



Terms of Use

1 THESE TERMS

1.1 These Terms of Use (**'Terms'**) govern your use of:

- (a) 98gym.com and 98training.com (**'Websites'**);
- (b) all 98 Gym social media pages (including Instagram, Facebook, TikTok, YouTube and Twitter) (**'Social Pages'**); and
- (c) the 98 Gym App and 98 Training App (together the **'Apps'**),

collectively the **'Services'**.

1.2 In these Terms:

- (a) **'98 Gym App'** means the '98 Gym' mobile application available through the Apple App Store and Google Play Store;
- (b) **'98 Training App'** means the '98 Training' mobile application made available through the Apple App Store and Google Play Store;
- (c) **'Privacy Policy'** means the '98 Privacy Policy', as updated from time to time and available on the Website;
- (d) **'we', 'us' or 'our'** refers to 98 Franchise Pty Limited (ACN 645 028 333), 98 Capital Pty Limited (ACN 639 004 032), 98 Training Pty Limited (ACN 639 004 452) and 98 Administration Pty Ltd (ACN 658 043 924), each 'related body corporate' (as defined in the *Corporations Act 2001* (Cth)) and their agents, representatives, officers, directors, shareholders, employees, contractors, successors, affiliates, licensees and franchisees;
- (e) **'you'** refers to any user of the Services; and

1.3 Please read these Terms carefully. By doing any of the following things, you agree to be bound by these Terms:

- (a) expressly accepting these Terms at any time, for example by clicking "I Accept" or "Proceed" or any clearly indicated activation phrase on your computer or other device;
- (b) downloading, updating and/or using the Apps;
- (c) using the Websites;
- (d) following, liking, connecting with, tagging, allowing yourself to be tagged, posting to or commenting on the Social Pages.

1.4 If you do not agree with these Terms, you must not download, update or use the Apps, or use the Websites and Social Pages.

1.5 We may amend, modify or otherwise update these Terms at any time and we will use our reasonable efforts to notify you of those changes. We will give such notice by posting the updated Terms on our Websites, using reasonable efforts to draw them to your attention.

1.6 Any changes to these Terms take effect from the date specified in the notice.

2 ACCESS AND USE OF SERVICES

2.1 For safety reasons, you must be at least 18 years old to use the Apps. We have the right to suspend or revoke your access to the Apps if we believe that you are under the age of 18 years' old.

2.2 We have the right to suspend or revoke your access to or use of the Services if you;

- (a) breach any of these Terms, or any other terms, policies and procedures that apply to the use of the Services from time to time;
- (b) do or say anything that brings us, our commercial partners and/or members into disrepute;
- (c) otherwise interfere with other parties' rights to have reasonable use of and access to the Services.



3 YOUR USE OF THE SERVICES

- 3.1 You acknowledge the risks and dangers associated with the strenuous exercise that forms part of the Services, which include, but are not limited to broken bones, soft tissue injuries, joint injuries, permanent disability or death. You assume all such risks and responsibility for damages, liabilities, losses or expenses which you may incur as a result of your use of the Services.
- 3.2 Each time you use the Services, you must ensure you are in good physical health and have no known medical or other reasons why you should not exercise. You should not use the Services until you have sought appropriate medical guidance.
- 3.3 We make no guarantee, warranty, representation or promise of any health outcomes associated with your use of the Services, including but not limited to weight loss, weight gain or other changes in body composition or your health or wellbeing more generally.
- 3.4 You must use the Services only for purposes that are permitted by these Terms, and any applicable law, regulation or generally accepted practices or guidelines.
- 3.5 You are solely responsible for protecting the confidentiality of any account information used to access the Services, including passwords. You agree to immediately notify us of any unauthorised use of your password or email address or any breach of security of which you have become aware.
- 3.6 You must not use the Services:
- (a) in connection with any commercial endeavours except as approved in writing by us;
 - (b) in a manner that violates these Terms, any law or regulation;
 - (c) in a manner that does or may cause harm, distress or loss to any person.
- 3.7 You must not disrupt, interfere with, reverse engineer or compromise the security of the Website and Apps, and any software or hardware used in connection with the Website and Apps.

