

SKY FITNESS Membership Terms & Conditions

Terms and Conditions of The Sky Fitness/Debitsuccess membership Agreement

1. INTRODUCTION

The document outlines the rights and responsibilities relating to the Members entitlements during the Membership Period to use of the Centre's facilities. It also relates to the member's authority to Debitsuccess Pty Ltd to directly debit the nominated bank account or credit card for any instalments or fees under the terms and conditions of this Membership Agreement and DDR overleaf. These terms are stated below.

2. DEFINITIONS

In this Agreement unless the contrary intention appears:

- a. The singular includes the plural and vice versa.
- b. A reference to a party includes that party's legal personal representative heirs and assigns.
- c. "Member" includes the parent or guardian of the Member if the Member is under 18 years.
- d. "Card" means the Sky Fitness membership card, and includes both a 24/7 access card and a standard card.
- e. "Centre" means the Sky Fitness Centre named on the Direct Debit Request (DDR) and Contract that this booklet refers to.
- f. "Debitsuccess" is Debitsuccess Pty Ltd, PO Box 577, Mt Waverly, Vic, 3149, Phone:1800 267 916, e-mail: Memberservice@Debitsuccess.com. All queries and comments about the services provided under this membership agreement should be directed to the centre. All queries and comments about the direct debit billing service should be directed to Debitsuccess. The member acknowledges that Debitsuccess has been arranged by the centre to collect fees due under this membership agreement if paying by way of direct debit, and also acknowledges that all rights of the Centre under this membership agreement are able to be enforced by Debitsuccess as if it were the Centre without any involvement on the part of the centre or the consent of the member.

3. LEGALLY BINDING AGREEMENT

The member acknowledges and agrees that:

- a. The Direct Debit Request (DDR) and contract is legally binding whether the use of the centre and its services is determined and paid on a yearly, monthly, weekly or individual basis.
- b. The membership must remain current in order to avoid paying the joining fee again.
- c. They declare that they are physically and medically fit and capable to engage in exercise and fitness programs at the centre and have and will inform instructors of any condition or risk that may have an effect on their ability to participate in any exercise or fitness program prior to commencement.
- d. They are 18 years of age or older at the time of signing, and not under any legal disability. If not, a parent or adult guardian will sign also.

4. RECEPTION AND ACCESS

- a. All members must swipe or present their Card at reception every time they attend the Centre including outside staffed hours if provided.
- b. At no stage are you permitted to give your Card to non-members to allow them to access the Centre.
- c. If a member would like to train with a non-member they must attend within staffed hours and the non-member must pay the casual membership rate.
- d. When scanning your Card upon entry outside staffed hours (if provided) you will have a limited amount of time to enter. If this opportunity is missed a second scan will not be able to be done for a period of 5 minutes.
- e. Members must advise any changes of address and phone number.
- f. The facilities are available to the general public and not exclusively for members.
- g. To use the Centre your account must be valid and up to date, overdue payments can be made directly at the Centre or by calling Debit Success after which the Centre may be used.
- h. All Sky Fitness 24/7 clubs but not limited to, require constant video surveillance whilst in the Centre except in the change rooms.

5. GENERAL CONDITIONS OF ENTRY

To ensure the Centre is able to provide a high level of service in a safe, healthy and pleasant environment for all, members must comply with following conditions:

- a. Entry will be refused or a person requested to leave the Centre if the person:
 - Is abusive or uses offensive language or whole behaviour is threatening or
 - Is under the influence of drugs or alcohol
- b. No smoking is permitted in the Centre
- c. No chewing gum permitted in the Centre
- d. Sweat towels must be used at all times.
- e. Weights must be returned to their correct place after use
- f. Correct training attire and runners must be worn in the Centre – no jeans, work clothes, boots, sandals, thongs, or clothing that is likely to cause offence to others are permitted
- g. No person under the age of 14 is allowed in the Centre unless accompanied by a guardian or qualified instructor.
- h. No food allowed in the gym or group exercise classes

- i. No late entry to a group exercise class

6. LOCKERS (where provided)

- a. All items stored in the lockers are at your risk and we do not accept responsibility for items and we do not accept responsibility for items lost, damaged or stolen.
- b. Bags are not permitted in the centre unless placed in lockers provided.

