intend to breach any provision;
- (c) Workout is required to do so by law;
- (d) the provision of the Services to you by Workout is, in the opinion of Workout, no longer commercially viable.

11.4 Subject to local applicable laws, Workout reserves the right to discontinue or cancel your membership at any time and may suspend or deny, in its sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts Workout's name or reputation or violates the rights of those of another party.

11.5 When the Terms come to an end, all of the legal rights, obligations and liabilities that you and Workout have benefited from, been subject to (or which have accrued over time whilst the Terms have been in force) or which are expressed to continue indefinitely, shall be unaffected by this cessation, and the provisions of this clause shall continue to apply to such rights, obligations and liabilities indefinitely.

12 Indemnity

12.1 You agree to indemnify Workout, its affiliates, employees, agents, contributors and licensors from and against any breach of the Terms.

13 Dispute Resolution

13.1 Compulsory:

If a dispute arises out of or relates to the Terms, either party may not commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sort).

13.2 Notice:

A party to the Terms claiming a dispute (“**Dispute**”) has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome and the action required to settle the Dispute.

13.3 Resolution:

On receipt of that notice (“**Notice**”) by that other party, the parties to the Terms (“**Parties**”) must:

- (a) Within seven (7) days of the Notice endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means upon which they may mutually agree;
- (b) If for any reason whatsoever, twenty-one (21) days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the Law Society of Queensland or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;
- (d) The mediation will be held in Brisbane, Australia.

13.4 Confidential

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

13.5 Termination of Mediation:

If thirty (30) days have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either Party may ask the mediator to terminate the mediation and the mediator must do so.

14 Venue and Jurisdiction

The Services offered by Workout are intended to be viewed by residents of Australia. In the event of any dispute arising out of or in relation to the Website, you agree that the exclusive venue for resolving any dispute shall be in the courts of Queensland, Australia.

15 GST

Unless otherwise stated, all amounts, including out of pocket expenses, expressed and described on or in connection with these Terms, are listed in Australian Dollars

(AUD) and are GST inclusive. GST is only applicable to subscribers situated in Australia.

16 Governing Law

The Terms are governed by the laws of Queensland, Australia. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted and construed by, under and pursuant to the laws of Queensland, Australia, without reference to conflict of law principles, notwithstanding mandatory rules. The validity of this governing law clause is not contested. The Terms shall be binding to the benefit of the parties hereto and their successors and assigns.

17 Independent Legal Advice

Both parties confirm and declare that the provisions of the Terms are fair and reasonable and both parties having taken the opportunity to obtain independent legal advice and declare the Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

18 Severance

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed and the rest of the Terms shall remain in force.