4 SUBSCRIPTION AND PAYMENT

- 4.1 You agree and acknowledge that:
- (a) if you are a member of a 98 Gym, your use of the Apps is included in and forms part of your membership;
 - (b) if you are not a member of a 98 Gym, you will be required to purchase a subscription to the Apps and your use of the Apps may be subject to an ongoing subscription fee ('**Subscription Fee**').
- 4.2 The Subscription Fee for the Apps will be notified to you when you sign up for a Free Trial (as defined below) and/or purchase your subscription to the Apps.
- 4.3 If you are required to purchase a subscription to the Apps, you must designate and provide information about your nominated payment method ('**Payment Method**'). This information must be complete and accurate, and you are responsible for keeping it up to date. You expressly authorise us to collect the ongoing Subscription Fee via your nominated Payment Method.
- 4.4 Subscription Fees will be charged on a weekly, monthly or yearly basis. Unless otherwise stated, all Subscription Fees are payable in advance, and will be billed automatically to the Payment Method each week, month or year on the date of your initial purchase (eg. if you purchase a subscription on 10 January, you will be billed on the 10th of each month).
- 4.5 Subscription Fees will auto-renew until you elect to cancel your subscription to the Apps.
- 4.6 You can cancel your subscription to the Apps at any time. The cancellation will take effect at the end of your current billing cycle, and you will have the same level of access to the Apps through the remainder of such billing cycle.
- 4.7 If you do not pay the Subscription Fees, we may make reasonable efforts to notify you and resolve the issue; however, we reserve the right to disable or terminate your access to the Apps (and may do so without notice).
- 4.8 **TO THE EXTENT PERMITTED BY LAW, THERE ARE NO REFUNDS FOR TERMINATION OR CANCELLATION OF YOUR SUBSCRIPTION. IF YOU NO LONGER WISH TO SUBSCRIBE TO THE APPS, IT IS YOUR RESPONSIBILITY TO CANCEL YOUR SUBSCRIPTION IN DUE TIME, REGARDLESS OF WHETHER OR NOT YOU ACTIVELY USE THE APPS.**



- 4.9 **TO THE EXTENT PERMITTED BY LAW, WE MAY CHANGE THE SUBSCRIPTION FEES AT ANY TIME. WE WILL GIVE YOU REASONABLE NOTICE OF ANY SUCH PRICING CHANGES BY POSTING THE NEW PRICES ON OR THROUGH THE APPS AND/OR BY SENDING YOU AN EMAIL NOTIFICATION. IF YOU DO NOT WISH TO PAY THE NEW PRICES, YOU CAN CANCEL YOUR SUBSCRIPTION PRIOR TO THE NEW SUBSCRIPTION FEES TAKING EFFECT.**
- 4.10 **WE OFFER FREE 14-DAY TRIALS WHICH PROVIDE YOU WITH FULL ACCESS TO OUR APPS ('FREE TRIAL').**
- 4.11 **IN ORDER TO SIGN UP FOR A FREE TRIAL, YOU MAY NEED TO PROVIDE US WITH YOUR PREFERRED PAYMENT METHOD. AS SOON AS YOU SUBMIT YOUR PAYMENT DETAILS, YOUR FREE TRIAL WILL BEGIN. YOU WILL NOT BE CHARGED UNTIL THE FREE TRIAL PERIOD ENDS.**
- 4.12 **If you subscribe to the App using the Apple Store, unless you cancel before the end of the Free Trial, or unless otherwise stated, your subscription will automatically continue and you will be billed the applicable Subscription Fee using the Payment Method you provided. If you decide you do not want to subscribe to the Apps, you must cancel your subscription before the end of the Free Trial period. You may lose access as soon as you cancel or at the end of the Free Trial period. Once you have cancelled your Free Trial, you cannot resume the Free Trial period even if it was not used for the entire duration of the offer.**
- 4.13 **IF YOU SUBSCRIBE TO THE APP USING THE GOOGLE PLAY STORE, YOU WILL BE NOTIFIED WHEN YOUR FREE TRIAL IS ENDING AND ASKED TO CONFIRM WHETHER YOU WOULD LIKE TO PURCHASE AN ONGOING SUBSCRIPTION TO THE APPS. IF YOU ELECT NOT TO PURCHASE AN ONGOING SUBSCRIPTION, YOUR ACCESS TO THE APPS WILL BE TERMINATED AT THE END OF THE FREE TRIAL. IF YOU ELECT TO PURCHASE AN ONGOING SUBSCRIPTION, YOUR ACCESS TO THE APPS WILL CONTINUE AND YOU WILL BE BILLED THE FIRST PERIOD OF SUBSCRIPTION FEES ON THE FIRST DAY AFTER THE FREE TRIAL ENDS.**
- 4.14 **Services, features and content within the Apps may change at any time, and we cannot guarantee any specific service, feature or content will be available for the entire Free Trial period.**

5 **MERCHANDISE REFUND, RETURNS AND EXCHANGE POLICY**

- 5.1 **In the case of merchandise purchased from the Websites or a 98 Gym, to the extent permitted by law:**
- (a) **we will not provide you with a refund if you change your mind;**
 - (b) **if you purchase the wrong size, we will exchange the merchandise for the correct size as long as you return the merchandise to us in its original condition with all tags still attached; and**
 - (c) **if the merchandise is faulty, we will either repair the merchandise or replace it (at our cost and election).**

