

## TERMS AND CONDITIONS

These Terms and Conditions, together with any Membership Form, Screening Tool, and Waiver set out in the Appendixes, set out the agreement (this **Agreement**) under the terms of which you or, where applicable, the person for whom you are the parent or guardian, (the **Member, you, your**) will obtain services, including the Activities, from **Rome Strength & Mobility Pty Ltd ABN 12 668 972 (Company, we, us, our)**.

We may change these Terms and Conditions at any time by updating the Terms and Conditions page on our website, and your ordering of the Activities or using the Gym following such an update will represent an agreement by you to be bound by the Terms and Conditions as amended. Changes to these Terms and Conditions will only apply to Membership Forms entered into after the change occurs. However, we will only increase your Fees in accordance with clause 6.2 below

### 1 MEMBERSHIP FORM, THIS AGREEMENT

- (a) These Terms and Conditions will apply to all the Member's dealings with Company, including being incorporated in all agreements or quotations under which Company is to provide services to the Member (each a **Membership Form**) together with any additional terms included in such a Membership Form.
- (b) The Member will be taken to have accepted this Agreement if the Member accepts a Membership Form, or if the Member orders, accepts or pays for any Activities provided by Company after receiving or becoming aware of this Agreement or these Terms and Conditions.

### 2 TERM

This Agreement commences on the Commencement Date and continues:

- (a) for the duration of the Minimum Term specified by the Membership Plan (1 month for flexi plans and 6 months for lifestyle plans).
- (b) for the duration of the Minimum Term, and then automatically as a 'Month to Month' Membership Plan until terminated in accordance with clause 14;
- (c) until terminated in accordance with clause 14 for Membership Plans.

### 3 PARTICIPANT'S OBLIGATIONS

#### 3.1 CAPACITY AND AGE

- (a) The Member warrants that they:
  - (i) have the legal capacity and are of sufficient age to enter into a binding contract with us.
- (b) The Member acknowledges and agrees that:
  - (i) they must be at least 18 years of age to participate in any Activities involving group fitness.

#### 3.2 PRE-ACTIVITY OBLIGATIONS

The Member warrants that, on or prior to the Commencement Date, they:

- (a) will complete the Screening Tool located in the Studio Waiver;
  - (i) if they answer 'yes' to any of the questions contained in the Screening Tool, obtain a doctor's certificate stating that they are allowed to participate in the Activities; or
  - (ii) if they answer 'yes' to any of the questions contained in the Screening Tool and cannot obtain a doctor's certificate stating that they are allowed

to participate in the Activities, agree that they participate in the Activities at their own risk, if permitted to do so by Company;

- (b) have read and signed the Studio Waiver
- (c) accept any Third Party Terms, in accordance with clause 10.

### 3.3 GENERAL

- (a) The Member must provide Company with all documentation, information and assistance reasonably required for Company to provide the Activities;
- (b) The Member must participate in any briefings and/or introductions as notified by Company prior to engaging in any Activities; and

### 3.4 INSTRUCTIONS AND SAFETY

The Member warrants that they:

- (a) Will comply with any safety guidelines, instructions and/or rules that Company's Personnel provide to them;
- (b) stop participating in any Activities, and alert Company or its Personnel, if the Member has any concerns about their health or safety or if they start feeling dizzy, faint, unwell or feel any unusual pain during the Activities; and
- (c) be responsible for their own safety.

### 3.5 HEALTH AND STATE OF THE PARTICIPANT

The Member warrants that they:

- (a) are not pregnant and do not have a health condition which might have the effect of making it more likely that they will be involved in an accident or injury while participating in the Activities (**Condition**);
- (b) will notify Company immediately if they develop a Condition;
- (c) are aware and agree that if they have a Condition, Company might refuse them participation in some and/or all Activities;
- (d) are aware that the Activities, even when no accident occurs, may involve risk to health;
- (e) will not participate in the Activities under the influence of drugs, alcohol or illicit substances;
- (f) will not participate in the Activities, if ill, injured or feeling unwell; and
- (g) will warm-up prior to participating in the Activities.

### 3.6 GYM USE

The Member must:

- (a) cover any surfaces at the Gym, including all equipment and exercise mats, with a clean towel during use and wipe down each piece of equipment after use;
- (b) not use abusive, offensive or threatening language or behaviour while at the Gym;
- (c) at all times wear clean clothing appropriate to the Activities they are undertaking and/or as instructed by Company from time to time (jeans, work clothes, boots, or clothing with offensive or inappropriate images are not permitted);
- (d) not train shirtless, unless expressly permitted by Company Personnel;
- (e) not enter the Gym under the influence of drugs or alcohol;
- (f) not smoke, consume alcohol, drugs, foods, and/or chew gum at the Gym;

- (g) not use the equipment and/or facilities without seeking instructions from Company Personnel if the Member is not familiar with the equipment and/or facilities; and
- (h) not intentionally drop weights, and return them to their correct place after use.

