



## GetGoing Terms and Conditions

**Disclaimer:** Neither we or our Personnel are medical practitioners, and do not give medical advice, treatment, cures or diagnoses. The GetGoing Packages and GetGoing Services, and any other information provided through the Platform, are intended to provide general wellbeing benefits. You acknowledge and agree that nothing in the Platform, GetGoing Packages, or GetGoing Services we provide may be taken to be medical advice, treatment, cures or a diagnosis by us or our Personnel, nor are they intended to be a substitute for consulting a medical practitioner. The GetGoing Packages and GetGoing Services are general and cannot substitute for the advice of a medical practitioner. You should seek immediate medical attention if you believe you may be suffering from a medical condition.

### 1 Our Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- We may amend the Fees at any time, by providing written notice to you;
- Unless your subscription to the GetGoing Services is suspended or terminated in accordance with these Terms, your subscription will roll over on an ongoing basis;
- To the maximum extent permitted by law, the Fees are non-refundable;
- Our liability under these Terms is limited to the Fees paid by you to us for a GetGoing Package or GetGoing Service; and
- We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform or for featuring certain products or services on the Platform.

Nothing in these terms limit your rights under the Australian Consumer Law.

### 2 Introduction

- 2.1 These terms and conditions (**Terms**) are entered into between Get Going Franchising Pty Ltd ABN 60 637 150 906 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 2.2 We provide a cloud-based fitness website (**Platform**) where you can purchase health and wellbeing programs or packages (**GetGoing Packages**), or sign up for on-going personal trainer or dietitian services (**GetGoing Services**).
- 2.3 In these Terms, **you** means the person or entity using the Platform.
- 2.4 If you are using the Platform or signing up to GetGoing Packages or GetGoing Services on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

### 3 Collection Notice

- 3.1 We collect personal information about you in order to provide the GetGoing Packages or GetGoing Services to you, to contact and communicate with you, and to respond to your enquiries and for other purposes set out in our Privacy Policy.
- 3.2 We may disclose that information to third party service providers who help us deliver the GetGoing Packages or Get Going Services (including our Personnel, dietitians, data storage and web-hosting server providers, payment systems operators, and debt collectors) or as required by law. If you do not provide this information, we may not be able to provide the GetGoing Packages or GetGoing Services to you. In certain circumstances, we may disclose your personal information to third parties located, or who store data, outside Australia.
- 3.3 Our Privacy Policy contains further information about: (1) how we store and use your personal information; (2) how you can access and seek correction of your personal information; (3) how you can make a privacy-related complaint; and (4) our complaint handling process.

3.4 By providing personal information to us, you acknowledge that we will collect, hold, use and disclose your personal information in accordance with our Privacy Policy.

#### 4 Acceptance and Platform Use

4.1 You accept these Terms by checking the box, clicking "I accept", registering on the Platform, sending an email accepting these Terms, instructing us (whether verbally or in writing) to provide the GetGoing Packages or GetGoing Services (as applicable), or making part or full payment of any Fees.

4.2 You must be at least 18 years old to purchase a GetGoing Package or use the GetGoing Services. If you are under the age of 18, your parent or legal guardian must accept these Terms, and sign off on any pre-exercise questionnaires, before we can provide GetGoing Packages or GetGoing Services to you.

4.3 When using the Platform, you must not do or attempt to do anything that is unlawful or inappropriate, including:

- (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
- (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
- (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
- (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
- (e) facilitating or assisting a third party to do any of the above acts.

#### 5 GetGoing Packages and Services

5.1 In consideration for your payment of the Fees, we agree to provide you with the GetGoing Packages or GetGoing Services (as applicable) in accordance with these Terms, whether ourselves or through our Personnel.

5.2 You must provide us with information regarding your current physical health condition and exercise ability, including (without limitation) information regarding allergies, dietary habits, injuries, impairments, and medications (**Health Information**)

5.3 If these Terms or the Platform express a time within which the GetGoing Packages or GetGoing Services are to be supplied, we will use reasonable endeavours to provide them by such time, but you agree that such time is an estimate only, and creates no obligation on us to supply the GetGoing Packages or GetGoing Services by that time.