6 **INTELLECTUAL PROPERTY**

- 6.1 **We, and our licensors, own the intellectual property rights (including copyright and trade marks) in respect of the Website, Apps and Social Pages, and their contents. You must not copy, modify, transmit or adapt the Website and Apps or their contents, or otherwise infringe the intellectual property rights of us or our licensors, without our prior written consent.**
- 6.2 **If, in the course of using the Services, you provide any content (including photos, videos, other images and text) to us (including by way of posting on the Social Pages), you grant us a non-exclusive, perpetual, irrevocable, world-wide, royalty-free licence to use, publish, reproduce and modify that content for any purpose. You warrant that you own the intellectual property rights in that content and that it does not infringe the intellectual property rights of any third party.**
- 6.3 **You agree that in using the Services, you will not publish any threatening, harassing, defamatory, obscene, offensive, hate mail or speech or facilitate others to commit such acts in whatever format.**
- 6.4 **You agree that we may, and reserve the right to, remove any content posted or comments made by you which we believe in our sole discretion to be damaging to us or any third party.**

7 **PRIVACY AND YOUR INFORMATION**

- 7.1 **We take your privacy seriously and any personal information provided by you through your use of the Services is subject to our Privacy Policy.**
- 7.2 **You warrant that any information you provide to us in the course of accessing the Services will always be accurate, correct and up to date.**



7.3 In the event of any inconsistency between these Terms and the Privacy Policy, the terms of the Privacy Policy prevail to the extent of the inconsistency.

8 **LINKS**

8.1 The Services may from time to time contain hyperlinks to websites or platforms operated by third parties. Such websites and platforms are not under our control, and we are not responsible for, and do not control or approve, of the contents or operation of any such websites and platforms.

9 **OUR LIABILITY TO YOU**

9.1 Your use of the Services is at your own risk and you acknowledge that the use of the Services may involve risk of injury, whether caused by you or another party.

9.2 To the extent permitted by law:

- (a) we exclude any liability to you in contract, tort, statute or in any other way for any injury, damage or loss of any kind whatsoever (including, without limitation, any liability for direct, indirect, special or consequential loss or damage), sustained by you and/or any other person, or for any costs, charges or expenses incurred by you, arising from or in connection with your use of or access to the Services, or any inability to use or access the Services, and/or any act or omission of ours;
- (b) you agree not to bring any claim or proceeding against us for any damage, loss, injury or liability you and/or any other person may suffer arising out of or in connection with your use of the Services; and
- (c) you forever discharge and release us from all liability to you and/or any other person for our acts or omissions arising out of or in connection with our provision of the Services.

9.3 You hold us harmless against any claims, proceedings losses, liabilities, costs or other expenses (including legal costs) incurred by you in connection with, whether directly or indirectly, your breach of these Terms, your use or access of the Services or any violation by you of any applicable law.

10 **WARRANTIES**

10.1 To the extent permitted by law:

- (a) all statutory and implied guarantees, warranties and conditions of any kind in connection with the Services are expressly disclaimed (but we do not exclude any statutory or implied guarantee, condition or warranty which cannot be lawfully excluded);
- (b) we do not warrant that:
 - (i) your access and use of the Services will be uninterrupted, or that the Services will operate error free, that any defects will be corrected or that the Services are free of computer viruses, trojans, spyware and other harmful material;
 - (ii) we will be able to prevent any unlawful, harmful or inappropriate use, modification or alteration of the Services, or that we will give notice of such use, modification or alteration;
- (c) we do not warrant or make any representations about the correctness, accuracy, currency, completeness, reliability, quality or otherwise of the Services or their contents. Your use of the Services and the content provided as part of the Services is at your own risk and the Services and the content provided as part of the Services is provided on an "as is" basis without any warranties of any kind. We may change the services and/or content forming part of the Services at any time without notice.

10.2 If we breach a non-excludable term, condition or guarantee, We will be liable for that breach. However, if We are allowed to limit Our liability for that breach under the relevant law, Our liability will be limited to supplying the same services again or paying the cost of having the services supplied by someone else (at Our option).

11 **GENERAL**

11.1 We make no representation that the services or any content within the services complies with the laws of any country outside Australia. If you use or access the services from outside Australia, you do so at your own risk and you are responsible for ensuring compliance with all laws in the place where you are located.



- 11.2 By using the Services, you agree that any claim or dispute arising in connection with these Terms, or your use of the Services, will be resolved in accordance with the laws of New South Wales and under the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.
- 11.3 These Terms form the entire agreement between us and you in relation to the Services and your use of them.
- 11.4 We will not be responsible for any delay in performing our obligations under these Terms due to causes beyond our reasonable control.
- 11.5 Any failure or delay on our part to exercise a power or right we have under these Terms does not amount to a waiver of that power or right and will not preclude our entitlement to exercise that power or right at a later date.

These Terms are current as at October 6th 2023.