

# **Preston Health and Fitness Membership - General Terms and Conditions**

## **1. Definitions**

- a) **Access Pass** means your membership fob allowing you to enter the Club.
- b) **Agreement** means this membership agreement made between you and Preston Health and Fitness incorporating the documents referred to in clause 2(b).
- (c) **Billing Account** means the bank account or credit card nominated by you to have your direct debit Membership Fees deducted from.
- (d) Club means the Preston Health and Fitness gym as specified in your Membership Agreement
  
- (e) Club Rules mean the Club rules as amended from time to time, which are located at the Club.
  
- (f) DD Membership means a weekly membership, with recurring fortnightly direct debit payments.
  
- (g) Dishonour Fee means a \$14.95 fee.
  
- (h) Pre-Workout Questionnaire means the pre-workout questionnaire that the member is required to complete prior to using the Club.
  
- (i) Foundation Member means a Member that has a Foundation Membership as categorised by this Agreement.
  
- (j) Preston Health and Fitness means the entity specified on your Membership Agreement and includes its heirs, estates, agents, representatives, officers, directors, shareholders, successors, affiliates, subsidiaries and employees.
  
- (k) Admin Fee means the sign up/ establishment fee specified in the Agreement.
  
- (l) **Member** means the individual who has entered into this Agreement with Preston Health and Fitness.
  
- (m) **Membership Agreement** means the form provided to you by Preston Health and Fitness requiring you to provide the relevant details to Preston Health and Fitness (e.g. name, address, payment card details) relating to your membership.
- (n) Membership Fees means the fees that are due and payable by you pursuant to this Agreement.
  
- (o) Minor means members under the age of 18.

(p) Upfront (UF) Membership means Members that have paid in advance according to the level of UF membership as specified in this Agreement.

(q) Payment Agreement means the Agreement between you and us permitting our Payment Provider to provide the direct debit and credit card payment facilities to you on our behalf in accordance with the Payment Provider's Direct Debit Service Agreement.

(r) Payment Provider means the payment provider specified from time to time by Preston Health and Fitness, which is currently Debit Success unless Preston Health and Fitness otherwise specifies.

(s) **Payment Provider's Direct Debit Request Service Agreement** means the Payment's Provider's service agreement provided to you by Preston Health and Fitness.

(t) Policies means the Preston Health and Fitness membership policies as amended from time to time, which are located at [www.prestonhealthandfitness.com.au](http://www.prestonhealthandfitness.com.au) and available at your Club on request.

(u) Privacy Policy means the Preston Health and Fitness privacy policy which is available at [www.prestonhealthandfitness.com.au](http://www.prestonhealthandfitness.com.au)

(v) Products means any products that are purchased pursuant to Preston Health and Fitness sale of goods terms and conditions.

(w) Staffed Hours means the hours for the Club, which are located at the entrance to the Club or at [www.prestonhealthandfitness.com.au](http://www.prestonhealthandfitness.com.au)  
Preston Health and Fitness reserves the right to change the Staffed Hours at any time without notice.

(x) Written Notice means notice in writing, given in person, by email or post to the parties' last known address.

## **2. Terms and Conditions**

(a) Your membership is governed by this Agreement.

(b) This Agreement incorporates these terms, the Membership Agreement, the Policies, the Club Rules and the Privacy Policy.

(c) Accepting this Agreement does not automatically entitle you to a membership as your application may be subject to further review by Preston Health and Fitness.

(d) Preston Health and Fitness reserves the right, in its sole discretion, to amend this Agreement.

(e) Preston Health and Fitness holds, so far as a provision of this Agreement is for the benefit of a third-party, that provision on trust for the relevant third-party.

### **3. Membership**

(a) Nature of Membership Your membership permits you to use Preston Health and Fitness' premises, facilities, equipment and services as shown and limited by the membership identified. Your membership is non-transferable by you unless deemed appropriate by Preston Health and Fitness.

(b) Change to Details You must provide Preston Health and Fitness with any changes to your details, which are relevant to your membership in writing.

(c) Membership Hold Preston Health and Fitness can place DD and UF memberships on hold for a minimum period of two weeks and maximum period of one year.

i) You must provide a request for a hold of your membership in writing to Preston Health and Fitness using the suspension form provided at the Club with start and end dates of the hold written on the form

ii) the member is responsible for recording the dates of the membership hold and understands that DD payments will begin the day after the hold ends and UF memberships will continue the day after the hold ends.

