

# MEMBERSHIP TERMS AND CONDITIONS

**THIS IS AN IMPORTANT DOCUMENT WHICH FORMS PART OF YOUR MEMBERSHIP AGREEMENT. PLEASE ENSURE YOU READ IT CAREFULLY.**

These are the Terms and Conditions which Caves Beach Gym Incorporated (CBG) is willing to provide membership to you. Any variation to these Terms and Conditions must be in writing and signed by our authorized officer.

## 1.0 Parties:

This agreement is made between Caves Beach Gym Incorporated (ABN 89540596390) and the Member whose name appears in this membership agreement. The Member's name who appears in this membership agreement acknowledges that they are over the age of 18.

If the Member is between 14 and 18 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 the Member's Parent / Guardian.

## 2.0 Personal information:

We take our responsibility to keep our members' privacy seriously, and all personal information received and collected by us is kept in strict confidence. We use members' personal information for the purposes for which it is collected and otherwise in compliance with our general privacy policy, which can be accessed on our website. Please let us know of any changes to your personal information so we can keep in touch.

## 3.0 Rules:

You agree to abide by the membership Rules and Regulations of CBG. You must ensure that you read and understand the Rules, which are notified to you through signage, handouts, or our websites.

## 4.0 Entire Agreement:

The Rules, these Terms and Conditions and the Membership Agreement, form the entire agreement between the parties (The Agreement) and any previous representations or documents whether provided by CBG or its agents or employees is excluded from this agreement.

## 5.0 Age Restrictions:

All members must be over the age of 18. Any member under 18 years of age understands that usage restrictions may apply and that this may change at any time as required by legislation and/or CBG's policies.

As Parent/Guardian of a minor, you hereby agree to be fully responsible for any and all actions, damages, injuries or loss to property or person, performed by the minor with or without your supervision in CBG. You further agree that any breach of CBG's policies, rules or terms, on the minors' part may constitute loss of the minors and or your membership privileges.

You understand that the following age restrictions are in place for members aged between 14 to 16 years of age:

- There will be no 24 HOUR access, unless supervised by a personal trainer recognized by CBG or a Parent or Guardian who must be a CBG Member and must be present

Between 16 and 18 years of age, 24 hour access will be granted with parental consent. By signing this agreement you are giving your consent.

## 6.0 Disclosure of your Physical Condition:

Provision of a safe and effective exercise program is dependent upon accurate health and fitness profiling. It is your responsibility to seek medical clearance prior to commencing any exercise program. 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. This is inclusive of any health risk assessment, initial and periodic fitness assessment and relevant information or recommendations provided by your medical practitioner. You further warrant and represent that you will not use CBG 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.

## 7.0 General use obligations:

As a member you will only be entitled to use our facilities:

- (a) during times that accord with your membership type;
- (b) for the term that your membership is valid; and
- (c) strictly in accordance with:
  - i. all of our policies (as may be amended and updated from time to time);
  - ii. any reasonable directions given by a member of our staff; and

iii. Code of Conduct

### **8.0 Equipment use obligations:**

You acknowledge and agree that:

- (a) You will follow all equipment operating instructions. If you are not sure of the correct use or operation of the equipment, you must seek assistance from a member of our staff before use;
- (b) to return all weights, dumbbells and bars to their designated racks after use, including unloading plates from machines and bars and returning them to their applicable racks;
- (c) that you will NOT DROP weights.

### **9.0 Damages / Personal Injury:**

You acknowledge that certain inherent risks exist in relation to the use of our equipment and gym and your participation in and acceptance of our fitness services. You enter CBG, use our equipment and participate or accept our fitness activities and services on your own volition and entirely at your own risk. You hereby release CBG from all liability whether relating directly or indirectly, to any personal injury or illness caused, resulting from or arising out of your use of our equipment, our facilities, your participation in our fitness activities or otherwise suffered by you while in any of our fitness centres, save where such injury or illness was caused as a direct consequence of our negligence or the negligence of someone we are responsible for. You also agree to indemnify us and to keep us indemnified for any claims or actions against us resulting from any personal injury or illness caused directly or indirectly by your use of our equipment, use of our fitness centre, or participation in and acceptance of our fitness services, save where such injury or illness was caused as a direct consequence of our negligence or the negligence of someone we are responsible for.

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. If you sign 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 an 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.

### **10.0 Start Date:**

You understand that your Membership commences on the Membership start date on page one of this Agreement and is ongoing unless terminated in accordance with this Agreement.

