

Terms & Conditions

Our details (“us”, “our”, “we”, and includes any of our employees, contractors, officers or agents)	Freedom Physiology Pty Ltd (A.C.N. 682 273 767) Address: 8a Curtis Street, Woodville South SA 5011
Particulars of Services	Exercise Physiology / Gym Membership
Your name:	
Your contact details:	Phone number: Email: Address:
Acceptance by you	By accepting these Terms & Conditions, you acknowledge that you have read, understood and agree to these Terms & Conditions. If you have any questions about these Terms & Conditions, do not accept them until your questions or issues are resolved.
Your signature:	

1. **IMPORTANT – LIMITATION OF LIABILITY**

- 1.1 We have no liability (including liability for negligence or recklessness) to any person for any loss or damage (direct, consequential or otherwise) suffered or incurred by any person in relation to any goods or Services supplied by us (or any of our employees, officers or agents). Without limiting the generality of this limitation, we have no liability for any loss or damage resulting from any failure, defect or deficiency of any kind in any goods or Services, and we are not liable for any loss of profit or special, indirect or consequential damages of any kind.
- 1.2 You agree to hold harmless and release and waive and disclaim against us from any responsibility, liability, demand or claim of any kind arising at any time in relation to your use or access to our Services.
- 1.3 Any valid claim by you against us must be presented in writing to us within a reasonable time, and in no event longer than 60 days after the goods or Services have been supplied. No action may be maintained by you against us unless a timely written claim has been given under this clause, and unless legal action is commenced within 12 months after the supply of the relevant goods or Services.

2. **SUPPLY**

We agree to supply, and you agree to purchase, the Services in the manner and at the times provided in these Terms & Conditions.

3. **EXERCISE PHYSIOLOGY SERVICES**

- 3.1 Exercise physiology involves physical treatment, which may include “hands on” treatment. You have the right to see the treatment provider of your choice.
- 3.2 By agreeing to these Terms & Conditions, you consent to receive treatment from us.
- 3.3 You acknowledge that there are risks associated with treatment, which may include stiffness, soreness, delayed onset muscle soreness, mild exacerbation of discomfort, injury related or unrelated to the treated area, fatigue and in rare circumstances death.
- 3.4 There are also risks in not receiving treatment. Delay in receiving treatment may lead to further complications.

4. **GYM MEMBERSHIP**

- 4.1 By purchasing a gym membership:

- (a) You are entering into a **periodic agreement** which will continue for the membership term (in accordance with clause 4.3), unless either you or us terminate it in accordance with these Terms & Conditions.
- (b) You are granted access to sessions scheduled by us during the membership term, subject to these Terms & Conditions.

- 4.2 The number of sessions that you attend within any period of time may be limited by the terms of your membership.

- 4.3 We offer the following membership types:

- (a) **Freedom 10 Class Pass.** This option allows you to attend 10 sessions, which will expire 6 months after the date of purchase. There is no rollover or credit for classes that you did not attend during that period of time.
- (b) **Freedom 5 Class Pass.** This option allows you to attend 5 sessions, which will expire 6 months after the date of purchase after the date of the first session. There is no rollover or credit for classes that you did not attend during that period of time.
- (c) **Freedom Athlete Program.** This option gives you unlimited access to all sessions. Payment is required weekly in advance of your attendance at any sessions. This membership is provided on an ongoing basis and ends only when it is terminated by you or by us in accordance with these Terms and Conditions.
- (d) **Freedom Prime Membership.** This option gives you unlimited access to all sessions. Payment is required fortnightly in advance of your attendance at any sessions. This membership is provided on an ongoing basis and ends only when it is terminated by you or by us in accordance with these Terms and Conditions.

- 4.4 If you have signed up for the Freedom Athlete Program or the Freedom Prime Membership by

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accepting these Terms & Conditions you authorise us to debit the membership fee from your nominated bank account in accordance with the payment cycle associated with that membership type.

- 4.5 If you are unable to attend for a prolonged period, you may place your membership on a period of suspension for up to 4 weeks, unless otherwise agreed in writing by Alexander Josipovic.
- 4.6 You may request to cancel your membership with us at any time. Once you make a request to cancel your membership, there will be one more payment cycle direct debited from your nominated account. This will allow you to attend the gym for up to 2 weeks following the cancellation request. We will not refund any payments on cancellation of your membership. On cancellation of your membership, you must cancel any direct debit authorisation for payment that you have given us.
- 4.7 We may cancel a membership by written notice to you in our complete discretion.

5. RULES

- 5.1 By engaging in our Services, you agree to abide by all rules notified to you from time to time by us and that any failure to abide by the rules may result in us declining to provide Services to you.
- 5.2 In addition to any rules notified to you from time to time, you agree to:
 - (a) Disclose any medical or health conditions that may impact your ability to engage in the Services. This is an ongoing obligation and you are required to notify us of any changes to your medical or health conditions;
 - (b) Immediately notify us if you or any other person is harmed or injured during the course of the Services;
 - (c) Not be under the influence of alcohol or illicit substances when engaging in our Services;
 - (d) Not engage in any behaviour that may create a risk to you or any third party;
 - (e) Comply with our instructions and directions at all times, including in respect of safety and the use of any equipment;
 - (f) Immediately notify us if you are unfamiliar with how to use any facilities or equipment;
 - (g) Not remove any equipment or facilities from the gym;
 - (h) Inspect equipment and facilities in the gym before use, and to not use them if you are concerned that they are not in good working condition. If you have any such concerns, you will immediately raise them with us.