(g) Foundation Membership Members who duly complete and agree to this Agreement prior to the Club opening date are defined under the Policies as a Foundation Member. A Foundation Member has the privilege of maintaining the same membership price for the life of this Agreement. Termination of Foundation Membership privileges is effective on the date Preston Health and Fitness advises the member by Written Notice. Preston Health and Fitness reserves the right to terminate a Foundation Member's privileges in the event of the following:

(i) A DD membership is cancelled or terminated; or

(ii) A DD membership is in arrears; or

(iii) A member's conduct is improper, harmful or illegal and contrary to the best interest of Preston Health and Fitness and / or its Members.

### **4. Payments**

(a) You agree to pay all Membership Fees as set out in this Agreement and agree to be bound by the direct debit terms and conditions as described in the Payment Agreement and the Payment Provider's Direct Debit Request Service Agreement.

- (b) For a DD Membership you must make your payments on a fortnightly basis in advance.
- (c) For a UF membership, you must pay your membership in advance according to your level of UF membership as indicated by Preston Health and Fitness to you.
- (d) For all memberships you must make payment of the Club Access and pro-rata amount in advance and the balance of the Membership Fees by way of direct debit (or if UF by way of credit, cash or EFTPOS).
- (e) You must provide to Preston Health and Fitness, in the form requested by Preston Health and Fitness, a Payment Agreement authorising Preston Health and Fitness' Payment Provider to debit the Membership Fee due for each direct debit period from your Billing Account.
- (f) Preston Health and Fitness will endeavour to contact you by phone, sms or email to inform you of any overdue payments. In the event that Preston Health and Fitness cannot contact you, it will provide you with Written Notice of overdue payments.
- (g) A Member will be charged a Dishonour Fee in the event that a fortnightly direct debit payment is dishonoured by their financial institution.
- (h) A Member will be charged a \$15.00 fee if their Access Pass is damaged or lost and requires replacement.
- (i) Additional fees (being bank charges or administrative charges incurred by the Payment Provider) will apply for any overdue or late payments.
- (j) If there are repeated failures to meet your payment obligations (other than through the fault of Preston Health and Fitness or its Payment Provider), without prejudicing Preston Health and Fitness' rights to recover any overdue payments, your membership may be suspended or terminated.
- (k) You acknowledge and agree that Preston Health and Fitness may change its Payment Provider and that Preston Health and Fitness and/or the current Payment Provider may, in their sole discretion, assign or novate all existing Payment Agreements to a new payment provider. In the event that Preston Health and Fitness or the current Payment Provider assigns or novates the existing Payment Agreements to a new payment provider, you consent to Preston Health and Fitness or the current Payment Provider providing your personal information (including, but not limited to your payment details, to its new payment provider) in accordance with this Agreement and Preston Health and Fitness' Privacy Policy.

(l) Preston Health and Fitness reserves the right, at any time, to change the Membership Fees charged to Members for use of the Club facilities. Preston Health and Fitness agrees to use reasonable endeavours to provide you with Written Notice of the changes. The changes will take effect 30 days after the Written Notice has deemed to be received by you. We deem receipt to have occurred 2 business days after the Written Notice was sent. At the end of the 30 day period, you authorise Preston Health and Fitness and/or the Payment Provider to debit the new amount to your account.

## **5. Minimum Age**

(a) All Members of Preston Health and Fitness must be a minimum of 14 years of age. All Minors must have a parent or legal guardian agree to the terms of this Agreement. All Minors must attend the Club to obtain a membership accompanied by their Parent/Guardian

(b) Minors aged between 14-15 years of age must comply with the restrictions outlined below;

- i) All membership forms completed by the minor (Membership Agreement, Access Waiver and Club Orientation Checklist) must be co-signed by a parent/guardian
- ii) provide a letter from a licensed physician stating the minor is physically fit and able to use gym equipment and participate in any physical exercise or activity
- iii) must be accompanied and train with a parent/guardian at all times

(c) Minors aged 16-17 years of age must comply with the restrictions outlined below;

- i) All membership forms completed by the minor (Membership Agreement, Access Waiver and Club Orientation Checklist) must be co-signed by a parent/guardian

## **6. Staffed Access**

(a) A Member may be subject to a Staffed Access only membership, which will only allow them to attend the Club during Staffed Hours.

## **7. Access by Non-Members**

(a) Preston Health and Fitness only grants Members, unless otherwise specified in this Agreement, access to the Club. No Member is permitted to bring a non-Member into the Club.

(b) If a Member breaches clause 7(a) of this Agreement, the Member acknowledges that:

(i) they accept responsibility and liability on their personal behalf for any injury, loss or damage attributed to the non-Member whether or not caused through the negligence of Preston Health and Fitness;

(ii) the act of bringing a non-Member into the Club constitutes automatic acceptance by the Member of an automatic fine. A fee of \$150 will be charged to the member.

