

MEMBERSHIP FORM

IMPORTANT NOTICE

This is a membership form under which you agree to become a member of SMASH FITNESS & RECOVERY. When you sign this form, you are entering into a legally binding agreement.

This agreement (**your membership**) is made up of the terms contained in this form including the membership details below (**details**) plus any special conditions and the attached Terms and Conditions (**Terms**).

This form sets out your rights to use our exercise facilities and services, and the obligations you have to comply with as a member. Your responsibilities under this agreement, including payment of membership fees, do not depend on how often you use the facilities and services. You promise to tell us if at any time you believe that you may not be able to comply with your obligations under this agreement including the payment of fees, so we can discuss your options with you.

What is set out in this agreement overrides any statements made by you or us before you signed the agreement. Accordingly, you should now read through this entire form carefully to make sure that it fully reflects your expectations and ask us or seek advice if you are unsure whether any particular statements that you have relied on are part of this agreement.

If your membership is for a Fixed Term, it automatically terminates at the expiry of the Minimum Term and so a new agreement will be required if you require services after that time.

If your membership is Ongoing, it is a periodic agreement that will continue after the Minimum Term until either you or we terminate it in the way described in the agreement. If an automatic direct debit arrangement is in place, membership fees will continue to be debited from your credit card or account until you or the health and fitness business cancels the arrangement by notifying your bank or credit provider. If you terminate the agreement or stop the automatic debit arrangement in a manner not described in the agreement, then you may be liable for damages for breach of contract.

This membership is . Please
initial and date here.

.....
Signature

.....

Date

This agreement is subject to a 0 day cooling off period.

Direct Debit Warning: Please ensure that you cancel any direct debit authorisation for payments under this agreement when your membership ends.

Health and fitness business
(we, us, our)

Smash Fitness & Recovery
gym with classes and open
gym times.

Mailing address: 3/2 Apollo
Close, West Gosford, New
South Wales, 2250

Contact number:

Email:

admin@smashfitness.com.au

Member
(you, your)

Name:

Address:

Date of Birth:

Contact number:

Email:

Cooling Off Period ends

0 days after the day on which
this Membership Form is
signed.

Minimum Term

Your membership may be
either for a Fixed Term or
Ongoing as indicated in the
Important Notice box above.

Start Date

Membership Type

Facilities and Services

One or more premises of the
health and fitness business
including all areas such as

exercise areas and change rooms (and any pool, spa and car park) as well as all equipment including weights, benches, machines, mats, and any programs, products, classes and services that you can use according to your Membership Type (excluding services provided by outside providers described in clause 10 or other services described in clause 11).

Fees

Membership fees for the Minimum Term

Joining fee	N/A
Cancellation fee	As specified in clause 9.3
Fitness assessment	N/A
Exercise consultation	N/A
Child minding	N/A
Guest pass	\$15 per visit
Suspension fees	N/A for each week or part of a week of the suspension
Transfer fees	N/A
Other fees	N/A

Payment of membership fees

Direct debit provider

Direct debit services are provided by

discussed with you at the time you signed the membership form, we will reinstate any applicable cooling off period.

3. Responsibility for members under 18

This section applies where the member is under 18. By signing on behalf of a child, the parent or guardian agrees to be responsible for ensuring the child exercises safely, pays their membership fees and otherwise follows these Terms.

The parent or guardian who signs this form also agrees to hold the health and fitness business harmless in respect of any claim made by or on behalf of the child against the health and fitness business to the extent that any such claim would have been excluded under this agreement, had the child been an adult and signed this agreement on his or her own behalf.

4. Safety first!

The health and safety of members is important to us. This clause sets out some of the things we require of you to help achieve that objective.

4.1. Your physical condition

- (a) A safe and effective exercise program is dependent upon accurate health and fitness profiling. It is therefore essential that you tell us in writing all relevant personal health and fitness information both before (through our pre-exercise questionnaire or otherwise) and during the course of any exercise program or other activity.
- (b) You promise that information you disclose to us will be true and accurate and not misleading in any way. You must not attend and use the facilities and services whilst you are suffering from any illness, disease, injury or other condition that could present a risk to the health or safety of other members and guests or yourself.
- (c) If you happen to use the facilities and services before disclosing relevant health information to us, you promise that you are in good physical condition and you do not know of any reason why you may not be able to exercise safely. If you feel unsure that you can make this promise, we ask that you do not use the facilities and services until we have completed your health and fitness profile.

4.2. Proper use of equipment

We will provide you with an instructional consultation with a staff member before using the facilities and services which you must attend before use. In any case, you promise to take care when using the facilities and services and make sure that you use the facilities and services including equipment appropriately and safely. If you are ever not sure how to operate any equipment properly, please ask a staff member before you use it.

