

## ONE XPS FITNESS MEMBERSHIP TERMS

Welcome to ONE XPS Fitness. We are very excited that you have chosen to join us. Where we refer to “you” or “your” throughout our terms, we are referring to you in your personal capacity as our member.

Before you can begin enjoying the benefits of being a member however, we need you to **read** and **accept** the terms and conditions of your membership set out below and as amended from time to time by us (**Terms**). Your attention is particularly drawn to clause 13 which sets out our liability to you.

Our Terms clearly set out what we expect from you and what you can expect from us. These Terms contain your legal rights and obligations so please make sure you read them carefully before accepting. Unfortunately, if you do not agree to our Terms, you will not be able to become a member. If you do agree to our Terms and subsequently breach any of them, we will be able to immediately freeze and/or terminate your membership.

To try and avoid any confusion on the interpretation of our Terms, please note the following by way of explanation to you:

- Any headings we use throughout these Terms shall not affect the interpretation of the clauses. References to clauses are to the clauses set out in these Terms.
- Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular and a reference to one gender shall include a reference to the other genders.
- A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- Any phrase introduced by the terms ‘including’, ‘include’, ‘in particular’ or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- A reference to **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to writing or written includes email but not fax.

### 1. Who we are

1. We are ONE XPS Fitness Limited, a company registered in England and Wales with company number 13085581 and registered office address at c/o Beever and Struthers, One Express Building, 1 George Leigh Street, Ancoats Manchester M45DL. Our gym is located and operated at One Express, 1 George Leigh Street, Ancoats, Manchester, M4 5DL. Where we refer to “we”, “our”, “us” throughout the Terms, this is who we are referring to.

2. You can access our website by visiting [www.onexpsfitness.co.uk](http://www.onexpsfitness.co.uk) OR [www.onexpsfitness.com](http://www.onexpsfitness.com) (website) and you can download our app [ONE XPS FITNESS] (app) which is available on iOS and android from the relevant app store.

3. As well as our website and app, we also have our social media pages where you can keep up to date with the latest news and events at the gym either on Twitter (@onexpsfitness), Instagram (@onexpsfitness) or Facebook (@onexpsfitness).

## **2. How to contact us**

2.1. If you need to contact us for any reason, please get in touch with Mike, our director, either by email to [mike@onexpsfitness.co.uk](mailto:mike@onexpsfitness.co.uk), phone on 07734 306125 or post addressed to Mike Lathwood at ONE XPS Fitness, One Express, 1 George Leigh Street, Ancoats, Manchester, M4 5DL.

## **3. How we may contact you**

3.1. If we need to contact you, we will do so by telephone or by email using the details you provided us with in your membership registration form.

## **4. Our contract with you**

4.1. These Terms set out the terms and conditions upon which your gym membership will operate.

4.2. Please ensure that you read these Terms carefully, and check that your details on your membership registration form and member's area on our website/app are complete and accurate before submitting your registration to us. We ask that you please keep your details up to date for the duration of your membership with us. If you think there is a mistake, please contact us to let us know using our contact details set out above. Please also make sure that you ask us to confirm any changes to you in writing to avoid any confusion between you and us.

4.3. We consider these Terms and your membership registration form (as amended in writing from time to time) constitute the whole agreement between you and us.

4.4. When you submit your registration form to us, this does not mean we have accepted your registration and agree to on-board you as a member. Our acceptance of your registration will take place and these Terms will become binding on you and us when we email you to confirm our acceptance of your registration, at which point a contract will come into existence between you and us.

## **5. Changes to your registration, membership or these Terms**

5.1. At any time, we may revise and update these Terms or the whole or any part of your membership from time to time by either amending the detail on our website or amending these Terms.

5.2. We will notify you of any material change to your membership or these Terms but you are expected to check our website from time to time and/or our noticeboard located outside of the main entrance to the gym which will detail the changes made (and such changes may be binding on you).

