

FLAIR PILATES
TERMS & CONDITIONS

Effective Date: 29 June 2020

Welcome to Flair Pilates! Uncomplicated fitness for uncomplicated people.

These Terms govern your use of the Website. The Website is owned and operated by Flair Pilates (ABN 33 938 958 821).

These Terms constitute a binding contract between you and us. If you continue to use the Website, you acknowledge that you have reviewed, understood and agree to be bound by these Terms. If you do not understand these Terms, if you do not agree to be bound by these Terms, or if you need more time to review and consider these Terms, then you must stop using the Website immediately. We only agree to your use of the Website if you agree to these Terms.

1. DEFINITIONS

‘Content’ means any content (including audiovisual content), materials, writing, images or other information made available on the Website or that we may provide to you in connection with the Website for any reason including to assist in your use of the Website.

‘Flair Pilates’ means Flair Pilates ABN 33 938 958 821.

‘Flair Pilates IP’ is all intellectual property that is owned by us and/or that is licensed to us including, but not limited to, the contents, layout, design, colours, appearance, graphics, imagery and code for the Website as well as all copyright, trade marks (registered and unregistered), trade secrets, patents and other intellectual property contained or utilised in the Website or the Content.

‘Identifying Information’ means information provided by you when: (a) sending an enquiry to us; or (b) subscribing to the Service, including but not limited to your name and email address.

‘Our Content’ means all Content published by us on the Website.

‘Service’ means the Flair Pilates on demand library of pilates and other fitness content available to Subscribers at www.flairpilates.com.au

‘Subscriber’ means a subscriber to the Service.

‘Subscription Fee’ means the applicable fee as set out on our Pricing page, which you can access [here](#).

‘these Terms’ means these Terms & Conditions.

‘us’, ‘we’, ‘our’ refers to Flair Pilates.

‘Website’ means the website hosted at www.flairpilates.com.au and includes the Service.

‘you’ or ‘your’ refers to the user of the Website.

‘Your Content’ means all Content published by you on the Website or which you otherwise share with us.

2. INTERPRETATION

In these Terms, unless the context otherwise requires, the following rules of interpretation shall apply:

- (a) words referring to one gender include every other gender;
- (b) words referring to a singular number include the plural, and words referring to a plural include the singular;
- (c) words referring to a person or persons includes companies, firms, corporations, organisations and vice versa; and
- (d) any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

3. YOUR AGREEMENT AND REPRESENTATIONS

By subscribing to the Service or by continuing to use the Website you represent and warrant to us that:

- (a) you have legal capacity to enter these Terms; and
- (b) you have complied with all of these Terms.

4. AGE RESTRICTION

In order to use or subscribe to the Service, you must be aged at least 18 years.

5. TERRITORIAL RESTRICTION

There is no territorial restriction on use of the Website or Subscription to the Service.

6. USER REGISTRATION

You will need to register with us in order to access the Service.

If you register with us, you will be asked to provide us with Identifying Information. This Identifying Information will allow you to access the Service. We reserve the right to close any account if we are unable to verify your user registration details.

You acknowledge that:

- (a) you are responsible for ensuring the accuracy of any Identifying Information that you provide to us as part of the registration process;
- (b) you will not share your login details with any third party and if you discover that your login details have been compromised, you will notify us immediately in writing; and
- (c) you are responsible for maintaining the safety and security of your Identifying Information as well as keeping us informed of any changes to your Identifying Information.

7. FREE TRIAL

Although we are not under any obligation to provide you with a free trial of the Service, from time to time we may choose to do so. If you accept the offer of a free trial of the Service, you are considered to have agreed to these Terms as though you were a Subscriber. There may also be additional terms that apply to any free trial which will be notified to you separately. In the event of any inconsistency between these Terms and the applicable free trial terms, the free trial terms will apply. Free trials are available to new Subscribers only. In order to receive a free trial of the Service you will be required to provide credit card details. At the end of the free trial period, your credit card will be automatically

charged the applicable monthly Subscription Fee unless you have cancelled your subscription before the end of the free trial period.