7. CANCELLATION/ TERMINATION

- a. Cooling off period:
The Direct Debit Request (DDR) and Contract is subject to a 7 day cooling off period:
 - i. The cooling off period commences at the close of business on the “Commencement Date”.
 - ii. The cooling off period is 7 days.
 - iii. The cooling off period ends at close of business on the 7th day after the “Commencement Date”.
 - iv. New members have the right to cancel their membership within the cooling off period if they are not completely satisfied with the services and programs.
 - v. All monies will be refunded on a pro rata basis with the exception of fees for an administration fee whichever is the lesser of up to 10% or \$75.
 - vi. All cooling off cancellations must be in writing to the Manager.
- b. Permanent Disability:
 - i. Upon providing written advice of a permanent disability or serious illness, along with a letter from a medical practitioner detailing the disability or illness, the centre may agree to cancel the membership effective from the day of notice for an Administration Fee of up to 10% of the membership fee.
 - ii. All monies will be refunded with the exception of charges for services already delivered.
- c. Direct Debit Membership

i. ALL CANCELLATION REQUESTS MUST IN THE FIRST INSTANCE BE DIRECTED TO THE CENTRE.

- 1. Cancellations inside the Minimum Term – The Member may terminate their Membership Agreement before the expiry of the minimum term or payments if all the installations and fees due up to the date of termination are paid, and in addition the cancellation fee as specified on the front of the Direct Debit Request (DDR) and contract is paid to Debitsuccess. If the cancellation fee has been left blank or has been crossed out then the Direct Debit Request (DDR) and contract may not be cancelled before the expiry of the minimum term or payments.
- 2. Cancellations after completion of the Minimum Term – After the expiry of the minimum term or payments, and after instalments and fees due have been paid in full, should the box on the front of the Direct Debit Request (DDR) and contract requesting minimum term be marked then the Direct Debit Request (DDR) and contract shall automatically terminate. Should the box on the front of the Direct Debit Request (DDR) and contract requesting termination after the minimum term not be marked, then the Direct Debit Request (DDR) and contract shall continue indefinitely until such time as the member makes a request, after the expiry of the minimum term for it to terminate. Any instalments/fees due at the date of termination (including instalments/fees which fall due during the notice period) will remain a debt owed to and recoverable by Debitsuccess. There will be a period of notice of 30 days unless otherwise specified by the Centre between the date of request and the date of actual termination during which any payments due must still be paid in full. The member should contact Debitsuccess if they have not received written confirmation of the termination within the 30 day period. The member shall not consider that the Direct Debit Request (DDR) and contract has been terminated until such time as this is confirmed in writing to the member by Debitsuccess (not more than 14 days after the termination date). Termination of the Direct Debit Request (DDR) and contract will also terminate the Direct Debit Request Authority.

8. TRANSFER OF MEMBERSHIP BY THE MEMBER

Transfer of membership will only be permitted from a member to a non-member and will incur a Transfer fee of \$20.00 if paying by Direct Debit, this fee is payable to the Centre.

9. REPLACEMENT CARD FEE

If a card is lost, destroyed or damaged and requires replacement card fee of \$5.00 applies for a standard card and up to \$29 for a 24/7 access card payable to the Centre.

10. ADDITIONAL FEES FOR A SPECIAL SERVICE

Some services require an additional fee and these include personal training, and crèche.

11. DAMAGE TO THE CENTRE

Any member who wilfully or through their negligence damages the Centre or its property will pay for the damage. Members are responsible for damages caused by their guests and children.