(1) for a Member who holds a DD Membership, this amount will be deducted from their nominated bank account; and

(2) for a Member who holds an UF Membership, the Member will receive an invoice for this amount;

(v) Preston Health and Fitness reserves the right to terminate the membership of the Member who brings a non-Member into the Club.

## **8. Orientation**

(a) It is a condition of this Agreement that you participate in a scheduled Member orientation program.

(b) The orientation focuses on various aspects of the Club including, but not limited to, Club layout, amenities and entry and exit areas, alarms and emergency devices

(c) Preston Health and Fitness may suspend or terminate this Agreement in the event of unsatisfactory completion of the Club orientation prior to the commencement of exercise.

(d) You acknowledge and represent to Preston Health and Fitness that you will seek assistance from Preston Health and Fitness personnel before using equipment that is unfamiliar to you.

## **9. Physical Condition**

(a) It is your responsibility not to use any equipment which may adversely affect any medical condition.

(b) You hereby represent to your Club and Preston Health and Fitness and their directors, officers, employees, contractors and agents that, to the best of your knowledge, you do not have any physical, medical or other disability or condition which may be affected or aggravated by, or which may result in any sickness, injury or death to you as a result of, your use of the Club or its facilities.

(c) If you have any health or medical concerns now or after you join as a Member of the Club, you must discuss them with your doctor before using the equipment or the Club.

(d) You acknowledge that Preston Health and Fitness did not give you any medical advice before you used the equipment, and cannot give you any medical advice after you use the equipment.

### **10. Pre-Workout Questionnaire**

(a) It is a condition of membership with Preston Health and Fitness that each Member, prior to using the Club, has to complete the Pre-Workout Questionnaire.

(b) You will not be permitted to use the Club until you have completed the Pre-Workout Questionnaire.

(c) Preston Health and Fitness reserves the right to restrict, suspend or terminate your membership if Preston Health and Fitness is of the reasonable opinion that you are unfit to utilise the Club on a 24/7 basis. If your membership is restricted or suspended for this reason, your membership will not be reinstated until you provide Preston Health and Fitness with a medical certificate confirming that you are fit to train.

### **11.Video and Audio Surveillance**

(a) For security purposes, Preston Health and Fitness uses video and audio surveillance equipment to monitor the Club on a 24 hour basis.

(b) By accepting this Agreement you acknowledge that by accessing any “Preston Health and Fitness” branded club you will be subject to video and audio surveillance and recording.

(c) Video and audio surveillance is limited to the floor area only, and is not within the walls of the bathrooms.

### **12. Equipment**

(a) You understand and acknowledge that Preston Health and Fitness purchases or leases the equipment from a third party and therefore does not manufacture any of the fitness or other equipment used in the Club.

(b) You understand and acknowledge that Preston Health and Fitness is providing recreational services and may not be held liable for defective products or equipment.

### **13. Liability for Property**

(a) Preston Health and Fitness is not liable to you for any personal property that is damaged, lost, or stolen while on or around the Club including, but not limited to, a vehicle or its contents or any property left in a locker.

(b) If you cause damage to the Club or any equipment you are liable to Preston Health and Fitness for its cost of repair or replacement.

### **14. Release and Indemnity**

- a. Preston Health and Fitness is entitled to ask you to agree to exclude, restrict or modify its liability for death or any personal injury suffered by you on Club premises, or from the use of our facilities or equipment.
- b. If you accept this Agreement, you agree to restrict the liability of Preston Health and Fitness if you are killed or injured, with the result that compensation may not be payable if you or a third party suffers death or personal injury.
- c. Preston Health and Fitness may refuse to provide you with the services if you do not agree to exclude, restrict or modify your rights by accepting this Agreement. Even if you accept this Agreement, you may still have further legal rights against Preston Health and Fitness.
- d. A parent or legal guardian of a child who acquires recreational services for the child cannot legally agree to exclude, restrict or modify the child's rights.

### **15. Release and Indemnity (Victoria)**

(a) 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 the recreational services it supplies to you —

(i) are rendered with due care and skill; and

(ii) are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and



(iii) might reasonably be expected to achieve any result you have made known to the supplier.

(b) 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 accept 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.

(c) You accept that your use of the facilities provided by Preston Health and Fitness or at any "Preston Health and Fitness" branded club is at your own risk and you acknowledge that the use of the facilities may involve risk or injury, whether caused by you or another party. By accepting this agreement you agree that Preston Health and Fitness will not be liable for any personal injury suffered on club premises, or from using our facilities or equipment.

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 Australian Consumer Law and Fair Trading Act 2012.

## **16. Cooling Off Period**

(a) All new memberships are subject to a cooling off period of 10 business days.