8. FEES

We offer various subscription options such as weekly and monthly. You can view subscription options and fees [here](#). Your credit card will automatically be debited weekly in advance if you select a weekly subscription or monthly in advance if you select a monthly subscription. You can cancel or change your subscription at any time by emailing us at the email address provided in the Contact section below at paragraph 21. Your subscription will then end at the end of the then current billing period unless it is too late for the next payment to be cancelled, in which case your subscription will end at the end of the next billing period. GST, if applicable, is included in the Subscription Fee.

If you are a Subscriber and you fail to pay any correctly charged Subscription Fee, your account will be cancelled without notice. If we are subsequently able to collect such Subscription Fee your account will be reinstated and your subscription period will be calculated from the date on which the late Subscription Fee was successfully charged to you. If we terminate your subscription for breach of these Terms we will not refund any Subscription Fee or part thereof.

We reserve the right to revise the Subscription Fees at any time by giving you at least 14 days' notice. If you do not cancel your subscription during the notice period you are deemed to have accepted the applicable revised Subscription Fee.

By using the Website you may incur third party charges from your mobile, internet or other provider.

We use Stripe for payments. By providing Stripe with your payment details, you are agreeing to Stripe's applicable terms.

9. LICENCE TO USE WEBSITE AND CONTENT

Subject to these Terms and your compliance with these Terms, we grant you a licence to use the Website and Our Content for any legitimate and legal personal purpose which is not prohibited by these Terms. The licence granted under these Terms is non-exclusive, limited, personal, non-transferable, revocable and terminates upon your cessation of use of the Website or upon termination of these Terms, whichever occurs first. For the avoidance of doubt, we only grant to you a licence to use the Service during the period for which you are a Subscriber.

10. ACCEPTABLE USE

You agree that:

- (a) all information that you upload or provide to the Website will be accurate, complete and honest and you will update all such information as necessary so that it remains at all times accurate, complete and honest;
- (b) you will not use the Website for any unlawful purpose or any purpose prohibited under these Terms;
- (c) you will not use the Website in any way that could damage the Website or our general business;
- (d) you will only use the Website for personal use; and
- (e) you will comply with the laws of all applicable jurisdictions in your use of the Website.

You further agree not to use the Website to:

- (a) harass, abuse or threaten any other person or to otherwise violate any other person's legal rights;
- (b) infringe any rights in Flair Pilates IP or the intellectual property rights of any third party;

- (c) upload or otherwise disseminate any computer viruses or other software that may damage our property or the property of any of our users or Subscribers;
- (d) commit any kind of fraud;
- (e) publish or distribute any offensive, obscene or defamatory material including any material which is violent, sexually explicit or contains nudity;
- (f) publish or distribute any material that incites violence, hatred or discrimination towards any person, group or community;
- (g) gather information about others unlawfully or use information obtained about others for any purpose; or
- (h) download, copy, store or transmit any of Our Content or attempt to do the same.

11. EXCLUSION OF LIABILITY

For the purpose of this clause, “us” and “we” includes all of Flair Pilates’ officers, directors, employees, affiliates, agents and other authorised representatives.

You acknowledge and agree that:

- (a) all forms of physical exercise including pilates have inherent dangers and risks, including risk of injury or death;**
- (b) your use of the Website is undertaken voluntarily, absolutely at your own risk and with a full appreciation of the nature and extent of all risks involved;**
- (c) you will consult your GP or other doctor prior to commencing any use of the Service;**
- (d) you will only use the Service if you are in good health;**
- (e) if at any time while using the Service you experience any pain or discomfort you will discontinue the exercise that is causing you pain or discomfort;**
- (f) you will consult your GP or other doctor prior to using the Service during pregnancy;**
- (g) it is your responsibility to determine whether or not the Service is suitable for you each and every time you wish to access the Service;**
- (h) it is your responsibility to determine whether or not any particular activity or exercise is suitable for you during your use of the Service;**
- (i) the Website is provided on an “as is” basis and may change at any time without prior notice;**
- (j) the Website may contain mistakes, errors and inaccuracies;**
- (k) if we provide any links to third party websites, we are not responsible for the content of such third party websites; and**
- (l) we have no liability for monitoring Content which is posted or uploaded to the Website other than Our Content.**