### 3.7 POSSESSIONS

- (a) The Member is responsible for their possessions while at the Gym. Company will not be liable if any of the Member's possessions are lost and/or stolen at the Gym.
- (b) Where the Member uses pigeonholes (or similar storage) at the Gym, Company will not be liable if the Member's possessions are lost and/or stolen. The Member uses the pigeonholes at their own risk.

### 3.8 GUESTS

You may only bring guests to the Gym if:

- (a) you obtain the permission of Company's Personnel to do so; and
- (b) the guest visits the Gym during Staffed Hours, unless expressly permitted otherwise by Company in writing.

## 4 CLASSES AND GYM AVAILABILITY

### 4.1 CLASSES

If the Member's Activities include Fitness Classes (**Classes**), the Member acknowledges and agrees that:

- (a) unless directed otherwise, they are required to book their Classes in advance via the Glofox App;
- (b) any missed Classes will be forfeited by the Member and Company will not be required to reschedule such Classes;
- (c) Any missed Classes beyond the first (one strike) will attract a penalty of \$5 for each Class missed, to the Member's account.

### 4.2 AVAILABILITY

- (a) While Company will endeavour to ensure that Classes and equipment are available during the advertised opening hours, on occasion, Classes or equipment may be full, unavailable or no longer offered and Company will not be liable to the Member in such circumstances.
- (b) Company reserves the right to change the Classes and times offered at its absolute discretion without notice to the Member.
- (c) The Member acknowledges that during public holidays and over the Christmas and New Year breaks, Company classes are reduced in frequency and/or unavailable. This circumstance has been reflected in our Fees and the Member is not entitled to any fee discounts on this account.

## 5 PAYMENT

### 5.1 FEES

The Member must pay the Fees to Company, in the amounts and at the times set out in the Membership Agreement or as otherwise agreed in writing.

### 5.2 FEE INCREASES

We reserve the right to increase the Fees at any time after the period of your initial Membership Plan has ended, or at any time if your Membership Plan is 'Month to Month', by giving you a 31-day notice of such increase.

### 5.3 INVOICES

If Company issues an invoice to the Member, payment must be made by the time(s) specified in such invoice.

### 5.4 GST

Unless otherwise indicated, amounts stated in a Membership Form include GST.

### 5.5 PAYMENTS COLLECTED THROUGH GLOFOX

Company uses Glofox to collect Fee payments. The processing of payments by Glofox will be, in addition to this Agreement, and privacy policy of Glofox. We are not liable for the security or performance of Glofox. We reserve the right to correct, or to instruct Glofox to correct any errors or mistakes in collecting your payment.

## 6 DEBT RECOVERY

If you do not pay an amount due under this Agreement on or before the date that it is due:

- (a) Company may seek to recover the amount due by referring the matter to debt collectors;
- (b) you must reimburse Company for any costs it incurs, including any legal and debt collector costs, in recovering the amount due or enforcing any of its rights under this Agreement; and/or
- (c) Glofox may automatically attempt to recover the money on our behalf.

## 7 SUSPENSION OF MEMBERSHIP

- (a) You may suspend your Membership Plan for a minimum of 2 weeks at a time so long as the total time suspended within a 12-month period does not exceed 6 fortnights.
- (b) To suspend your Membership Plan you must:
  - (i) notify Company in writing at least 14 days prior to the date of suspension;
  - (ii) not have any outstanding Fees to pay to Company.
- (c) Suspensions must commence and end on the date when your payment is due.
- (d) 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 or suspension charges made.

## 8 TRANSFER OF MEMBERSHIP

You can transfer your Lifestyle Membership Plan to another person (**Transferee**), within the term of your Membership Plan provided that:

- (a) you pay a \$10 transfer fee;
- (b) the Transferee is not a current member;
- (c) the Transferee agrees to enter into a Membership Agreement with Company under the same Membership Plan; and
- (d) the Transferee is not a person who previously failed to pay membership fees to Company.

## 9 THIRD PARTY GOODS AND SERVICES

- (a) If Company is required to acquire goods or services supplied by a third party, the Member may be subject to the terms and conditions of that third party (**'Third Party Terms'**).
- (b) Provided that Company has notified the Member of such Third Party Terms and provided the Member with a copy of those terms, the Member agrees to any Third Party Terms applicable to any goods or services supplied by a third party that the Member or Company acquires as part of providing the goods or services and Company will not be liable for any loss or damage suffered by the Member in connection with such Third Party Terms.
- (c) The Member has the right to reject any Third Party Terms. If the Member rejects the Third Party Terms, Company cannot provide the services to the Member and clause 14 will apply.
- (d) Any Service that requires Company to acquire goods and services supplied by a third party on behalf of the Member may be subject to the terms & conditions of that third party (**'Third Party Terms'**), including 'no refund' policies.
- (e) The Member agrees to familiarise itself with any Third Party Terms applicable to any such goods and services and, by instructing Company to acquire the goods or services on the Member's behalf, the Member will be taken to have agreed to such Third Party Terms.