6. FIT FOR EXERCISE

- 6.1 You agree that you will not engage our Services if:
 - (a) You have any reason to believe that you are not able to undertake involvement in our Services due to illness or injury;
 - (b) You have been advised by a healthcare professional to limit your exercise; and
 - (c) You are taking any medication which recommends that you do not engage in physical activity or exercise.
- 6.2 If you have any concerns about your health or fitness, you agree to seek medical advice any act only in accordance with that medical advice.

7. ASSUMPTION OF RISK

- 7.1 You understand and acknowledge that engaging in our Services may expose you to many inherent risks, including accidents, injury, illness, or even death. This may arise from, but is not limited to:
 - (a) Your fitness level or tiredness;
 - (b) Strenuous exercise;
 - (c) Your technique;
 - (d) Incorrect use of facilities or equipment;
 - (e) Your state of health;
 - (f) Use of equipment supplied by us; or
 - (g) Failure to comply with our instructions or directions.
- 7.2 While we have policies and procedures to assist with safety and mitigate risk, there are risks outside of our control.
- 7.3 To the extent permitted by law, you expressly and voluntarily assume all risk of any Claim or Loss (including in relation to injury or death) sustained by you while accessing our Services, including but not limited that arising from equipment malfunction.

8. HOW WE WILL CHARGE

- 8.1 Our fees and charges are set out in our Schedule of Fees available on our website.
- 8.2 Our fees and charges may change from time to time. If our fees change, we will provide at least 2 weeks' notice of the change in fees by email to the email address provided when you signed these Terms & Conditions.
- 8.3 All gym memberships must be paid for in full in advance of the training session.
- 8.4 Except for the case of a home visit, an exercise physiology appointment must be paid in full immediately following the conclusion of the appointment.
- 8.5 For home visits, we will send you an invoice for payment. Payment is due within 7 days of the date that the invoice is issued.
- 8.6 We accept payment by way of cash and EFTPOS for your convenience.
- 8.7 You will not be entitled to book further exercise physiology appointments until all outstanding money have been paid.

9. CANCELLATION POLICY

- 9.1 If you are unable to attend a gym session or exercise physiology appointment that you have booked into, you are required to cancel your attendance not less than 12 hours prior to the class.
- 9.2 If you miss an exercise physiology appointment or do not give more than 12 hours' notice of your cancellation, then you may be charged a cancellation fee of \$50.

10. NO WITHHOLDING OR OFFSET

You may not withhold from any payment, or offset against any payment, due to us any amount in respect of any amount owed by or claim against us.

11. PAYMENTS AND INTEREST CHARGES

- 11.1 If you fail to pay us any amount under these Terms & Conditions, we may:
 - (a) Immediately terminate the supply/service arrangement between us by providing you with written notice of termination;

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- (b) Terminate any credit facilities extended to you; and
- (c) Initiate legal action for recovery of any outstanding amounts owed by you and the costs incurred (including but not limited to legal costs on a solicitor and own client basis).

- 11.2 Time is of the essence for the payment of amounts due to us by you.
- 11.3 You will pay interest on amounts due to us that are over the payment terms at the rate of 2% per month accrued daily and compounded monthly from the date payment is due to the date on which payment is received by us.
- 11.4 You will be liable to us for all costs and expenses (including legal costs) incurred by us in collecting any overdue account, or incurred by us due to any breach or default of these Terms & Conditions, and must pay the same to us immediately upon notice or demand.

12. DISCLOSE ALL RELEVANT INFORMATION

- 12.1 You must disclose all relevant information to us relating to the terms, conditions and circumstances in which we are to supply the Services. Without limitation, you will disclose to us:
- (a) Accurate, complete and sufficient information concerning the Services to allow us to comply with all laws and regulations concerning the supply of the Services; and
 - (b) All foreseeable hazards associated with the supply of the Services by us, including any health or medical conditions that you may have.
- 12.2 You confirm that all information provided by you, is true, accurate and complete in all material respects, and may be relied upon by us in the supply of the Services.
- 12.3 You indemnify us against all losses, costs, penalties and expenses which we pay or incur as a result of you failing to fully discharge the obligations in this clause 11.

13. DISCLOSURE FOR PROMOTIONAL PURPOSES

You agree that we may take photos, audio recordings or videos during sessions for promotional purposes. You agree for us to use such photos, audio recordings or videos in our promotional materials, including posting them online.

