

# MEMBERSHIP TERMS AND CONDITIONS

THIS IS AN IMPORTANT DOCUMENT – PLEASE ENSURE THAT YOU READ IT CAREFULLY

## 1. OUR AGREEMENT

This agreement is made between Emma Dorothy Moore T/A Train With Em ABN 19 786 578 480 (“Us”, “We”, “Our” or “TWE”) and the member who has signed up for a membership or purchased a casual class or product via our online booking system (“you”).

These Terms and Conditions, and your online signup make up the entire agreement between the parties (“the Agreement”). Any previous representations or documents whether provided by TWE or its agents or employees is excluded from this Agreement.

You must ensure that you read, understand and abide by all of the terms and conditions of the Agreement. If you have any questions please ask us.

“Rules” means the rules which are binding rules that apply to all members, visitors and guests and that are notified to you through signage, handouts, social media or our website ([www.trainwithem.com.au](http://www.trainwithem.com.au)).

## 2. AGE RESTRICTIONS

If you are of a limited legal capacity (i.e. between 14 and 17 years of age), you represent that you have obtained the consent of your statutory representative prior to entering in to this Agreement, and that the signature of the Parent / Guardian contained herein, is that of your Parent / Guardian.

You understand that the age restrictions are in place for members aged between 14 to 17 years of age.

There will be no access to weights based training or group exercise classes which include resistance training, unless supervised one on one by a personal trainer. A Parent or Guardian must be a TWE member and must be present at all times.

## 3. START DATE

Your Membership starts on the membership start date that you select when you purchase your Membership online provided that you have agreed to these Terms and Conditions either by signing in person or online via the signup page.

## 4. YOUR MEMBERSHIP TYPE

You are becoming a member of TWE under the type of membership you have selected in the online system. All members commit to attending the sessions to the end of the term or the remaining time left of the term, once the member commences training with TWE. All members commit to a membership package where the member agrees to continue with the agreed package until the term finish date. The member may upgrade to a higher membership package with more sessions within the term but may not downgrade to a membership package with lessor sessions unless having provided 10 business days’ notice to [emma@trainwithem.com.au](mailto:emma@trainwithem.com.au). You may not transfer your membership to another person.

## 5. UPGRADE/DOWNGRADE OF MEMBERSHIP TYPE

There is an administration fee of \$10 for all downgrade of Membership Type. Members wishing to upgrade, must pay the additional pro-rata for the current billing cycle.

## 6. TERMINATION/HOLDS AND PT RESCHEDULING

A membership, once commenced, may be terminated or cancelled in writing via email to [emma@trainwithem.com.au](mailto:emma@trainwithem.com.au) 10 business days prior to the final payment date.

You may place your membership on hold for medical, maternity/paternity, travel, and military reasons upon the provision of satisfactory supporting documentation. Membership Holds are available for a minimum of 2 weeks and maximum of 8 weeks per calendar year and is only possible if your membership fees are paid up to date. All requests must be applied for in writing via email to [emma@trainwithem.com.au](mailto:emma@trainwithem.com.au), at least ten (10) days prior to the commencement of the hold period, and

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TWE reserves the right to refuse any application for hold at any time. No backdated requests will be approved.

Hold dates must coincide with pre-existing billing dates. A Hold Fee of \$5/ week is chargeable. Going over the 8 week maximum hold will result in potentially losing your current rate and your membership changing to whatever TWE's current rate for the same package may be at the current point in time.

A Personal Training Client may request a cancellation or rescheduled PT appointment in writing via email no less than 24 hours prior to the currently scheduled time. Any less notice will result in a forfeit of the PT session. Send any reschedule requests to [emma@trainwithem.com.au](mailto:emma@trainwithem.com.au). Reschedule requests for a date that falls within another payment period can not be guaranteed as PT sessions do not roll over from term to term.

A membership may be put on hold (suspended) due to medical reasons, at no charge, once a doctor's certificate has been provided outlining the member's condition.

### **7. TWE's RIGHTS**

TWE may Cancel or Postpone a session with little or no notice. TWE and it's representatives may refuse a member entry or continuation in a session if TWE's Representatives have deemed (at their sole discretion) the member to be medically or physically unfit to participate. However, TWE is not able to provide advice concerning the member's medical fitness to undertake exercise or activity and that is the member's responsibility to seek medical advice in this regard.

### **8. COLLECTION OF FEES**

If your membership is terminated for any of these reasons we may recover any outstanding membership dues and fees and reasonable costs and expenses we incur as a result of your breach, including debt recovery expenses of engaging an external collection agency and legal costs ( without limiting any other right or remedy we have).