To the fullest extent permitted by law we hereby expressly exclude:

- (a) all warranties, guarantees, representations or terms (whether express or implied) except for those expressly set out in these Terms;**
- (b) any liability in relation to the accuracy, completeness, performance, reliability, timeliness, quality, safety, legality or suitability for a particular purpose of the Website;**
- (c) any liability for damage, loss, cost or expense including legal costs and expenses, whether direct or indirect, incurred by you in relation to loss of data or otherwise in connection with your use of the Website.**

To the fullest extent permitted by law, you waive all of your legal rights of action against us and fully release us from any claim you may have including for loss, damage, injury or death howsoever arising out of or in relation to your use of the Website including without limitation, liability for any negligent or tortious act or omission, breach of duty, breach of contract or breach of statutory duty on the part of Flair Pilates.

12. INDEMNITY

For the purpose of this clause, “us” and “we” includes all of Flair Pilates’ officers, directors, employees, affiliates, agents and other authorised representatives.

You hereby indemnify us and you agree to defend us and to hold us harmless in relation to any and all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) which may arise from or relate to your use or misuse of the Website or your breach of these Terms. You agree that we may select our own legal representation and may participate in our own legal proceedings if, and to the extent that, we choose and in such case the indemnity set out herein shall continue to apply.

13. VARIATION OF THESE TERMS

You hereby acknowledge and agree that we may vary or amend these Terms from time to time. If you continue to use the Website following any such variation or amendment you will be deemed to have confirmed and agreed to the varied or amended version of these Terms.

You agree to routinely monitor these Terms and to refer to the Effective Date posted at the top of these Terms in order to monitor any variations or amendments. You further agree to clear your cache when doing so in order to avoid accessing a previous version of these Terms.

In the event that you fail to monitor any variations or amendments of these Terms, you agree that such failure shall be considered an affirmative waiver of your right to review the varied or amended version of these Terms.

14. CHANGES TO WEBSITE

We may, in our sole discretion, vary, alter, amend, change or update the Website at any time.

The website may be unavailable from time to time (whether due to maintenance or for any other reason).

You acknowledge, agree and accept that we take no responsibility for, and to the maximum extent permitted by law we shall not be liable in any way for, the Website being temporarily or permanently unavailable, whether due to reasons within our control or not.

15. INTELLECTUAL PROPERTY

You hereby acknowledge and agree that, as between us and you, we own all intellectual property rights in the Website and nothing in these Terms amounts to a transfer of any intellectual property rights from us to you.

You hereby acknowledge and agree that you will not use any Flair Pilates IP for any unlawful or infringing purpose. If you use any Flair Pilates IP for a lawful purpose you will not remove any copyright notices or other intellectual property notices.

You hereby acknowledge and agree that you will not reproduce or distribute Flair Pilates IP in any way, including electronically or via registration of any new trade marks, business names or Uniform Resource Locators (URLs).

You grant us a worldwide, irrevocable, perpetual, non-exclusive, royalty-free and transferrable right and licence to use Your Content in any way we choose. This licence includes a right and licence to:

- (a) reproduce, copy, alter or make derivative works from Your Content;

- (b) display, communicate to the public, broadcast or transmit Your Content; and
- (c) authorise any other person, company or organisation to use Your Content.

To the extent that you hold any moral rights in connection with Your Content, you hereby consent to us making any material alterations to Your Content and doing or omitting to do any acts which would otherwise infringe your moral rights under the *Copyright Act 1968* (Cth) in relation to Your Content. In all countries of the world where it is possible to waive moral rights, you hereby waive all moral rights in Your Content.

You represent and warrant to us that you have all necessary rights to grant the licences and to provide the consents set out in this clause.

You agree not to copy or otherwise use any other Subscriber's Content without their express written consent.

16. PRIVACY

Through your use of the Website, you may provide us with some of your personal information. By using the Website, you authorise us to use your information in accordance with our Privacy Policy.