5.4 Where the GetGoing Packages or GetGoing Services are to be supplied at your premises, you agree to provide us (and our Personnel) with access to your premises (and the facilities at your premises) for us to provide the GetGoing Packages or GetGoing Services to you, free from harm or risk to health or safety, at the times and on the dates as agreed between the Parties.

5.5 You acknowledge and agree that our Personnel are not medically trained and are not qualified to assess whether you are in good physical condition or health. If you have any doubts as to your ability to use the GetGoing Packages or receive the GetGoing Services, you agree to seek advice from a medical professional.

5.6 Our Personnel may from time-to-time provide you with information relating to your health and nutrition. This information is for informational and educational purposes only and is not intended as a substitute for medical advice.

#### 6 Fees and Payments

6.1 We will charge you a fee for your use of the GetGoing Packages or GetGoing Services (**Fee**), which will be advised to you by our Personnel or otherwise listed on our Platform.

##### **GetGoing Packages**

6.2 You may purchase GetGoing Packages from us as set out on the Platform. If you place an order for a GetGoing Package on our Platform, you are making an offer to purchase for the Fee listed on the Platform (including any applicable charges and taxes). We may, at our absolute discretion, accept or reject a request for GetGoing Packages. If we need to reject your request, we will notify you within a reasonable time after your request is placed. Once we accept a request for a GetGoing Package, a binding agreement is formed for its supply to you in accordance with these Terms.

##### **GetGoing Services**

6.3 The GetGoing Services operate on a subscription basis, and by placing a request for GetGoing Services you are agreeing to receive the GetGoing Services on an ongoing basis. When you sign-up for GetGoing Services, you will be charged an initial

amount equivalent to one weeks' worth of Fees (**Joining Fee**), which must be paid before we commence the supply of GetGoing Services to you.

- 6.4 Unless the GetGoing Services have been suspended or terminated in accordance with these Terms, you will be charged Fees for the GetGoing Services on a fortnightly basis. Without limiting your rights under the Australian Consumer Law, you can suspend or terminate the GetGoing Services in accordance with the "Suspending Your GetGoing Services" or "Ending Your GetGoing Services" clause of these Terms.
- 6.5 You agree that in respect of the GetGoing Services, we may amend the Fees at any time by providing 28 days' written notice to you (**Notice Period**). If you do not agree to any amendment to the Fees, you may terminate the GetGoing Services by giving us notice in writing prior to the end of the Notice Period, and we will cease supplying the GetGoing Services to you at the end of the Notice Period.

#### **General**

- 6.6 The payment methods we offer for the Fees are set out on the Platform, or will be advised to you by our Personnel. We may offer payment via a third-party payment provider (for example, humm or Stripe), and including through a direct debit facility. You acknowledge and agree that we have no control over the actions of third-party payment providers, and your use of the third-party payment provider may be subject to additional terms and conditions.
- 6.7 Our third-party payment providers or direct debiting partners may charge you a dishonour fee in the event that your chosen payment method is not valid (for example, due to insufficient funds).
- 6.8 You must not pay, or attempt to pay, the Fees by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- 6.9 If any payment has not been made in accordance with the timeframes stipulated by us, we may (at our absolute discretion) after a period of 5 business days cease, cease providing the GetGoing Packages or GetGoing Services (as applicable) and recover, as a debt due and immediately payable from you, our additional costs of doing so (including legal fees and debt collector fees).