### **9. MEMBERSHIP DUES AND FEES**

All membership dues and fees will be recovered on automatic debit from your nominated credit / debit account as setup when initially purchasing your membership. Minimum term of the payments will depend on the membership chosen and will continue indefinitely thereafter unless advised , in writing, to cancel. In the event of a failed Direct Debit payment, the member may incur a fee, which will be added to the next successful payment. This cost will vary depending on the charges imposed by the Direct Debit Company controlling the debit from the member's account or credit card. After the term finish date, the member remains on an active TWE membership and the member will not need to join again, hence the payments will continue to be withdrawn unless advised otherwise. If a membership fee payment remains outstanding, you agree that, unless we are in breach of our obligations under the Agreement, we may continue to debit the nominated credit / debit account for the total amount due without notice to you. If for any reason payment of your Membership Dues and Fees is declined by your credit card/bank account a fee of \$15 per due payment may be charged by TWE as a charge we incur for collecting any outstanding Membership Dues and Fees and will be payable by you. If you have a genuine dispute in relation to the collection of outstanding amounts or the charges we incur, please contact us.

### **10. MEMBERSHIP FEE INCREASE**

We review our Membership Dues and Fees periodically and we reserve the right to change them. If we increase the Membership Dues and Fees we will provide at least 30 days prior notice of the increase by post, email or SMS to the addresses provided by you in the online signup. Following such notice, you authorize us to increase any direct debits to your credit card or bank account which you have authorized upon joining. We will not use this right to vary the terms on any special offer which applies to you. If you

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do not wish to accept an increase you may terminate your membership. All Membership Dues and Fees include goods and services tax (GST). We reserve the right to change your Membership Dues and Fees in line with any government GST rate changes.

### 11. REFUNDS

Except as provided in this Agreement all monies are non-refundable.

### 12. LIABILITY

In the course of exercising or engaging in any recreational activities which may involve a significant degree of physical exertion or physical risk while using TWE facilities, you may be injured or killed, and we will not be liable except to the extent caused by our gross negligence as defined under section 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.

Please refer to the warning notice below which we are required to provide you under the Australian Consumer Law and Fair Trading Act 2012 in relation to this limitation of our liability.

Warning under the Australian Consumer Law and Fair Trading Act 2012 (Victorian memberships only)  
Under the Australian Consumer Law (ACL), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form (Parties named in Section 1) is required to ensure that the recreational services 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. By signing 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 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.

Recreational activities, means your participation in a sporting activity or a similar leisure time pursuit or your participation in any other activity that involves significant degree of physical exertion or physical risk and is undertaken for the purposes of recreation, enjoyment or leisure.

Without limiting the paragraph above and any other terms which are implied into this Agreement, or by statute in relation to the supply of services which cannot be excluded or limited, we ensure that the services we provide are provided to you with due care and skill, are fit for the purposes for which they are commonly bought as is reasonable to expect in the circumstances, will correspond in the nature and quality with the services demonstrated to you, and are free from defect rendering them unfit for purposes for which our services are commonly acquired. Unless we have breached this obligations we will not be liable for any death, injury, loss, liability or damage that you may incur as a result of the services provided by us to you.

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### **13. RESPONSIBILITY FOR DAMAGE CAUSED BY YOU**

You are solely responsible for any damage which you may cause to TWE, its facilities, services, products or equipment, if such damage is caused by your willful act and / or negligence.

### **14. YOUR HEALTH**

Exercising and using the facilities may involve risk of injury and you exercise and use the TWE services and equipment at your own risk. You agree to disclose to us all relevant personal health and fitness information both prior to and during engagement in any exercise program, service or facility we provide to you, as part of your membership. Please monitor your physical condition at all times and exercise to a level that is appropriate given your knowledge of your health and any medical advice you have obtained. You further warrant and represent that you will advise TWE of any material changes to your health whilst a member and not use TWE or any of our facilities, services or products whilst you are suffering from any infections or contagious illness, disease or other ailment or whilst you are suffering from any physical ailment such as open cuts, or sores, or minor infections where there is a risk, however small, to other members and guests. We reserve the right to refuse entry or terminate memberships based on health reasons for the safety of our members.

### **15. CONTRACTORS**

Contractors and franchisees may provide services at TWE. Fees for such services are paid directly to the contractors and franchisees (these may include, but are not limited to Personal Trainers and Instructors). We take no responsibility for the services provided by and fees paid to these contractors and franchisees. Any claim which you might have as a result of an act or failure to act by a TWE contractor or franchisee (whether or not payment has been made to them). You hereby agree not to hold us liable and you agree to indemnify us and keep us indemnified for any claims suffered by you as a result of negligence by a contractor or franchisee.