12. SAFETY, MAINTENANCE & SERVICE DEMAND

The centre may from time to time when necessary:

- a. Close off any part of the premises or isolate any piece of equipment for maintenance or safety reasons;
- b. Change the hours of opening and closing or alter class timetable in accordance with demand; or
- c. Vary Centre rules. Where this occurs the Centre will provide reasonable notice on the Centre notice board or at reception.

13. DAMAGE & PERSONAL INJURY

Disclaimer

To the extent permitted by the law, the Centre and Debitsuccess excludes any liability to the Member in Membership Agreement, tort, statute or in any other way for an injury, damage or loss of any kind whatsoever (including, without limitation, any liability for direct, indirect, special or consequential loss or damage), sustained by the Member and/or any

other person, or for any cost, charges or expenses incurred by the Member, arising from in connection with the Direct Debit Request (DDR) and contract and/or the services/ products provided by the Centre and/or Debitsuccess, and/or any act or omission of the Centre and/or Debitsuccess.

Warning under the Australian Consumer Law and Fair Trading Act 2012 (Victorian memberships only)

A. If you participate in these activities your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out in or on this notice.

B. Under the Australian Consumer Law (Victoria) several statutory guarantees apply to the supply of certain goods and service. These guarantees mean that the supplier named on this form is required to ensure that the recreational service 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, 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 Australian Consumer Law and Fair Trading Act 2012 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 Australian Consumer Law and Fair Trading Act 2012 and section 22(3)(b) of the Australian Consumer Law and Fair Trading Act 2012.

14. SERVERABLY

In the event any part of this Direct Debit Request (DDR) and Contract being or becoming void or unenforceable then the part shall be severed for the Direct Debit Request (DDR) and Contract with the intention that the balance of the Direct Debit Request (DDR) and Contract shall remain in full force and effect, unaffected by the severance.

15. SUSPENSION

Suspension may be possible under the term of the Direct Debit Request (DDR) and Contract. You may suspend for a minimum of 2 weeks at a time so long as the total time suspended within the minimum term does not exceed 6 weeks. In order to suspend you must contact the Centre manager in writing with reasonable notice (at least 3 days) prior to the date of suspension. There is a charge of \$2.50 per week dependant on the type of membership while the agreement is suspended. Any time spent on suspension will be added onto the minimum term of the Agreement so that the amount payable shall still be payable regardless of any suspension.

16. BREACH OF TERMS & CONDITIONS

Any breach of these terms and conditions will result in a warning and any further breach will result in a second warning and your membership may be suspended or terminated. A proven serious breach of the general conditions of entry under Clause 5 may result in immediate termination of your membership without warning. The Member, Debitsuccess and the Centre each hold reciprocal rights of termination for the material breach of any term or condition of this Membership agreement. The Membership Agreement will be terminated upon receipt of written notice outlining the relevant breach.

17. TRANSFER OF MEMBERSHIP BY THE CENTRE

- a. The centre will have the right to assign or novate the membership agreement to a third party in the event of the sale of the business.
- b. The centre may relocate to another premise within a 5 kilometre radius and the location at which the services are provided may change during the term of the agreement. In the event of a) or b) occurring you agree that the Direct Debit Request (DDR) and contract will continue with the new third party and/or at the new location.

18. PAYMENTS BY DIRECT DEBIT

If paying by Direct Debit the member agrees to pay the instalment amount at the agreed payment frequency until the Direct Debit (DDR) and contract is terminated in accordance with clause 7 above. Should there be any arrears in payments the member authorises Debitsuccess to debit the outstanding balance in order to bring the amount up to date.

19. ADMINISTRATION FEE (DIRECT DEBIT)

If paying by Direct Debit, a one-off Administration fee to the value on the face of the contract is payable to Debitsuccess by the member on signing of the Direct Debit Request (DDR) and contract. The fee is split \$10 to Debitsuccess and the remainder to the Centre.