#### **7 GetGoing Money Back Guarantee and Cooling Off Period**

- 7.1 **GetGoing Packages:** In addition to your Consumer Law Rights, where you are not completely satisfied with your results, we may offer a money back guarantee provided that:
- (a) you have notified us within 30 days from the date you purchase the GetGoing Package that you are not satisfied with your results; and
  - (b) you have completed a 30-minute teleconference discussion with one of our Personnel, and provided feedback in relation to the GetGoing Package, including but not limited to any of its meal plans, exercise plans, or consultation sessions.
- 7.2 **GetGoing Services:** You have a 7-day cooling off period in which to change or cancel the GetGoing Services you have subscribed for (**Cooling Off Period**). Your Cooling Off Period starts on the date that you request GetGoing Services. If you cancel your GetGoing Services within the Cooling Off Period, we will charge you an administration fee equivalent to the Joining Fee, but you will not be charged any further Fees and any excess monies paid will be refunded to you.
- 7.3 If you cannot attend a session as part of the GetGoing Services, you must give a minimum of 14 hours' notice in order to have a credit applied to your account. If insufficient notice is given or not given at all, your session will be forfeited and no credit will be applied.
- 7.4 **Credit Expiry:** Any credit that a client accumulates as part of the GetGoing Packages or GetGoing Services must be used within 3 months from the date of accumulation. Any unused credit after this period will be forfeited and deemed void.

#### **8 Our Intellectual Property**

- 8.1 You acknowledge and agree that any Intellectual Property or content (including copyright and trademarks) in respect of the GetGoing Packages, GetGoing Services and the Platform, including the Platform itself and any algorithms or machine learning models used on the Platform (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- 8.2 We authorise you to use Our Intellectual Property solely for your personal use. You must not exploit Our Intellectual Property for any other purpose, nor allow, aid or facilitate such use by any third party. You may only access Our Intellectual Property on your personal device, and you may not use Our Intellectual Property for any commercial purpose.

- 8.3 You must not, without our prior written consent:
- (a) copy, in whole or in part, any of Our Intellectual Property;

- (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or
- (c) breach any of our intellectual property rights, including (without limitation) altering or modifying any of Our Intellectual Property, downloading Our Intellectual Property, causing any of Our Intellectual Property to be framed or embedded in another website, or creating derivative works from any of Our Intellectual Property.

8.4 This clause will survive the termination or expiry of these Terms.

## 9 Warranties

9.1 You represent, warrant and agree that:

- (a) you will not use our Platform, GetGoing Packages, GetGoing Services, or Our Intellectual Property, in any way that competes with our business;
- (b) there are no legal restrictions preventing you from entering into these Terms;
- (c) you will comply with our reasonable requests or requirements;
- (d) you are in good physical condition and are not aware of any medical condition or other reason why you cannot, or should not, do active or passive exercise;
- (e) you will notify us of any change in your health status that may impact your ability to safely use the GetGoing Packages or receive the GetGoing Services;
- (f) you will provide us with all documentation, information, instructions, cooperation and access reasonably necessary to enable us to provide the GetGoing Packages or GetGoing Services (as applicable);
- (g) all information and documentation that you provide to us in connection with these Terms (including your Health Information) is true, correct and complete;
- (h) that the GetGoing Packages and GetGoing Services are provided to you solely for your benefit and you will not (and you will not attempt to) disclose, or provide third parties with access to them without our prior written consent; and
- (i) you have not relied on any representations or warranties made by us in relation to the GetGoing Packages or GetGoing Services (including as to whether they are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms.

## 10 Australian Consumer Law

10.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth), and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the GetGoing Packages or GetGoing Services by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).

10.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the GetGoing Packages or GetGoing Services provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.

10.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform, GetGoing Packages and GetGoing Services) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.

10.4 This clause will survive the termination or expiry of these Terms.

## 11 Liability

11.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for Consequential Loss;
- (b) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel, including any failure by that Party to mitigate its losses; and
- (c) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us repaying you the amount of the Fees paid by you to us for a GetGoing Package or GetGoing Service (as applicable).