## 10 LIABILITY AND INDEMNITIES

### 10.1 NO RELIANCE

The Member acknowledges that in deciding to pay for the Activities and in entering into this Agreement the Member has not relied on the skill or judgment of Company and that the Member has satisfied itself as to the condition and suitability of the Gym and/or Activities and their fitness for the Member's purpose.

### 10.2 LIABILITY

- (a) To the maximum extent permitted by law and subject to clause 11.2(b), the total liability of each party in respect of loss or damage sustained by the other party in connection with this agreement is limited to the amount paid by the Member to Company under the most recent Membership Form.
- (b) Clause 11.2(a) does not apply to the Member's liability in respect of loss or damage sustained by Company arising from the Member breach of:
  - (i) Clause 4 – Participant's Obligations; and
  - (ii) Clause 11 – Privacy.

### 10.3 CONSEQUENTIAL LOSS

To the maximum extent permitted by law, neither party will be liable for any incidental, special or consequential loss or damages, or damages for loss of data, business or business opportunity, goodwill, anticipated savings, profits or revenue in connection with this agreement or any goods or services provided by Company, except:

- (a) in relation to a party's liability for fraud, personal injury, death or loss or damage to tangible property; or
- (b) to the extent this liability cannot be excluded under the *Competition and Consumer Act 2010* (Cth).

#### 10.4 RISK

- (a) Participating in the Activities involves the potential for injury and the Member is participating in any Activities at their own risk with knowledge of the dangers involved, including but not limited to, physical injury, muscle and ligament strains, illness, bruising, falls, injury through equipment failure, injury through impact during fitness class participation and death.
- (b) The Member acknowledges that there will be times where the Member will be unsupervised by any Company Personnel and agrees to accept any risks of loss, injury, damage or death arising out of the Member's unsupervised use of the Gym, unless there is reckless disregard or gross negligence on Company's behalf.
- (c) The Member acknowledges that while Company uses its best endeavours to ensure that the Gym and any facilities and/or equipment are free of faults and safety issues, there may be instances of equipment failure, and/or equipment and other objects may be left in incorrect positions by other Gym users. The Member agrees that Company will not be liable for any loss or damage arising out of such circumstances unless there is reckless disregard or gross negligence on Company's behalf.
- (d) The Member will bear all risk of loss or destruction of, or damage to, any equipment and/or other property and/or people arising out or contributed to by their participation in the Activities.

#### 10.5 INDEMNITY

The Member indemnifies Company from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:

- (a) any breach of this Agreement by the Member;
- (b) any negligent, fraudulent or criminal act or omission of the Member or its Personnel; or
- (c) an event, where circumstances giving rise to a claim, were caused or contributed to by the Member.

### 11 WARRANTIES

- (a) To the maximum extent permitted by applicable law, all express or implied representations and warranties not expressly stated in this agreement are excluded.
- (b) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

### 12 PRIVACY

- (a) You agree to be bound by our Privacy Policy, which is available on our website.
- (b) You consent to us taking images and recording video footage of you for the following purposes only:
  - (i) promotion of the Gym, Gym events and advertising the associated products and services; and
  - (ii) publication on social media platforms or in newspapers, in trade and other journals and on websites and the internet for the purposes of professional advancement,in accordance with our Privacy Policy.
- (c) Please notify us if you do not wish footage or images of you to be taken or kept by us.

## **13 CANCELLATION**

### **13.1 BY COMPANY**

Company may terminate this Agreement in whole or in part immediately by written notice to the Member if the Member is in breach of any term of this Agreement.

### **13.2 NOTICE – ALL MEMBERS**

Subject to clause 3, if you wish to cancel this Agreement, you must provide at least 7 days written notice to Company (**Notice**) and will be required to complete a final billing cycle.

### **13.3 LIFESTYLE MEMBERSHIP PLAN**

If you are on a Lifestyle Membership Plan:

- (a) you must pay Company the remainder of the minimum term if the Notice is prior to the expiry of the Minimum Term; or
- (b) cancellation after the minimum term requires 7 days written notice and payment of one final billing cycle.

