

ALTITUDE FITNESS ARMIDALE

Terms & Conditions

Effective Date: August 2021

Welcome to www.altitudefitnessarmidale.com.au (**Site**).

IMPORTANT NOTICE

This Site is owned and operated by Altitude Fitness Armidale ABN 64 171 230 160 trading as Altitude Fitness Armidale. These Terms and Conditions govern your right to use the Site and your access to and use of the Subscription, Program, products and / or services and incorporates to the extent applicable, the Website Terms and Conditions and Privacy Policy (Terms). It is important that you carefully read the terms and conditions set out below as they apply to your Subscription.

1. Eligibility and Consent

By using the Site, accessing or purchasing the Program, any products or services, you warrant that you are over 18 years of age and have the legal capacity to enter into a legally binding contract. If you are accessing the Site or subscribing for access to the Program or any of the Site's services or products on behalf of a person who is under 18 years of age, then you are representing that you are that person's legal guardian and are responsible for that person's compliance with these Terms. You will indemnify us for any loss or damage we may suffer as a consequence of any person who is less than 18 years of age failing to comply with these Terms.

By accessing and using this Site, our social media channels and any other materials made available to you or provided to you on this Site, whether made available for purchase or not, you are taken to accept our Terms.

2. Subscription and Membership

We will provide you with access to the Program included in the Subscription package selected in accordance with these Terms.

We offer a Subscription in accordance with and as set out in the Application process. Access to the Subscriptions is subject to these Terms.

3. Medical Disclaimer

The information provided or accessed by you throughout the Site or as part of Your Subscription should not, at any time or under circumstances be substituted for professional medical advice and should not be used

at any time to treat or diagnose any health condition, including mental health condition. We are not medical practitioners and as such, we do not and cannot provide you with any medical advice or assistance. You are solely responsible for your health and wellbeing and we encourage you to seek independent medical advice before deciding whether the Program selected or the Subscription and the information contained within it are correct and suitable for you. You acknowledge and agree that your access and use of the Site and the Subscription is at your own risk.

4. Changes to these Terms

We reserve the right to change or modify these Terms at any time consistent with applicable laws and principles, without notice to you. These changes will be effective as of the date we post the revised version on this Site. It is your responsibility to review these Terms prior to use and periodically throughout your use of our Site and services. If at any time you choose not to accept these Terms, you should not use this Site.

By remaining on this Site and your continued use of this Site is deemed acceptance of any modifications or amendment of these Terms. You may also accept these terms where you click “Agree” or “Accept” or “Buy” where such an option is made available to you during your use of the Site. If you’re uncertain about the Terms or anything else on our Site, please don’t hesitate to contact us before completing any purchase.

5. Fees

Our Subscription Fees are in Australian Dollars (AUD) and are inclusive of any Australian Goods and Services Tax (GST) (as applicable). We reserve the right to change our Subscription Fees from time to time and you acknowledge and agree that you will be responsible for all charges incurred by you.

You acknowledge and agree that you are solely responsible for any costs that may be incurred by them for use of the Subscription, including but not limited to the cost of equipment, internet to access the Program and facilities and locations adequate for participation in the Program.

By nominating a credit or debit card or account, you are expressly agreeing to be billed on a recurring basis for your Subscription. Your Subscription payment will be deducted automatically on an “upfront” basis, with the first payment on the date you sign up and future payments on the monthly anniversary of the date you signed up. Your Subscription will continue until your Subscription is:

- a. canceled; or
- b. terminated.

You will be charged the same weekly amount based on the Subscription Program you have selected.

Where you fail to pay your Fee or we are unable to deduct the amount, we reserve the right to suspend your Subscription until all outstanding amounts have been paid. This is in addition to any other rights we have under these Terms including the ability to terminate for non-payment.

We do not offer refunds or credits for change of mind, unused Subscriptions, accidental purchases, or medical conditions, unless required by law to do so.

6. Cancellation and Termination

There is no contract or cancellation fee for cancellation of your Subscription. Subscription charges are dependent on the type of Subscription you have selected. Your Subscription will auto renew unless you choose to cancel. Your Subscription may be cancelled at any time with 30 days notice in writing via email communication to admin@altitudefitnessarmidale.com.au. Please note that we do not issue refunds when cancelling.

The term of your Subscription is continuous, unless cancelled or terminated.