(b) A request for termination of membership during the cooling off period must be made by Written Notice unless this Agreement is defined as an unsolicited consumer agreement under the Australian Consumer Law, in which case termination may be written or oral.

(c) For any membership terminated validly during the cooling off period, Preston Health and Fitness will refund to you the total of all Membership Fees.

## **17. Your Right to Terminate Your Membership**

(a) You may terminate your UF membership at any time on the following basis:

(i) You provide a request for termination of your UF membership in writing to Preston Health and Fitness using the cancellation form provided at the Club

(ii) If your request for termination is for reason of permanent sickness or physical incapacity and this prevents you from using the Club:

(A) Your request must be accompanied by a medical certificate evidencing such permanent sickness or physical incapacity; and

(B) there will be a refund of any unused Membership Fees.

(iii) In the event of death, your estate must provide written evidence in the form of a death certificate and all unused Membership Fees will be refunded.

(A) in relation to DD Memberships:

(1) you may terminate your membership at any time;

(2) you must provide Preston Health and Fitness with 7 days Written Notice of the termination date with Preston Health and Fitness

(3) the Member will not incur any financial obligations under this Agreement on and from the date that the Written Notice has been processed and accepted by Preston Health and Fitness and the Member has a right to continue attending the Club until the Member's pre-paid period expires.

(B) in relation to UF Members:

(1) you may not terminate the membership during the prepaid period (or get a refund), unless you suffer from a permanent sickness or physical incapacity as described in clause 17(a)(ii); and

(2) if you do not renew your UF membership by the renewal date, your membership will automatically expire.

## **18. Preston Health and Fitness' Right to Restrict or Terminate Your Membership**

(a) Preston Health and Fitness may restrict your membership (including by limiting access to other "Preston Health and Fitness" branded clubs and for limiting access to Staffed Hours) at any time on the following basis:

- (i) concern for the health and/or safety of the Member; or
  - (ii) non-compliance, improper or harmful conduct engaged in by the Member.
- (b) Preston Health and Fitness may terminate your membership at any time on the following basis:
- (i) you fail to make any payments of your Membership Fees;
  - (ii) Preston Health and Fitness reasonably suspects that you are engaging in illegal activity in the Club;
  - (iii) you fail to follow any of the Policies or Club Rules, or violate any part of this Agreement; or
  - (iv) your conduct is improper or harmful to the best interest of Preston Health and Fitness Members.
- (c) In the event that Preston Health and Fitness terminates your membership in accordance with clause 18(b), termination will be effective on the date that Preston Health and Fitness sends Written Notice. You are liable for all financial obligations until that date. If you are a UF Member, Preston Health and Fitness will not refund any unused portion of your fees.
- (d) Upon termination of your membership by Preston Health and Fitness, you will cease to have access to the Club. Any money owing to Preston Health and Fitness when your membership ends, remains immediately due and payable and Preston Health and Fitness will deduct the amount outstanding from any refund which you may be eligible. If there is not enough money to cover the amount owing to Preston Health and Fitness, you must pay the balance of the amount owing.
- (e) Upon termination of your membership by your election, you may continue to use the Club for any period that you have paid in advance. You will cease to have access to the Club once any period you have paid in advance expires.
- (f) Termination or expiration of this Agreement shall be without prejudice to the rights of each party against the other in respect of anything done or omitted under this Agreement prior to such termination or expiration.

## **19. Termination and Unauthorised Cessation of Direct Debit**

(a) If you terminate the Agreement or stop the automatic debit arrangement in a manner not described in the Agreement, then you may be liable to Preston Health and Fitness for any unpaid fees, or fees incurred by Preston Health and Fitness.

## **20. Assignment**

Preston Health and Fitness may assign or novate its rights under this Agreement at any time without prior consent.

## **21. Risk Warning**

(a) Preston Health and Fitness warns that whilst you are on our premises using our Club and recreational services, you are at risk of suffering physical harm or personal injury including broken bones, soft tissue injuries, joint injuries, permanent disability or death. These injuries may occur from you:

- (i) slipping on wet flooring;
- (ii) being struck by weights;
- (iii) colliding with equipment, or other Members;
- (iv) engaging in strenuous exercise and activities; or
- (v) incorrect use of equipment or Club,

(b) You acknowledge that any such injury may result not only from your actions but from the action, omission or negligence of others.

(c) You acknowledge and agree that the above mentioned injuries and potential causes of injuries are not exhaustive, and there are other unknown or anticipated risks that may result in injury, illness or death.

(d) You acknowledge that whilst every attempt is made to ensure that the recreational services and facilities provided by Preston Health and Fitness are safe, there are some significant and inherent risks involved, and you agree that you are participating voluntarily at your own risk and responsibility, thereby exposing yourself to certain risks