4.3. Rules of good behaviour

- (a) We display rules that apply to everyone using the facilities and services in order to promote health and safety and the protection of property (our Rules). A copy of our Rules will be handed to you when you apply for membership and may be displayed on our website and on signage. Please make sure that you read our Rules carefully and ask us if there is anything you are not sure about.
- (b) We may occasionally update our Rules to further promote health and safety or to make other improvements. We will seek to tell you of any changes as set out below, though we expect you to keep familiar with the current version of our Rules by reading our website and signage on a regular basis.
- (c) If you break our Rules, the response we take will be at our reasonable choosing and we will try to exercise this right fairly by giving you a warning if we consider the failure is less serious. In this regard however you acknowledge that health and safety of all users and protection of property is very important. Accordingly, if we reasonably consider the failure to follow our Rules is serious or persistent we may suspend or even cancel your membership with immediate effect.

4.4. We can refuse you entry

We can refuse you entry to the facilities and services or cancel your membership immediately if you behave in a way that is seriously risky or inappropriate, such as if you threaten or harass others, deliberately or recklessly damage equipment or facilities or if you use or distribute illegal or performance enhancing drugs.

4.5. Please follow our directions

You agree to follow any reasonable direction of a member of our staff relating to health and safety or any other matter.

5. We take your privacy seriously

5.1. Our privacy policy

From when you apply for membership we will have access to personal information about you, such as information relating to your health and finances. We will protect this information and only use, disclose or deal with this information in accordance with our Privacy Policy. The latest version of the Privacy Policy will be available on our website.

5.2. Video monitoring

We may use video monitoring in our facilities for health, safety and security reasons. If you have any queries in relation to the use of monitors operating in and around our facilities please contact us.

5.3. Please keep your contact details up to date

You promise to tell us promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to your membership with us. This includes any matters that affect the health or safety of you or others.

6. What you get when you join

From the Start Date you are entitled to the membership benefits and use of the facilities and services that apply to the Membership Type you selected.

7. When can you put your membership on hold?

You may temporarily suspend your membership for travel or medical reasons if all amounts payable for your membership are paid up to date. You will need to produce satisfactory supporting documentation when you apply for a suspension. You must apply for a suspension as soon as possible after you become aware of the relevant circumstances. We are entitled to charge you the suspension fee for processing your application. In any 12 month period, we are not obliged to suspend your membership on more than two occasions or for more than three months in total. While your membership is suspended, the term will be extended and we will freeze any direct debit payments that fall within the suspension period.

8. Ending your membership

For the purposes of any requirements in this agreement to tell us in writing or give us written notice, we will accept notification by email or post.

8.1. On or after expiry of the Minimum Term

- (a) Where neither you nor we terminate this agreement, any unpaid fees will need to be paid by you and in addition to our other rights we may have including our taking action to recover the outstanding payments.

8.2. Other ways that you can end your Membership

You can also cancel your membership where:

(When no cancellation fee will apply)

- we don't keep our end of the deal (please see paragraph (a) below);
- you become subject to medical incapacity (please see paragraph (b) below);
- we make changes to this agreement that adversely affect you (please see clause 12); or
- you otherwise become entitled to do so under consumer legislation;

(When a cancellation fee may apply)

- you relocate or simply wish to cancel for any other reason (please see paragraph (c) below).
- (a) If we don't keep our end of the deal
 - (i) You can cancel your membership by written notice to us if we breach any of our obligations under this agreement and we have not remedied that breach within a reasonable time after you have given us a written request that we do so.
 - (ii) No fees will be applicable for cancelling in accordance with this clause apart from, to the extent not impacted by our breach, the joining fee, membership fees for the time you have been a member calculated on a pro-rata basis and any outstanding fees for other services already supplied to you.
- (b) You can cancel for medical reasons
 - (i) You can end your membership by telling us in writing if you cannot exercise for the remainder of Minimum Term due to an illness or a physical incapacity and you produce supporting documentation to our reasonable satisfaction.
 - (ii) In that event, you will only be charged the joining fee, membership fees for the time you have been a member calculated on a pro rata basis and any outstanding fees for other services already supplied to you.
- (c) If your membership is no longer convenient
 - (i) Otherwise, you can end your membership during the Minimum Term with immediate effect at any time by simply telling us in writing. We understand that circumstances change and so you do not need to give any reason.
 - (ii) Please note we will consider any request to transfer your membership and may agree to the transfer at our reasonable choosing subject to satisfaction of reasonable eligibility conditions and your payment of the transfer fee. We will never charge you cancellation fee if we agree a transfer to someone who is not currently a member and they have paid our standard joining fee.
 - (iii) In any case if your membership ends under this paragraph (c), you will be liable for the joining fee, membership fees for the time you were a member calculated on a pro-rata basis, any outstanding fees for other services already supplied to you and, except as mentioned above, the cancellation fee.

