

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, who acknowledges that they are over the age of 18.

If the Member is between 14 and 18 years of age, the Parent/Guardian agrees to be responsible for ensuring the child exercises safely, pays their memberships fees and otherwise follows these terms and conditions contained herein.

2.0 Personal information:

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 Privacy Policy, which can be accessed on our website. Please let us know of any changes to your personal information.

3.0 Code of Conduct:

You agree to abide by the membership Code of Conduct of CBG. You must ensure that you read and understand the Code of Conduct, which is notified to you through signage, handouts, or our websites. If we reasonably consider the failure to follow our Code of Conduct is serious or persistent, we may suspend or even cancel your membership with immediate effect.

4.0 Entire Agreement:

The Code of Conduct, 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 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 / 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 as the members Parent/Guardian you are giving your consent.

6.0 Disclosure of your Physical Condition:

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, temperature, 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 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:

From the start date on page one of this Agreement you are entitled to the membership benefits and use of the facilities and services that apply to the membership type you selected and is ongoing unless terminated in accordance with this Agreement.

11.0 Cooling Off Period:

This agreement is subject to a 7 day cooling off period:

11.1. The cooling off period commences at the close of business on the "Commencement Date" and the cooling off period ends at close of business on the 7th day after the "Commencement Date".

11.2 New members have the right to cancel their membership within the cooling off period if they are not completely satisfied with the services and programs.

11.3 All monies will be refunded on a pro rata basis and made by EFT. No Cash refunds will be issued

11.4 All cooling off cancellations must be in writing to the Manager prior to midnight on the 7th day of the cooling off period. If you terminate your Agreement after the Cooling off Period, different conditions will apply.

12.0 Membership Types:

Use of the CBG services & facilities are governed by the Membership Type selected.

13.0 Membership TAGS / Personal Access Cards (PAC):

Memberships and TAGS / PAC's are not transferable. 24 hour access cards are available for 24hr clients and as outlined in clause 31.0 If you allow your membership TAG / 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/ PAC, you should contact CBG regarding the reissue of a replacement. A fee will be charged to cover the cost of the replacement. Clients who purchase memberships with Corporate Fitness and who wish to utilize our 24hr access will be required to pay a PAC fee of \$100 per annum. This fee will be due and payable each year on the 12 month anniversary of membership start date to continue to utilize the 24hr access with a Corporate Membership.

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.

14.0 Dress Code:

In all areas of CBG and during workouts for safety reasons, you are always required to wear a singlet or t-shirt, and fully enclosed, clean sports shoes.

15.0 Towels and Cleanliness:

Towels must be used in classes and when exercising on gym equipment & floors to maintain hygiene and safety standards. All equipment used (including bags and mats) must be wiped down with provided antibacterial wipes after use.

16.0 Lost Property:

CBG highly recommends that you use the provided shelves for your belongings. Please look after your own personal items. CBG, its employees, or contractors, are not responsible for any loss of personal property. 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 and is available only while the parent/guardian is exercising at CBG. 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 all personal items. 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 are available when checking in.

18.0 Personal training:

Personal training services are offered by our fitness professionals. Full terms and conditions will be available upon making an appointment. Please note our cancellation policy of Personal Training sessions must be paid for at the time of booking. If you need to cancel, you must call the PT direct or CBG, 12 hours in advance of the scheduled training session to avoid loss of payment. If you fail to show up or do not give 12 hours notice, you will be charged the full amount of the session.

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. Such as wearing inappropriate clothing or footwear; failing to use a towel; poor hygiene; being under the influence of drugs or alcohol; distributing illegal or performance enhancing drugs, 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. You agree to follow any reasonable direction from a member of our staff relating to health or safety or any other matter. 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 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.

In that event you will only be charged membership fees for the time you have been a member calculated on a pro rata basis and an administration fee of \$50.

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

In that event you will only be charged membership fees for the time you have been a member calculated on a pro rata basis and an administration fee of \$50

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 because 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.
- 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 failure 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 or you will incur a \$10 failure fee.
- 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 added on to end date |
| • 6 Month Memberships | 6 Weeks Maximum Suspension added on to end date |
| • 3 Month Memberships | 4 Weeks Maximum Suspension added on to end date |
| • Direct Debit Memberships | 3 Weeks Maximum with 2 Week Minimum in the first 6 months
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 to GYM and/or CFCB Box

31.0 Hours of operation:

To access our 24hour gym or our CFCB Box you must have a specific membership which allows entry outside of staffed hours. CFCB clients will have access to the CFCB box at all times and CBG members who have purchased an additional membership allowing CFCB entry, will have access to the Box other than during timetabled class times. Standard CBG members will have access to the gym and the box during staffed hours

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.
- (iii) you must use caution when entering or leaving the building.

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. Under no circumstances shall you allow access to non-members and or people who knock on the door. This includes children, No children are permitted in the gym or the CFCB box. Doing so may put you and or other members at risk of injury or harm and could result in your membership being cancelled. In any instance where you do allow another person access into the facility, a tailgate fee of \$250 will be payable to CBG. It is your responsibility to ensure that the member's door is closed and secure upon you entering AND exiting CBG.