### **11.0 Cooling Off Period:**

After applying for membership, you have a seven day period ("Cooling Off Period") during which you may cancel your membership. Notice must be given in writing prior to the end of the cooling off period. Upon cancellation under this clause, a refund of 50% of the monies paid may be applicable and access to the club will be denied. Refunds will be made by EFT or Cheque. No Cash refunds will be issued.

If you terminate your Agreement after the Cooling off Period, different conditions will apply.

### **12.0 Membership Types:**

Use of the CBG services and facilities are governed by the Membership Type as listed on page one of this Agreement.

### **13.0 Membership TAGS / Personal Access Cards (PAC):**

Membership TAGS / PAC's are not transferable. 24 hour access cards are available for 24hr clients. If you allow your membership TAG or PAC to be used by another person for the purpose of obtaining entry, this amounts to the repudiation of the Agreement and we may terminate the agreement with you paying all monies due under this agreement. In the event of a lost or stolen Membership TAG or PAC, you should contact CBG regarding the reissue of a replacement. A fee will be charged to cover the cost of the replacement.

### **14.0 Dress Code:**

Fully enclosed, clean sports shoes must be worn in all areas of CBG and during workouts for safety reasons. You are required to wear a singlet or t-shirt at all times.

### **15.0 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 with a spray bottle and paper towel after use.

## **15.0 Lockers:**

Lockers and shelving are available. Please look after your own personal items. CBG employees, or contractors, are not responsible for any loss of personal property.

## **16.0 Lost Property:**

CBG highly recommends that you use the provided lockers for your belongings. CBG does not take responsibility for loss, damage, or theft of your belongings. Any items of lost property will be held for one month and then donated to charity.

## **17.0 Crèche:**

Crèche is offered at a minimal cost. Parents (or guardians) must remain at CBG at all times whilst their child/ren are at the crèche. Children must be checked in and out and collected prior to the crèche closing time. Please ensure your children arrive with clean nappies or take them to the toilet on arrival. Please label drink bottles, lunch boxes and all personal items. Please do not bring children into the crèche if they are sick or showing early signs of fever, runny nose, vomiting, diarrhea or general illness. Too sick for School = Too sick for crèche. Please adhere to our No Nuts policy. Full terms and conditions are available when checking in your child/ren.

## **18.0 Personal training:**

Personal training services are offered by our fitness professionals. All of our fitness professionals are engaged as contractors. Any arrangements you make with any of our fitness professionals are between the respective fitness professional and you directly. We do not get involved with these arrangements and do not take any responsibility for them.

## **19.0 Right of admission:**

We reserve the right to refuse admission, cancel your membership and/or terminate the Agreement without warning to any persons including members for any reason which we consider to be reasonably necessary to ensure the safety of our members and their enjoyment of our services and facilities, including: wearing inappropriate clothing or footwear; failing to use a towel; poor hygiene; being under the influence of drugs or alcohol; engaging in conduct that is disruptive or offensive to other members; or damaging equipment or facilities. You may not conduct, promote, or solicit other business without prior permission of CBG management. No refunds will be issued.

We reserve absolute discretion when approving membership applications and terminating Agreements.

## **20.0 Termination Procedures:**

Any request for Membership termination must be made in person at CBG. A Termination Form will need to be completed and authorized by you. All termination requests will be processed on the day of submission, however if this falls within 2 days prior to the billing date, your termination will be processed the following business day after billing. All outstanding debt must be settled prior to Termination requests being actioned.

### **20.1 Termination on expiry of the Minimum Term:**

If you have a Prepaid Fixed Term Agreement (paid in full upfront payment), it will terminate automatically upon expiry of the Minimum Term.

### **20.2 Termination when changes made to Terms and Conditions:**

You are entitled to terminate the Agreement with immediate effect at any time by providing us with written notice if higher membership fees applicable to your membership are introduced or you do not continue to use CBG after an amendment to these Terms and Conditions

### **20.3 Termination due to sickness or incapacity**

If you are unable to continue to use CBG during your minimum membership term because of a permanent sickness or physical incapacity, you may terminate your membership by:

- (a) providing us a completed termination request form;
- (b) giving us an original medical certificate stating that you are unable to use our facility because of your permanent sickness or physical incapacity.

### **20.4 Termination due to relocation**

If you are unable to continue to use the CBG during your minimum membership term because of a permanent relocation, you may terminate your membership by:

- (a) providing us a completed termination request form at least 30 days before termination is to occur;
- (b) provide us comprehensive evidence that your new residence is at least beyond a 20 km radius from CBG

### **20.5 Termination by us**

You acknowledge and agree that we may terminate your membership without warning if you breach any part of these terms and conditions which we deem, in our sole discretion, serious enough to justify termination. If we terminate

your membership as a consequence of your breach of these terms and conditions, you acknowledge and agree that you will remain responsible, at the very least, for the payment of the balance of your minimum membership cost.