8.3. When can we end your membership?

- (a) In addition to our other rights under this agreement, we can terminate your membership by written notice to you if you fail to act in accordance with any obligation under this agreement and if capable of remedy you do not remedy the failure within a reasonable time of us giving you written notice requiring you do so.

However, we will not seek to end your membership in this way if you have failed to make a payment and we are also in breach of a material condition of this agreement. If we cancel this agreement under this paragraph you will be liable for the joining fee, membership fees for the time you were a member, the cancellation fee and any other fees payable for further fitness services already supplied.

- (b) On rare occasions we may cancel a membership by written notice to the member without the need to give a reason. If we cancel your membership under this paragraph you will only be liable for the membership fees for the time you were a member and any other fees for other fitness services already provided. No cancellation fee will apply and we will refund your joining fee together with the sum of \$50. You agree that this payment is your sole entitlement to compensation for cancellation of your membership under this paragraph.
- (c) You promise that you are not insolvent at the time of signing and that you will tell us promptly if you believe you will be insolvent and unable to pay your membership fees for an extended period of time. If we become aware of these circumstances, we may end your membership.

9. Fees you have to pay for your membership

The fees you have to pay are specified in the details. This clause 9 sets out some further rights and obligations that apply in relation to particular fees. If you fail to make any payment when due, we can suspend your membership and refuse you access to the facilities and services until all outstanding amounts have been paid in addition to our other rights under these Terms. Fees and charges continue to accrue during the suspension.

9.1. Joining fee

We may charge you a joining fee to cover the set up costs for a new membership. The joining fee is not refundable except in limited circumstances relating to clause 8.3.

9.2. Membership fees

9.3. Cancellation fee

The cancellation fee based on a payout figure equal to the membership fees that you would have paid for the remainder of the Minimum Term as at the cancellation date less _____%.

9.4. Fee increases

We will not increase the membership fees during the Minimum Term. However, we may increase your membership fees or any other fees with effect any time after that. We will make a fair effort to tell you at least 60 days before by writing to you by post or by email. Where we have done so, you authorise us to increase any debits from your nominated

account in line with this increase. We will not use this right to vary the terms of any special offer which applies to you.

9.5. Refunds and the Credit Code

We are entitled to deduct all fees and charges that you must pay under this agreement from any refund we give you. The National Credit Code does not apply to this agreement.

10. Issues with outside providers

- (a) We will seek to make sure those franchisees, contractors and other authorised persons who provide services at the facilities (outside providers) are appropriately qualified before granting them access. Examples of outside providers include such as coaches, physiotherapists, masseurs and personal trainers who may offer additional services from the facilities that are not included with your Membership Type. Please note that outside providers are neither employed by us nor are they our agents, even if they happen to be wearing clothes displaying our name and logo. You will know that they are outside providers because they will require payment of their fee direct from you when you engage them.
- (b) This is important because we are not liable for any injury, loss or other claims arising from breach of contract, negligence or otherwise that are suffered by you in connection with any outside provider services, other than to the extent caused by our negligence. In addition, you release us and hold us harmless in relation to any such claims.
- (c) We have no responsibility in respect of the fees that you must pay directly to outside providers nor for any associated costs or refunds. However, please advise us if you have a problem with an outside provider and we will try to help if we can. Nothing in this clause limits our liability for the actions of our employees or agents.

11. Other services

There may be other services offered at the facilities that do not form part of your Membership Type but are available for you to purchase separately. These are not part of the services provided under your membership and you will be advised at the time if any additional terms apply to these services.

12. Changes to your membership agreement

- (a) We may need to make changes to this agreement including our Rules during your membership. However, we will always try to do this in a way that is fair by giving you an opportunity to cancel your membership if you do not agree to the change as described in this clause below.

- (b) We will tell you in writing of the proposed change in advance and tell you the date that it will come into effect. This effective date will be at least 30 days from the date of our notification unless it is impractical for us to do so. Your membership will be amended with effect from the effective date. If however, you are adversely affected by the change, you may cancel your membership without payment of a cancellation fee by telling us in writing before that date. Please note you cannot cancel under this clause if we are required to make the change in order to comply with a law or any direction of a competent authority.