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

(ii) If you have paid upfront, 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 time 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/ 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. CBG is equipped with duress alarms designed to alert security monitoring in the event of you or other members being threatened or in need of help

- (i) If you are a Direct Debit Client, the amount will be automatically debited from your account; or
- (ii) If you have paid upfront, 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 time decreased by 3 months.

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

34.0 Video Monitoring:

You are fully aware that all of CBG premises are equipped with video & audio monitoring technology which is constantly recording for the security of the gym and that the video monitoring 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.

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 gym 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 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.

37.0 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.

38.0 CFCB BOX Access Termination: Further to clause 20.5, your membership can be cancelled immediately and without any right to a refund if ;

- a) you allow anyone to enter The Box via your access code
- b) you are caught stealing and or damaging equipment
- c) weights and equipment are not returned to their correct place including repositioning equipment correctly
- d) you agree to not move equipment in or out of the CFCB Box and gym

39.0 COVID -19:

By entering this facility, you are aware that you agree to fully accept all known and unknown risks, including the potential risk of exposure to respiratory illnesses such as the coronavirus (COVID-19).

Although we regularly sanitise our equipment and are using enhanced cleaning methods and enforcing social distancing in our facility, you understand that you may be exposed to the coronavirus or its symptoms through no fault of our own. You understand and agree that you will hold CBG harmless and you will not hold CBG liable for any real or perceived symptoms of COVID-19 or any other disease, illness, or condition, nor for exacerbating any existing symptoms, and you fully agree to accept all risks of entering the facility, using the equipment, working with personal trainers, attending classes, and/or interacting or being exposed to other members.

CFCB CLIENTS ONLY

WAIVER/ RELEASE OF LIABILITY/ INFORMED CONSENT FORM

WARNING ... Safety first!!

High intensity exercise must be approached cautiously in the beginning, a gradual ramp up of intensity is necessary to allow muscles cells to adapt to the new demands being placed on them. Failure to do so, opens the door to a life threatening condition, known as '**Rhabdomyolysis**'. In short, the muscle cells are damaged flooding the bloodstream with toxins that can overwhelm the kidneys as they attempt to cleanse the blood, leading to potential shutdown. Intense training can cause Rhabdomyolysis. **It is important that you start at a reduced intensity.** Brown urine, complete muscle weakness and/or swelling of joints are warning signs of 'Rhabdo'. If you develop these symptoms, seek medical assistance IMMEDIATELY.

In consideration of CFCB allowing me to participate, I acknowledge, understand and I am aware that:

I have voluntarily chosen to participate in training activities provided by **CFCB** . I understand there are inherent risks in all aspects of physical training and I acknowledge that I have been informed of the possible strenuous nature of the training and the potential for undesirable physiological results including, but not limited to, abnormal blood pressure, muscle soreness, fainting, heart attack and/or death. I also acknowledge that I have been specifically warned about the medical condition

"Rhabdomyolysis" and accordingly I have been advised to limit my effort in order to minimize the risks associated with this condition.

I understand that the training may involve weightlifting, gymnastic movements, strenuous bodyweight exercises and other high exertion activities, and that I am not obligated to perform nor participate in any activity that I do not wish to do, and that it is my right to refuse such participation at any time during my training sessions. I understand that should I feel lightheaded, faint, dizzy, nauseated, or experience pain or discomfort, **I am to stop the activity and inform my trainer.** I give **CFCB** and the staff of the facility permission to seek emergency medical services for me should I become injured or ill with the understanding that I am responsible for any expenses incurred.

I agree to **WAIVE ANY AND ALL CLAIMS** that I have or may have in the future against **CFCB**, and its directors, officers, employees, agents, volunteers and independent contractors (all of whom are hereinafter collectively referred to as "the Releasees"). I agree to **RELEASE THE RELEASEES** from any and all liability for any loss, damage, injury or expense that I may suffer, or that my next of kin may suffer as a result of my participation in the programs, activities and services provided by **CFCB**, due to any cause whatsoever including negligence, breach of contract, or breach of any statutory or other duty of care. I agree to **HOLD HARMLESS AND INDEMNIFY THE RELEASEES** from any and all liability for any damage to the property of, or personal injury to, any third party, resulting from my participation in any program, activity or service provided by the Releasees.

This agreement shall be binding upon me, my successors, representatives, heirs, executors, assigns, or transferees. If any portion of this agreement is held invalid, I agree that the remainder of the agreement shall remain in full legal force and effect. If I am signing on behalf of a minor child, I also give full permission for any person connected with **CFCB** to administer first aid deemed necessary, and in case of serious illness or injury, I give permission to call for medical and or surgical care for the child and to transport the child to a medical facility deemed necessary for the well-being of the child.

I HAVE READ AND UNDERSTOOD THIS AGREEMENT AND I AM AWARE THAT BY SIGNING THE MEMBERSHIPS FORM which includes THIS "INFORMED CONSENT FORM" I AM WAIVING CERTAIN LEGAL RIGHTS (INCLUDING THE RIGHT TO SUE) WHICH I OR MY HEIRS, NEXT OF KIN, EXECUTOR, ADMINISTRATORS AND ASSIGNS MAY HAVE AGAINST THE RELEASEES. ANY QUESTIONS I HAD WERE ANSWERED TO MY FULL SATISFACTION.