### **21.0 Membership Fee Increase:**

If you have an ongoing agreement, we reserve the right to increase the membership fees to be charged. We will give you 2 weeks' notice and 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.

### **22.0 Payment of Fees by Direct Debit:**

All membership fees may be recovered from your nominated credit / debit account (as provided from time to time). Any bank fees charged to us because of a rejection when collecting your due membership fees may be charged directly to you by us. 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 an Ongoing Agreement has been chosen, a pro rata charge for Membership will be made at the time the Membership application is accepted by CBG. This charge is based on the number of days between the Membership Start Date and the first direct debit date.
- Debit/charges will be made on Thursdays. In the case of new memberships, your credit card /bank account will be charged/debited the first billing Thursday after the Membership Start Date.
- Fees and/or dues are payable in advance.
- For multiple memberships, the primary member will be responsible for the payment of Dues for all associated Memberships.
- If you fail to pay your Fees by the due date, CBG reserves the right to refuse entry to our facilities until such outstanding payment is received.
- If for any reason payment of the Member's Dues is declined by the Member's credit card/bank account, a fee of \$10 per due payment will be charged by CBG and will be payable by the Member.
- You must ensure sufficient funds are available at all times to cover the direct debits to be made under this Agreement.
- You must advise us in advance if your bank account or credit card is closed or changed.
- You acknowledge that it is your responsibility to cancel your direct debit facilities in respect of your membership when this agreement expires or is terminated.
- A cancellation fee of \$100 will apply if you wish to discontinue your membership within the first six months.

### **22.1 Outstanding Payments:**

As a result of outstanding debt, CBG reserves the right to refer overdue amounts to an external collections agency. In the event of payment defaults you will be liable to CBG for all outstanding monies due and will be liable to pay CBG debt recovery expenses and legal costs.

### **22.2 Refunds:**

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

### **23.0 Membership suspension:**

You agree to the membership suspension conditions as follows:

- |                            |  |
|----------------------------|--|
| • 12 Month Memberships     | 8 Weeks Maximum Suspension   |
| • 6 Month Memberships      | 6 Weeks Maximum Suspension   |
| • 3 Month Memberships      | 4 Weeks Maximum Suspension   |
| • Direct Debit Memberships | 3 Weeks Maximum with 2 Week Minimum in the first 6 months<br>Further 5 Weeks within 12 months totaling 8 weeks maximum |

If you wish to suspend your membership you must complete a CBG amendment form prior to the commencement of the suspension period. Direct debt payments will resume once your membership suspension period expires. If you wish to extend the duration of your membership suspension, you must provide us with notice prior to the expiration of your original suspension period. This notice must specify the new expiration date of the suspension.

#### **23.1 Special circumstances**

Should you wish to put your membership on suspension as a consequence of a medical condition which inhibits you from using our fitness services, we may extend the suspension provided you give us a medical certificate evidencing your condition, as is deemed satisfactory by CBG.

## **24.0 Risk Management:**

You understand that CBG does not manufacture fitness or other equipment, but purchases / leases equipment. You understand that CBG is providing recreational services and is not liable for defective products.

## **25.0 Responsibility for Damage:**

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

## **26.0 Interruption of Services:**

As a result of repair, maintenance, public holiday, or special occasions, CBG may be required to restrict the use or temporarily close or halt CBG 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. CBG hours of operation may be modified from time to time without prior notice to the Member. CBG 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.

## **27.0 Assignment:**

You must not assign any rights or benefits under these Terms and Conditions unless you have obtained our prior written consent. We may assign or transfer any rights or benefits under these Terms and Conditions at any time without notice to you. However, we will remain liable to meet our obligations to you under these Terms and Conditions and the Agreement.

## **28.0 Intellectual Property:**

These Terms and Conditions do not give you any intellectual property rights in CBG, or in our facilities, services or products.

## **29.0 Severability:**

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

## **30.0 Photography:**

We may occasionally take photographs of CBG and its facilities (including members). If you do not wish to have your photograph used please ensure that you delete the condition on the front page of this agreement. We reserve the right to use these photographs for commercial purposes without payment.

# **24 hour access**

## **31.0 Hours of operation:**

CBG is closed to ALL clients EVERY Sunday from 8am to 12 noon. We operate 24 hours a day for the rest of the week and are accessible at any time except for Sunday mornings, to our 24 hour members.