14. PRIVACY

You agree that information which we collect and retain about you can be used in accordance with our Privacy Policy, which is available here: <https://freedomphysiology.com.au/privacy-policy>

15. THIRD PARTY SUPPLIES – PASS THROUGH TERMS

- 15.1 The terms set out in this clause 15 have priority over any other terms.
- 15.2 From time to time we may provide you goods and/or Services (a **Third Party Supply**) from or on behalf of a third-party provider (the **Principal**). We may provide a Third Party Supply as principal or as agent.
- 15.3 We do not warrant the performance or integrity of any Third Party Supply. We merely pass through to you whatever end-user representations and warranties the Principal provides to or through us with the Third Party Supply.
- 15.4 We are not responsible for any acts or omissions of the Principal, for any obligations undertaken or

representations that they may make, or for any other products or services they may supply to you, either directly or through us.

- 15.5 We have no control over the intellectual property in a Third Party Supply, and therefore do not take any responsibility for any liability arising as a result of the Third Party Supply. We do not indemnify you for claims by third parties that may arise as a result of a Third Party Supply infringing any intellectual property of any third party. We will pass through to you any indemnity or cover provided by the Principal in respect of the Third Party Supply.

- 15.6 Your sole and exclusive remedy for any breach of warranty or other liability is as stated in the Principal's own terms and conditions.

16. NATURE OF RELATIONSHIP

We will supply the Services as an independent contractor and neither us nor any of our personnel will (unless otherwise agreed by us) be, or be deemed to be in partnership or in a joint venture relationship with you, or your employee, servant or agent.

17. COMPETITION AND CONSUMER ACT 2010 (Cth)

- 17.1 These Terms & Conditions must be read subject to the *Competition and Consumer Act 2010* (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other Commonwealth, Territory or State legislation insofar as such legislation may be applicable and prevents the exclusion or modification of any such term, condition or warranty, and our liability is limited to the maximum extent permitted by law.
- 17.2 We will agree a time for the provision of our Services with you. You agree that the time within which we provide Services to you is reasonable.

18. FORCE MAJEURE

- 18.1 Neither of us is liable for any delay or failure to perform our obligations under these Terms & Conditions if such delay is due to Force Majeure.
- 18.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended during the Force Majeure.
- 18.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 Business Days, either party may then terminate these Terms & Conditions with notice in writing to the other party.

19. CAPACITY

For the purposes of these terms each party:

- (a) Expressly acts, covenants and binds on behalf of itself and on behalf of its related parties (including heirs, successors, permitted assigns, associated entities and legal personal representatives); and
- (b) Covenants to procure (to the best of its abilities) the performance by each of its related parties of the terms and conditions contained herein.

20. SUCCESSORS AND ASSIGNS

- 20.1 These Terms & Conditions apply to and bind the successors and assigns of the parties.
- 20.2 Notwithstanding clause 20.1, neither these Terms & Conditions nor any right or obligation under them are assignable in whole or in part by you, whether by operation of law or otherwise, without our prior written consent.

21. INVALID PROVISIONS

If any provision of these Terms & Conditions are held to be illegal, invalid or unenforceable, these Terms & Conditions must be considered divisible and inoperative as to such provision to the extent it is illegal, invalid or unenforceable. In all other respects these Terms & Conditions remains in full force and effect.

22. LEGAL EFFECT

The parties intend the provisions of these Terms & Conditions to be legally binding and enforceable against us.

23. APPLICABLE LAW AND JURISDICTION

23.1 These Terms & Conditions are governed by and construed in accordance with the laws of the State.

23.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State in respect of any claim, dispute or difference arising out of or in connection with these Terms & Conditions.

24. INTERPRETATION

24.1 In these Terms & Conditions unless the context indicates a contrary intention:

- (a) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (b) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, these Terms & Conditions;
- (c) A reference to a party to these Terms & Conditions or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (e) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;

- (f) References to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing; and
- (g) Nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or any part of it.

25. DICTIONARY

In these Terms & Conditions the following expressions have the meanings assigned to them respectively unless those meanings are repugnant to the context or subject matter:

25.1 **Business Day** means a weekday (excluding a public holiday) in the State;

25.2 **Claim** includes any claims, actions, demands, liabilities, suits, causes of action, proceedings, arbitrations, judgements, accounts, rights, entitlements, obligations, or interests, in each case howsoever arising and whether legal or equitable, actual or contingent, present or future, fixed or unascertained;

25.3 **Force Majeure** means a circumstance beyond the reasonable control of the parties that result in a party being unable to observe or perform on time an obligation under these Terms & Conditions. Such circumstances include but are not be limited to:

- (a) Acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (b) Acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) Strikes;

25.4 **Loss** includes all losses, costs, expenses, damages, awards and other liabilities (whether incurred or sustained in relation to person or property, and whether direct, consequential or otherwise), and all associated interest, penalties and legal costs (on a full indemnity basis), in each case howsoever arising and whether legal or equitable, actual or contingent, present or future, fixed or unascertained;

25.5 **Services** means the advice, recommendations, information, rights and services to be supplied under these Terms & Conditions; and

25.6 **State** means South Australia.

END OF GENERAL TERMS