### **13.4 FLEXI PLAN**

If you are on a Flexi Membership Plan:

- (a) you must pay Company the remainder of the minimum term if the Notice is prior to the expiry of the Minimum Term; or
- (b) cancellation after the minimum term requires 7 days written notice and payment of one final billing cycle.

### **13.5 SURVIVAL**

Any clause that by its nature would reasonably be expected to be performed after the termination or expiry of this Agreement will survive and be enforceable after such termination or expiry.

## **14 DISPUTE RESOLUTION**

- (a) A party claiming that a dispute has arisen under or in connection with this Agreement must not commence court proceedings arising from or relating to the dispute, other than a claim for urgent interlocutory relief, unless that party has complied with the requirements of this clause.
- (b) A party that requires resolution of a dispute which arises under or in connection with this Agreement must give the other party or parties to the dispute written notice containing reasonable details of the dispute and requiring its resolution under this clause.
- (c) Once the dispute notice has been given, each party to the dispute must then use its best efforts to resolve the dispute in good faith. If the dispute is not resolved within a period of 14 days (or such other period as agreed by the parties in writing) after the date of the notice, any party to the dispute may take legal proceedings to resolve the dispute.

## **15 NOTICES**

- (a) A notice or other communication to a party under this Agreement must be:
  - (i) in writing and in English; and
  - (ii) delivered via email to the other party, to the email address specified in this agreement, or if no email address is specified in this agreement,

then the email address most regularly used by the parties to correspond regarding the subject matter of this agreement as at the date of this agreement (**Email Address**). The parties may update their Email Address by notice to the other party.

- (b) Unless the party sending the notice knows or reasonably ought to suspect that an email was not delivered to the other party's Email Address, notice will be taken to be given:
  - (i) 24 hours after the email was sent, unless that falls on a Saturday, Sunday or a public holiday in the state or territory whose laws govern this Agreement, in which case the notice will be taken to be given on the next occurring business day in that state or territory; or
  - (ii) when replied to by the other party,whichever is earlier.

## **16 GENERAL**

### **16.1 GOVERNING LAW AND JURISDICTION**

This agreement is governed by the law applying in New South Wales, Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of New South Wales, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### **16.2 AMENDMENTS**

This agreement may only be amended in accordance with a written agreement between the parties.

### **16.3 WAIVER**

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

### **16.4 SEVERANCE**

Any term of this agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this agreement is not limited or otherwise affected.

### **16.5 JOINT AND SEVERAL LIABILITY**

An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

### **16.6 ASSIGNMENT**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### **16.7 COUNTERPARTS**

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement and all together constitute one agreement.

### **16.8 COSTS**

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.



## 16.9 ENTIRE AGREEMENT

This agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.

## 16.10 INTERPRETATION

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (i) **(includes)** the word "includes" and similar words in any form is not a word of limitation;
- (j) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision; and
- (k) **(currency)** a reference to \$, or "dollar", is to Australian currency, unless otherwise agreed in writing.

## 17 DEFINITIONS

In addition to capitalised terms defined in the Agreement Details above, capitalised terms used in this agreement will have the following meanings:

Term	Meaning
<b>24/7 Access</b>	means access to the Gym outside of the Staffed Hours.
<b>Activities</b>	means the Activities listed in the Membership Form to be provided to the Member by Company.
<b>Commencement Date</b>	has the meaning set out in the Membership Form.
<b>Fees</b>	has the meaning set out in the Membership Form.
<b>Gym</b>	means the venue specified in the Membership Form.
<b>Laws</b>	mean any applicable statute, regulation, by-law, ordinance or subordinate legislation in force from time to time in the relevant

Term	Meaning
	jurisdiction(s) where the Activities are performed or received and includes any industry codes of conduct.
<b>Member, you, your</b>	has the meaning set out in the Membership Form and includes the parent or guardian of the Member if the Member is under 18 years of age.
<b>Membership Form</b>	has the meaning set out in clause 1(a) of these Terms and Conditions.
<b>Membership Plan</b>	has the meaning set out in the Membership Form and relates to the contract length and payment terms a Member has selected.
<b>Personnel</b>	means, in respect of a party, that party's officers, employees, contractors (including subcontractors) and agents.
<b>Staffed Hours</b>	means between 6am and 8pm.
<b>Third Party Terms</b>	has the meaning set out in clause 7.

## 18 INTERPRETATION

In this Agreement, the following rules of interpretation apply:

- (a) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (b) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (c) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) **(person)** a reference to "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (e) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (g) **(document)** a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (h) **(currency)** a reference to "\$" or "dollar" is to Australian currency;
- (i) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (j) **(includes)** the word "**includes**" and similar words in any form is not a word of limitation; and
- (k) **(adverse interpretation)** no provision of this Agreement will be interpreted adversely to a party because that party was responsible for the preparation of this Agreement or that provision.