Refer to our Privacy Policy to find out what information we collect, how we use it and store it, and your rights in relation to it.

Our Privacy Policy can be found [here](#).

17. REVERSE ENGINEERING AND SECURITY

You agree not to do or attempt to do any of the following:

- (a) reverse engineer, disassemble or hack any code or software from or on the Website;
- (b) violate the security of the Website through any unauthorised access, circumvention of encryption or other security tools, scraping, data mining or interference with any host, user or network; or
- (c) illicitly collect or transmit information about other Subscribers.

18. TERMINATION

We may immediately terminate these Terms, as between you and us, at any time, with or without cause.

We specifically reserve the right to terminate these Terms, as between you and us, if you breach these Terms in any way.

These Terms terminate automatically if we cease to operate the Website for any reason.

If you have registered for an account with us, you may terminate these Terms at any time by contacting us at the email address provided in the Contact Us section at paragraph 21 below and requesting termination.

Upon the termination of these Terms, any provisions which would by their nature be reasonably expected to survive termination shall remain in full force and effect, including but not limited to our exclusions of liability as set out in the Health Disclaimer and General Exclusion of Liability clause.

If we terminate or suspend your account you agree not to register a new account on the Website under a different identity or to recommence using the Website without our express permission in writing.

19. OTHER ACTION

We reserve the right to take any of the following actions in our sole discretion:

- (a) monitor, review, edit or delete any of Your Content, whether or not you have breached these Terms;
- (b) review any allegations about breaches of these Terms, and determine in our sole discretion whether to take any action in response to those alleged breaches, including removal of any of Your Content in relation to those alleged breaches; and
- (c) determine in our sole discretion whether to terminate your or another Subscriber's access to the Website or any particular part or parts of the Website.

20. GENERAL PROVISIONS

Australian Consumer Law: You may have certain rights, warranties, guarantees and remedies under the *Australian Consumer Law*, contained in the *Competition and Consumer Act 2010* (Cth), and, if such rights, warranties, guarantees and remedies cannot be restricted, modified or excluded by us then they continue to apply despite anything to the contrary set out in these Terms. Our liability to you is governed solely by these Terms, our Privacy Policy and the *Australian Consumer Law*, to the extent that it applies.

Applicable law: Your use of the Website is subject to the laws of Queensland and each party submits to the exclusive jurisdiction of the courts of Queensland.

No assignment: You must not assign, sub-license or otherwise deal in any way with your rights under these Terms without our prior written consent.

Severability: If any clause or sub-clause of these Terms is held to be invalid or unenforceable, it is to be read down or severed such that the remaining clauses and sub-clauses will be enforced to the maximum extent possible. In such circumstances, the remainder of these Terms shall continue in full force and effect.

No waiver: In the event that we fail to enforce any provision of these Terms, such failure shall not constitute a waiver of any future enforcement of that provision or of any other provision. Waiver of any clause or sub-clause of these Terms will not constitute a waiver of any other clause or sub-clause.

No partnership or agency: Nothing in these Terms is intended to give rise to a partnership or agency relationship between you and us.

Notices: We may serve legal notices on you at the email address that you provide to us upon registration (or such updated email address notified by you to us from time to time). You may serve any legal notices on us at info@flairpilates.com.au (or such updated email address notified by us to you from time to time). Email notices will be deemed to have been received upon transmission confirmed by a delivery receipt. Hard copy notices sent by prepaid post in Australia will be deemed to have been received five (5) business days after posting.

Separate agreements: You may have other legal agreements with us including our Privacy Policy. Those other legal agreements are separate from and are in addition to these Terms. These Terms do not alter, amend, revise or replace the terms of any other legal agreements you may have with us. To

the extent of any inconsistency between these Terms and our Privacy Policy, our Privacy Policy will apply.

Disputes: If any dispute arises between you and us under these Terms we will try to resolve it directly between you and us before resorting to legal action and we ask that you do the same.

21. CONTACT US

You can contact us at:

Flair Pilates
ABN 33 938 958 821
info@flairpilates.com.au