If you are a 24 hour member and you access CBG outside staffed hours you acknowledge that you:

- (i) enter and utilize our equipment and facilities within CBG on your own accord and entirely at your own risk; and
- (ii) must not use any equipment or facilities if you believe (or reasonably should have formed the belief) that there is a real risk exists to your personal health, safety or property.

## **32.0 Unapproved Guests/Tailgate Penalty Fees:**

CBG is committed to providing you with a safe, secure exercise facility. As we are a 24 hour facility but not staffed for 24 hours, we ask you to maintain our security protocols at all times. In any instance where you do allow another person access into the facility, a tailgate fee of \$250 will be payable to CBG:

- (i) If you are a Direct Debit Client, the amount will be automatically debited from your account; or
- (ii) If you are a Paid in Advance Client, you will be issued with an invoice. If this invoice is not paid within the terms of the invoice, you agree to have your membership decreased by 3 months.

You fully understand and accept that if you provide access to CBG outside of staffed hours, for a non-member or a member who has lost or damaged their TAG or PAC, that we may terminate your membership immediately. You understand that this policy is applicable regardless of whether the person you provide access to exercises or not. You accept full and complete responsibility for any injury, loss or damage suffered by the unapproved guest while at CBG.

## **33.0 Duress alarm**

You understand and accept that if you intentionally activate a Duress Button or a Personal Duress Lanyard with no reason or for a reason that is deemed not appropriate by CBG, a \$250 penalty will be payable to CBG:

- (i) If you are a Direct Debit Client, the amount will be automatically debited from your account; or

(ii) If you are a Paid in Advance Client, you will be issued with an invoice. If this invoice is not paid within the terms of the invoice, you agree to have your membership decreased by 3 months.

CBG will use this money to recover the costs associated with false activation of a Duress Button. If there is any additional money remaining after all costs have been recovered, *these will be donated to a charity of our nomination.*

You must wear the security lanyards when appropriate, for example when exercising alone or outside of staffed hours.

**34.0 Video Surveillance**

You are fully aware that all of CBG premises are equipped with video surveillance technology which is constantly recording for the security of the gym and that the video surveillance can be remotely viewed at any time by the gym's nominated agent and/or security provider. This system is used for security purposes but does not guarantee against harm. You must use caution when entering or leaving the building. Under no circumstances shall you allow access to non-members and or people who knock on the door. Doing so may put you and or other members at risk of injury or harm and could result in your membership being cancelled. CBG is equipped with duress alarms designed to alert authorities in the event of you or other members being threatened or in need of help. It is your responsibility to ensure that the member's door is closed and secure upon you entering AND exiting CBG.

**35.0 Staffed Hours:**

The staffed hours are displayed at our entrance and on our website. We reserve the right to make amendments to our staffed hours without notice to you and solely at our discretion.

Some areas of the club will be locked off outside of staffed hours and members will not have access. These areas will be under constant video surveillance and penalties will apply if the member breaches these areas.

**36.0 24 Hour Personal Access Card (PAC):**

24 hour clients will receive their own PAC, free of charge, upon membership signing. This PAC will give the member access to the facility during non-staffed hours, except Sunday mornings as outlined in 31.0 above.

Members who do not have their PAC will not be allowed into CBG during non-staffed hours, nor should they ask other members to let them in.

If you lose your PAC you will need to purchase a new one at the current purchase price.

**37.0 Risk and Release:**

You knowingly and freely assume all such risks, both known and unknown and acknowledge that this is an unsupervised gym and you assume all risks associated with using exercise equipment alone without the aide and presence of gym staff on the premises.

**38.0 Updating Terms:**

We reserve the right to update our Terms and Conditions at any time following 14 days' notice which may be given by:

- (a) placing notices of the update in the facility;
- (b) writing to you by email, advising of the update;
- (c) publishing notice of the update on our website; and/or
- (d) sending you an SMS notification of the update.

The most up to date version of our Terms & Conditions are available on our website

By signing up for a membership you agree that you have read, understood and hereby agree to the terms and conditions as stated in this declaration. You agree to abide by all posted signage and warnings.

Print Member Name: \_\_\_\_\_ Membership Number: \_\_\_\_\_

Member Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Parent / Guardian Signature if member under 18: \_\_\_\_\_

**IF YOU WISH TO HAVE A HARD OR DIGITAL COPY OF YOUR SIGNED MEMBERSHIP AGREEMENT, PLEASE ASK CBG STAFF AT ANY TIME.**