We reserve the right to terminate your Licence and Subscription immediately in our sole discretion if we believe you have breached any of the Terms including failure to comply with the Licence terms and/or failure to pay the Fees when due, subject to applicable laws.

7. Force Majeure Event

We will make reasonable commercial efforts to ensure that the Program is available to you. However, in the unlikely event that We are unable to provide the Program, for any reason including, but not limited to illness, injury, emergency, or Act of God, sudden event or other circumstances beyond our control (**Force Majeure Event**), then we will provide other avenues for delivery of the Program. We assume no liability if the Program or any part of it is unavailable for any period of time.

You acknowledge and agree that you are responsible for use of and access to the internet to connect to the Program and that we are not responsible for any fees, technical problems, security breaches or system failures due to the hardware or software that you use to access the Program.

8. Warranties

This Subscription is provided on an “as is” and “as available” basis and to the fullest extent permitted by law we make no representations or warranties about our Subscription, Program and / or the products or services including that:

- a. they are suitable, reliable, complete, secure, accurate or fit for any particular purpose;
- b. you will achieve any particular result or outcome;
- c. access will be free of any harmful components (including viruses) or other code that is harmful or may assist in causing harm; or
- d. there is no possibility of failure to store communications or other data.

9. Limitation of Liability

To the fullest extent permitted by applicable laws, in no event are we responsible for any losses and expenses however arising, including without limitation, any direct, indirect and/or present, unascertained, future or contingent, loss of use, loss of data, loss caused by a virus, loss of income or profit or projected profit, loss or damage to property, claims of third parties, or other losses of any kind or character arising from or in connection with your use of the Subscription, Program and /or our products or services, your inability to access the Program, interruption or outage of the Program or the fact that content in our

Program or in our services is inaccurate, incomplete or out of date. Our liability for any breach of a condition or warranty under these Terms shall be limited to the extent provided for by the Australian Consumer Law (Schedule 2 of the Competition and Consumer Act 2010).

10. Indemnity

To the fullest extent permitted by applicable laws, you agree to indemnify, and hold us and our related entities, affiliates, and our and their respective officers, agents and employees harmless from any loss, liability, claim, or demand, (including reasonable legal fees on a full indemnity basis), made by any third party due to or arising out of your use of the Subscription or Program selected in violation of these Terms and/or arising from a breach of these Terms and/or any breach of your representations and warranties set out in these Terms or your breach of any law or the rights of a third party.

11. Intellectual Property and Licence

The Site, Subscription Materials, Program, products and services contain intellectual property owned by us and/ or Third Party Materials and we own all the Intellectual Property Rights in the same. Your use of the Site, the products and/or services and access to any Subscription Materials does not grant or transfer any rights, title or interest to you in relation to this Site, the products and/or services or the Subscription Materials.

No Commercial Use

You may not modify, publish, transmit, participate in the transfer or sale of, create derivative works from, distribute, display, reproduce or perform, or in any way exploit in any format whatsoever the Site, our products and/or services or the Subscription Materials, our Intellectual Property and Third Party Materials in whole or in part without our prior written consent. We reserve the right to immediately remove your access to our Site, Program, products and services, Subscription Materials, without refund, if you are found to be violating these Terms.

Free or paid content

When you access free content on our Site or when you purchase our Subscription, Program, products and or services, you are granted a non-exclusive, non-transferable, limited licence to access and use the Subscription Materials for your own personal use (**Licence**). You may not assign or transfer the Subscription Materials or your membership of any Subscription or Program to any other person without our express written consent. We reserve the right, in our sole discretion, to accept or refuse to provide the Subscription, Program, products and/or services to you at any time for any reason.

Except as otherwise provided, you acknowledge and agree that you have no right to modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, sell, create derivative works of, enhance or in any way exploit any of the Subscription Materials in any manner whatsoever except as authorised by us.

To the extent that your intellectual property is required for the provision of the Program, you grant us a non-exclusive license to use the intellectual property for this purpose.

12. Privacy Policy

When you apply for your Subscription, we will require you to provide us with certain personal information about you; this may include information about your health. Your privacy is extremely important to us and we take your privacy seriously. We will only use the personal information provided by you to us strictly for the purposes of providing you with our Program, and to market to you with your consent. Where you wish to withdraw your consent to marketing, you can unsubscribe within the body of any email we send or inform us via email.