11.2 This clause will survive the termination or expiry of these Terms.

## 12 Termination

- 12.1 **Suspending Your GetGoing Services:** You may suspend your GetGoing Services at no charge for a maximum of three (3) fortnightly payments each calendar year (**Free Suspension Period**). If you require your GetGoing Services to be suspended for longer than the Free Suspension Period, you will be charged a suspension fee of \$10 per week for each additional week over and above the Free Suspension Period, which may be waived if suspension is for medical reasons (following receipt of sufficient supporting evidence).
- 12.2 **Ending Your GetGoing Services:** You may terminate GetGoing Services by calling 1800 446 464. We require 28 days' notice to end your GetGoing Services subscription. Once you have provided us with notice of termination, you will continue to be direct debited until the end of the 28 day notice period, which may be waived if termination is for medical reasons (following receipt of sufficient supporting evidence), and you acknowledge and agree that this fee is a genuine pre-estimate of our loss suffered as a result of your termination of the GetGoing Services.
- 12.3 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
  - (b) the Defaulting Party is unable to pay its debts as they fall due.
- 12.4 Should we reasonably suspect that you are in breach of these Terms, we may suspend your access to the Platform, or our provision of the GetGoing Packages or GetGoing Services to you, while we investigate the suspected breach.
- 12.5 Upon expiry or termination of these Terms:
- (a) we will remove your access to the Platform;
  - (b) you agree that other than where termination is due to our breach of these Terms, and to the maximum extent permitted by law, any payments made by you to us (including any Fees) are not refundable to you;
  - (c) where we terminate GetGoing Packages or GetGoing Services for any reason, you also agree to pay us our reasonable additional costs directly arising from such termination.
- 12.6 Where termination is due to our breach of these Terms, we agree to refund you for any prepaid unused Fees on a pro-rata basis.
- 12.7 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under these Terms.
- 12.8 This clause will survive the termination or expiry of these Terms.
- 12.9 **Early Termination Fee for Minimum Contracts:**  
For clients on a 3-month minimum contract, an early termination fee of \$500 applies if the client elects to terminate the contract before the completion of the minimum contract period. This fee is non-negotiable and non-refundable.

## 13 General

- 13.1 **Amendments:** We may amend these Terms at any time, by providing written notice to you. By clicking "I accept", or continuing to use the GetGoing Packages or Get Going Services after the notice, or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may terminate the GetGoing Packages or GetGoing Services in accordance with these Terms.
- 13.2 **Assignment:** Subject to the below clause, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 13.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 13.4 **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 13.5 **Entire Terms:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 13.6 **Force Majeure:** To the maximum extent permitted by law, we shall have no Liability for any event or circumstance outside of our reasonable control.

13.7 **Governing law:** These Terms are governed by the laws of Victoria. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

- 13.8 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 13.9 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the Privacy Act 1988 (Cth) and any other applicable legislation or privacy guidelines.
- 13.10 **Publicity:** We will not advertise or publicise the fact that you are a user of the Getgoing Packages or GetGoing Services, including on our website or in our promotional material, without your prior consent.
- 13.11 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 13.12 **Third party sites:** The Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform (**Affiliate Link**) or for featuring certain products or services on the Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Platform, or which (if any) third party links are Affiliate Links.
- 13.13 **Trust Provisions:** Each Party described in these Terms as a trustee (**Trustee**) enters into these Terms only in its capacity as a trustee of the trust of which it is described as the Trustee (**Trust**). Subject to this clause, and despite any other provision of these Terms, a Liability arising under or in connection with these Terms is limited and can be enforced against a Trustee only to the extent to which the Trustee is indemnified out of the assets of the Trust. The limitation set out in this clause does not apply where the Trustee's right to indemnification is reduced or lost as a result of fraud, breach of trust or breach of duty by the Trustee. This clause will survive the termination or expiry of these Terms.

## 14 Definitions

- 14.1 **Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.
- 14.2 **Intellectual Property** means copyright, registered or unregistered designs, patents or trademarks, any domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- 14.3 **Personnel** means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.
- 14.4 **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.

**For any questions or notices, please contact us at:**

Get Going Franchising Pty Ltd

**Email:** [info@getgoingpt.com.au](mailto:info@getgoingpt.com.au)

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