### **16. GENERAL USE**

**Dress Code** - Fully enclosed, clean sports shoes must be worn in all public (non-studio) areas of TWE and during workouts for safety reasons. Appropriate workout clothes should be worn at all times. Towels and Cleanliness - Towels must be used when participating in classes and when exercising on gym equipment to maintain hygiene and safety standards. All equipment used (including bags and mats) must be wiped down. All members must bring any medical aids required by the member (eg asthma puffers) to each session.

Please look after your personal items, TWE employees, or contractors, are not responsible for any loss of personal property. All personal belongings must be removed from TWE prior to leaving daily or they will be removed and TWE does not take responsibility for loss, damage, or theft of your belongings.

**Gym Floor** - To prevent trip hazards, no bags are to be brought to the gym floor and must be kept in the designated area.

### **17. INTERRUPTION OF SERVICES**

As a result of repair, maintenance, public holiday, or special occasions, TWE may be required to restrict the use or temporarily close or halt TWE activity from time to time. There will be no reduction, suspension, abatement, or apportionment of membership fees or other charges during such time when the above-mentioned occurs. TWE hours of operation may be modified from time to time without prior notice to you. Train With Em reserves the right to change the facility from time to time, to eliminate or add facilities and services, and to change the type or quantity of equipment and services. TWE may from time to time reserve the use of its facilities for special events, competitions and private functions.

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### **18. SCHEDULE AND EQUIPMENT**

Train With Em reserves the right to update, move and/or alter the facilities, equipment and modify the Group Fitness group exercise schedule, without notice.

### **19. CHANGE OF DETAILS**

You must keep us promptly informed of any changes of address, phone contact numbers, email address, bank account and credit card details for payment and any other personal information that is relevant to your membership with us.

### **20. CHILDREN**

Our Kids Area is available to children of members and casual users of TWE during attending class times only. You are responsible for your child, and for making sure that your child understands the rules of the Kids Area. During a class, at no point is a child to open the gate for any reason. All children must remain within the gated area, unless the class instructor has said it is ok for children to be with their parents. Parents are responsible for making sure their child is safe.

Please ensure all children's possessions are clearly labelled, including food and drinks.

In case your child's nappy requires changing, you will be called from your activity to change it. If children need to use the bathroom, you will be called from your activity to escort them. TWE has the right to refuse any child who is sick or appears to have any illness/condition that may be transferred to other patrons/children.

NOTE: Ambulance fees / medical fees will be the responsibility of the parent of the injured child.

Please be aware that the following food items will not be permitted in the Kids Area room: eggs, all nuts, Peanut Butter and Nutella. This is consistent with childcare centres throughout VIC and is essential in the prevention of Anaphylaxis reaction from some children.

All children and parents must help to tidy the Kids Area at the end of every class. Children are to be advised that they are not to jump on or play with the gate. All food-related mess must be cleaned at the end of classes and children who are eating must keep their food to themselves and not share with other children.

### **21. PRIVACY STATEMENT AND ACKNOWLEDGEMENT**

We take the privacy of our members seriously. We collect personal information from you to provide you with our services, to administer your membership and for other purposes as described in our Privacy Policy. We will only use, disclose or deal with such information in accordance with our Privacy Policy.

### **22. GOVERNING LAW**

These Terms and Conditions are governed by, and you agree to submit to the laws applicable in the state or territory of TWE.

### **23. VARIATION**

We may alter these Terms and Conditions or the Rules at any time upon 30 days written notice, including email, SMS message, social media or posting it on our website.

All use of TWE facilities, services and products after the date specified in such notice will be subject to such altered Terms and Conditions or Rules and you will have been deemed to accept these variations.

### **24. SEVERABILITY**

If any part of this Agreement is or becomes illegal, void or unenforceable, this does not invalidate the rest of this Agreement.

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### **PHOTOGRAPHS & RIGHTS TO USE:**

Photos may be taken and used by TWE without compensation to me. I understand such photos are and will remain the property of TWE for promotional purposes only. If I do not wish to have photographs taken, I will take it upon myself to alert all TWE trainers, contractors or staff independently.

**By deciding to Train With Em I acknowledge that I have read, understood and agree to the above declaration, terms and conditions, and acknowledge that during all such times whilst participating in a TWE exercise session both my property and my person shall be at my own risk and I will not hold TWE or its Personal Trainers, Instructors, Contractors or Staff liable for any personal injury or loss of property, whether caused by negligence by TWE, it's servants or agents.**