13. Our liability to you

13.1. Statutory guarantees

- (a) ACL: The Australian Consumer Law (ACL) contained in the Competition and Consumer Act 2010 (Cth) (CCA) provides certain guarantees in sections 60 to 62 (statutory guarantees) which generally require that services supplied to you:
- are rendered with due care and skill,
 - 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 and
 - are supplied within a reasonable time (when no time is set).
- (b) Permitted exclusion: However, the CCA permits a supplier of recreational services to ask you to accept some limitations on those statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you acknowledge and agree that we exclude all liability to you for death or injury resulting from a failure by us to comply with any statutory guarantee.

In the previous sentence, “injury” means:

- physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
 - the contraction, aggravation or acceleration of a disease; or
 - the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.
- (c) Reckless conduct: This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

13.2. General exclusions

- (a) Please note that nothing in this agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.
- (b) Otherwise, and except as expressly included in this agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this agreement. In particular, but subject to the preceding paragraph, we are not liable for:
- negligence; or
 - breach of terms implied that services will be provided with reasonable care and skill,
- at common law that in either case results in your death or injury (as defined in paragraph (a) above) in connection with or under this agreement, but to avoid doubt we do not exclude liability for our reckless conduct.

13.3. Loss of property

- (a) You promise that you will not unnecessarily bring valuables in to the facilities and that if lockers are available you will use the lockers to store any valuable property that you bring with you. If we provide secure storage lockers, then this is part of our service to you. However, we are not responsible if someone breaks into your locker and takes your property, other than to the extent we have not complied with our obligations in respect of this service under a statutory guarantee.
- (b) Other than as described above, maintaining the security of unattended property in the facility is not part of the service we provide under this agreement. Accordingly, if you choose not to use a locker to securely store your property and leave it unattended in the facilities, we will not be responsible for any loss or damage to your property that occurs.

14. Your responsibility for damage

You agree to pay for any damage to the facilities caused by you or your guests through a wilful act or negligence.

15. When you pay by direct debit**15.1. Authorisation to deduct fees**

By nominating a credit or debit account, you are authorising us to deduct from that account all fees and other charges for which you may be responsible under this agreement. Accordingly, it is essential that you keep your account details up to date.

15.2. If your payment is late or rejected

- (a) You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.
- (b) Any bank fees charged to us because of a rejection when we attempt to collect payments from you may be charged directly to you by us (or by the Direct Debit Provider).
- (c) If a payment remains outstanding, you agree that, unless we are in breach of our obligations under these Terms, we (or the Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you. If the amount owing is more than one periodic membership fee we will seek to contact you first.

15.3. Direct debits

- (a) If you choose to pay fees by direct debit, then this will be through the Direct Debit Provider named in the details. The Direct Debit Provider may be us (if we are authorised) or a third party provider who is not a party to this agreement and whose only role is to provide direct debit services.
- (b) We will provide you with a copy of the terms and conditions that apply to the direct debit services. Those terms and conditions are entirely separate to this agreement and you may have rights and obligations under those terms and conditions. As such, the Direct Debit Provider acting in its capacity as such has no liability to you in connection with your involvement in exercise activities under this agreement.
- (c) You may at any time contact the Direct Debit Provider if you have any queries or to verify your direct debit authorisation details.

16. General terms

16.1. Unexpected events

We are not liable if you cannot use your membership due to anything beyond our reasonable control. If that failure or delay continues for more than 30 days, then either you or we can cancel this agreement with immediate effect by telling the other in writing. We are entitled to make part or all of the facilities unavailable for up to two weeks during each calendar year to undertake maintenance, repairs or improvements, in which case we will extend your membership by the time you are unable to use the facilities.

16.2. Our logo and intellectual property

No rights in relation to our logo, trademarks or any other intellectual property rights associated with our business, techniques, exercise programs or classes are granted to you under this agreement, except that any exercise program created for you may be used while you are a member for the purpose of your exercise activities.

16.3. Transferring this agreement

We can transfer the rights or benefit under this agreement or sub-contract our obligations under this agreement to a third party at any time without notice to you but in doing so we will make sure that the transferee agrees to honour the terms of your membership.

16.4. Severability and waiver

If a court finds that any part of any term of this agreement is or becomes illegal, void or unenforceable, that part is deleted and this does not invalidate the rest of this agreement. If we do not enforce our rights under this agreement at any time, it does not mean that we may not do so on future occasions.

16.5. Applicable law

The law of the State/Territory specified in the details applies to this agreement.



Smash Fitness & Recovery
Unit 3, 2 Apollo Close
West Gosford, NSW, 2250