20. PRIVACY

A customer's "personal information" (as that term is defined in the Privacy Act 1988(Cth)) will only be used by the centre or Debitsuccess to provide you with the services contemplated by the Direct Debit Request (DDR) and contract or in accordance with your selection relating to the privacy disclaimer on the front page of the (DDR) and contract. Debitsuccess Privacy Statement is to be found on its website www.Debitsuccess.com. The centre's Privacy Statement can be obtained from the centre.

21. CREDIT/DEBIT REPORTING AGENCIES

If paying by Direct Debit, upon default by the member in regard to any obligation under the (DDR) and contract and failure to remedy the default after notification by Debitsuccess, the member authorises Debitsuccess to notify any debt

collection/credit reporting agency of the default. Should this occur then at Debitsuccess sole discretion it may terminate the membership agreement at which time the full outstanding balance for the remainder of the minimum term or payments (including any current arrears) shall be due in full. The member authorises Debitsuccess to add to the outstanding debt a fee of \$50.00 and an amount equivalent to 25% of the full outstanding balance (being Debitsuccess expenses reasonably incurred in collecting the debt) upon initial referral to the debt collection/credit reporting agency.

22. INCREASE IN FEES

If paying by direct debit, Debitsuccess may at any time AFTER the end of the minimum term, upon sending written notice to the members last known address and giving 14 days' notice, increase the instalment amount. If the member wishes to terminate the Direct Debit request (DDR) and contract as a result of the increase in the amount, the member must notify Debitsuccess in writing within 14 days of the date of the written notice sent by Debitsuccess. The membership agreement will be terminated upon receipt of this notice. If the member does not notify Debitsuccess of the intention to terminate the Direct Debit Request (DDR) and contract within the specified time period, then the (DDR) and contract will remain in force and the increase in the instalment amount will be deemed to be accepted by the member.

23. ENTIRE AGREEMENT

The Direct Debit Request (DDR) and contract, constitute the entire agreement, understanding and arrangement (express and implied) between the member, the centre and Debitsuccess relating to the subject matter of the (DDR) and contract and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral.

25. ADDITIONAL TERMS AND CONDITIONS RELATING TO 24/7 ACCESS IF PROVIDED

If the membership type provided includes 24/7 access to the centre then the provisions of this clause 25 apply to the membership.

- a. Sky Fitness 24/7 is an unmanned facility for periods of time and as such if you participate in activities in this facility you are exposing yourself to the potential for serious injury including death. As such you should take note that your rights to sue the supplier if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, or are excluded (subject to clause 13), restricted or modified in the way set out in or on this notice/appointment.
 1. The member expressly indicates an understanding of the risks associated with undertaking activities in an unmanned and unsupervised centre and hereby releases, indemnifies and holds harmless Sky Fitness, their respective owners, officers, affiliates, agents and their employees in the event that I suffer personal loss, am injured or killed in the centre.
 2. Further, the member provides this release whether it arises from the negligence of the centre or otherwise and does so with the intention that this release shall be as broad and inclusive as the laws of the state allow.
- b. Subject to clause 4c, the member acknowledges and agrees that they may not admit guests at any time to the Sky Fitness 24/7 centre. Furthermore, the member agrees that if this clause is breached then the following provisions shall apply:
 1. Upon a first breach the member's access to 24/7 to the centre will be suspended immediately for a period of 14 days without notification to the member.
 2. Upon any subsequent breach the member's membership shall be immediately cancelled and the member agrees to pay a cancellation fee of \$220 or 50% of the remaining membership fees due and payable under the terms of the agreement, whichever is the higher.
 3. Some areas of the club will be locked off outside staff hours and the members will not have access. These general areas may include but are not limited to saunas, child care areas and office areas. Please check with the facility to confirm if further information required.
 4. I fully understand and accept that if I intentionally activate a Duress Button or a Personal Duress Lanyard with no reason or for a reason that is deemed not appropriate by Sky Fitness 24/7 that I will be charged a \$250 penalty which will be automatically debited from my bank account or credit card. Sky Fitness 24/7 will only use this money to recover the costs associated with false activation of a Duress Button. If there is any additional money remaining after all costs have been recovered, these will be donated to a registered charity of the Franchisees nomination.
 5. I am fully aware that Sky Fitness 24/7 is equipped with the Video Surveillance technology which is constantly recording for the security of the gym and that the Video Surveillance can be remotely viewed at any time by the gyms operator and/or security provider.