We will disclose and deal with your information in accordance with our privacy policy which you can access at any time here:

https://d2saw6je89goi1.cloudfront.net/uploads/digital_asset/file/932792/AFA_Privacy_Policy.docx.pdf

13. Electronic Communications and Electronic Signatures

These Terms will become binding when You agree to these Terms, including by clicking “I consent” or “I agree” or similar, or by purchasing and/ or commencing the Subscription.

14. Severability

Whenever possible, each provision of the Agreement will be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of the Agreement is held invalid or unenforceable, the remainder of the Agreement will nevertheless remain in full force and effect and the invalid or unenforceable provision will be replaced by a valid or enforceable provision.

15. Validity

Whenever possible, each provision of these Terms will be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of these Terms is held invalid or unenforceable, the remainder of these Terms will nevertheless remain in full force and effect and the invalid or unenforceable provision will be replaced by a valid or enforceable provision.

16. Ceasing our Website

We have the right to discontinue this Site. If we decide to do this, it can be at any time and may be without notice to you. We may also exclude any person from using our Site, at any time and at our sole discretion. We will not be responsible for any liability you may suffer arising from or in connection with any such discontinuance or exclusion.

17. Relationship of the parties

Nothing in these Terms is intended to or shall create or deemed to create a partnership, joint venture, agency or the relationship of employer and employee and shall not give rise to any fiduciary or equitable duties owed by Altitude Fitness Armidale to you.

18. Assignment

We are permitted to assign, transfer and subcontract our rights and/or obligations under these Terms without any notification or consent required. However, you are not permitted to assign, transfer or subcontract your rights and/or obligations under these Terms.

19. Entire Agreement

These Terms (together with our Privacy Policy and disclaimers) contained on this Site, constitute the entire understanding and agreement between us and you, in relation to your use of this Site and supersede all previous communications, negotiations, and agreements, whether oral, written, or electronic, respect to this Site and your use of this Site.

20. Governing Law and Jurisdiction

The formation, construction, performance and enforcement of these Terms will be in accordance with the laws in force in the State or Territory in Australia in which We are located. You and We submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

21. Interpretation

In these Terms, clause and other headings are for ease of reference and do not affect the interpretation of the Terms and:

- a. words in the singular include the plural and vice versa;
- b. a reference to a party to the Terms includes the party's permitted assigns; and
- c. a reference to "including" and similar words do not imply any limit.

22. Definitions

In these Terms, the following terms have the stated meaning unless a contrary intention appears:

ACL	means Australian Consumer Law as set out in the CCA.
Agreement	means the Subscription Agreement, including the Schedule, any recitals or annexures or attachments.
Application	means the application form completed and submitted by you.
CCA	means the <i>Competition and Consumer Act 2010 (Cth)</i> .

Commencement Date	means the date that your Subscription commences.
Direct Debit Amount	means the amount set out in Application that you have agreed to pay by direct debit during each Payment Period.
Fees	means the fees payable by you to join and participate in the Subscription as set out in the Application.
Intellectual Property Rights	means all current and future registered and unregistered rights in respect of patents, copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, inventions (including patents), domain names, discoveries, data, databases, and all other rights resulting from intellectual activity whether created before or after the Effective Date of these Terms and whether in Australia or otherwise and includes the Subscription Materials.
our/us/we	refers to Altitude Fitness Armidale ABN 64 171 230 160
Payment Period	means the frequency of your direct debit payments as set out in the Application.
Privacy Policy	Means the privacy policy: https://d2saw6je89goi1.cloudfront.net/uploads/digital_asset/file/932792/AFA_Privacy_Policy.docx.pdf
Program	means the programs offered on our Site as part of the Subscription.
Site	Means collectively the website www.altitudefitnessarmidale.com.au . Program, products and/or services provided by Altitude
Subscription	means your subscription with Us, entitling to the use of the Site, the Program, products and/or services provided by Altitude.
Subscription Materials	means all content provided as part of the Subscription, including, without limitation, photography, checklists, guides, ebooks, workbooks, trademarks, copyrights, proprietary information, designs, patents and other intellectual property rights, as well as the business name, logo, all designs, text, videos, audio files, graphics, other files, and software.
Third Party Materials	means all materials, including any documents, audio, video, designs, photography and information of a third party.
you/your	means you, the person accessing the Site and agreeing to the Terms of your use of the Site and its contents.