DDR TERMS AND CONDITIONS

1. INITIAL TERMS

Debitsuccess will debit your nominated account for the amounts and at the frequency of payments as agreed between us on the Debitsuccess (DDR) membership agreement signed and accepted by you.

2. CHANGE OF TERMS

In the unlikely event that the initial terms are to change, they can only do so in accordance with your membership agreement and we must give you at least 14 days' notice including any new amount or new frequency and the next debit date.

3. DEFERRING/STOPPING A PAYMENT

Should you wish to defer a payment to another date you must contact Debitsuccess before the date of that payment to request the deferment. Deferments are entirely at the discretion of Debitsuccess and will depend upon the length of deferment, the current state of your account and your past history. You may request to stop an individual payment however you will still be liable to make this payment by some other method or your account will become overdue.

4. ALTERING THE SCHEDULE

Should you wish to alter the payment frequency or day to Debit your account contact Debitsuccess and at our discretion in most instances we will be able to make the changes you require. There may be a fee charged for this service (details on fees available by contacting Debitsuccess on 1800 267 916). Any changes made will not affect the total amount you would otherwise have paid over the minimum term of your membership agreement.

5. SUSPENDING THE PAYMENTS

Suspending the payments may be possible under the terms of your membership agreement. Payments may be suspended for a minimum of 2 weeks at a time so long as the total does not exceed 6 weeks. Exceptions to this must be approved by club management.

In order to suspend payments you should contact Debitsuccess at least 3 days prior to the date of the first suspension payment. There is a charge of \$2.50 p/week while the membership is in suspension unless a different amount is specified on the agreement. Any time spent on suspension will be added on to the minimum term of the membership agreement so that the sum of the instalments payable for the minimum term or number of payments shall still be payable regardless of any suspension or suspension charges made.

6. CANCELLING THE PAYMENTS

You can cancel this Direct Debit Request authority by requesting this via Debitsuccess or your Bank. Cancellation of this authority does not terminate your membership agreement or remove your liability to make the payments you have agreed to.

7. DISPUTES

If you dispute any debit payment, you must notify Debitsuccess immediately. Debitsuccess will respond to your dispute within 7 working days and will refund the amount of the debit if we are unable to substantiate the reason for it. If you do not receive a satisfactory response from us to your dispute contact your financial institution who will respond to you with an answer to your claim within 5 business days if your claim is lodged within 12 months of the disputed drawing or within 30 business days for claims lodged after 12 months of the disputed drawing.

8. NON-WORKING DAY

When the day to debit falls on a weekend or public holiday the debit will be initiated on the next available working day.

9. DISHONoured PAYMENTS

It is your responsibility to ensure that on the due date cleared funds are available in your nominated account to meet your Direct Debit payment. Should your payment be dishonoured Debitsuccess will debit an additional \$10 with your next payment and may, if we have not received instructions to the contrary from you, debit both the current payment and the overdue payments on the same day. Debitsuccess may debit other fees or costs involved with debt collection in accordance with the terms and conditions of the membership agreement (refer clause 21 Credit/Debt reporting agents).

10. ENQUIRIES

All enquiries should be directed to Debitsuccess and should be made at least 1 working day prior to the next scheduled debit date.

11. YOUR OTHER RESPONSIBILITIES

In addition to those already mentioned, you are responsible for ensuring that your nominated account is able to accept direct debits. If it is not, it is your responsibility to provide Debitsuccess with an appropriate account number.

I agree and recognise that I have been provided with a New Member Information document. I fully understand and agree to abide by all of the terms, conditions, policies and instructions contained within this document.