## 6. Your Membership

- 6.1. Your membership will start on the date we accept your registration in accordance with clause 4.4 above or, if you choose to delay your membership in accordance with clause 6.2 below, herein after referred to as the **commencement date**.
- 6.2. You may delay your commencement date by a maximum of one calendar month from the date on which we accept your registration. Please let us know on your registration form if you would like to do this, and the date on which you would like your membership to start. Please note that this will only be permitted once we confirm our acceptance of your revised commencement date to you in writing. Where you do delay your membership, you will not be able to access the gym or benefit from your membership until the date of your revised commencement date.
- 6.3. Your membership shall continue from your commencement date or revised commencement date (as the case may be), (unless terminated earlier in accordance with these Terms) for a period of 1 month and shall automatically continue on a rolling monthly basis thereafter.
- 6.4. In consideration of paying your membership fee (as detailed in clause 7.1 below), you will receive the following benefits:
  - 6.4.1 Access to and use of the gym during the following opening hours (or such other opening hours as we may notify you of from time to time):
    - 6am to 10pm Monday to Friday (inclusive); and
    - 8am to 6pm Saturday, Sunday and Bank Holidays;
  - 6.4.2 Access to a number of classes (please see clause 7.6 below where an additional fee is payable for some classes);
  - 6.4.3 Access to the secure member login areas of our website and app where you will be able to book and cancel classes, update your membership details and make payments;
  - 6.4.4 A gym induction upon joining the gym where you will be given a tour of the gym and shown how to use and operate various pieces of equipment to a basic standard. Depending on the number of new members as at your commencement date, you may have this induction individually, or in a group (capped at a maximum of six people, including you); and
  - 6.4.5 Two free passes per year to bring a guest with you to the gym. You will receive two separate QR barcodes through our app for this purpose.
- 6.5. Your membership is not negotiable or transferable, save for the circumstances set out in clause 12.2.

## 7. Membership Fees and Payment

- 7.1. Your membership fee to access and use the gym and receive the benefits set out in clause 6.4 above is £35 per month (unless clause 8.2 applies to you), or such other amount as we may notify you in writing of from time to time (**membership fee**).

- 7.2. We may increase your membership fee at any time during the contract and we will give you one month's written notice of our intention to do this via email (hence why it is important you keep us updated of any changes to your details). If you do not agree to the price increase, please see your rights to end the contract under clause 12.
- 7.3. The first membership fee will become payable on your commencement date (or revised commencement date) and this will be taken via a debit or credit card.
- 7.4. At the time of making your first payment, you will be asked to fill out a direct debit mandate which we will send to your bank as proof that you have authorised us to collect future payments from your nominated account.
- 7.5. Your direct debit will be payable each month on the same date your first payment was made. Should you wish to alter the date of your direct debit, you may do so via our app.
- 7.6. Please note that the following benefits are not included in your membership fee, but are available on request for an additional fee:
- 7.6.1. personal training sessions with one of our qualified personal trainers;
  - 7.6.2. outsourced gym classes, for example, Yoga and Pilates where we engage a suitable qualified teacher to attend the gym and hold these; or
  - 7.6.3. a health MOT provided by Mike Lathwood.
- 7.7. Where an additional fee is payable, you will be asked to make this payment in advance via our website or app when making the relevant booking.
- 7.8. You are entitled to freeze your membership for up to a maximum of three consecutive months in your membership period. You must give us written notice of your intention to freeze your membership and we must receive such notice at least five working days before your next payment date. If we receive your notice less than five days before your next payment date, your membership will not be frozen until the month after the one you intended.
- 7.9. Should the gym have to close for a period of longer than 48 hours, you will receive a refund of a proportion of your membership fee equal to the number of days the gym is shut for calculated on a pro-rata basis with regard to the monthly membership fee.
- 7.10. Should you die or become incapacitated so as to be unable to receive your membership services, we will not take any further direct debit payments after the date on which we are notified of your death or incapacity.
- 7.11. For other costs incurred outside of your membership fee, if you do not make any payment to us by the due date, we may charge interest to you on the overdue amount at the rate of 4% above the base lending rate of the Bank of England from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement. You must pay us interest together with any overdue amount.

## **8. Promotional Terms**

- 8.1. We are currently not charging a joining fee to join the gym.
- 8.2. If you are a resident of a property owned by Philip J Davies Holdings PLC (company number 00876255) or any subsidiary of Philip J Davies Holdings PLC, then you are entitled to a discounted membership at a rate of £30 per month. To benefit from this, you will need to provide proof of address and/or employment at the relevant property upon submitting your registration form to us.
- 8.3. We reserve the right to hold void, suspend, cancel or amend any promotional offers we have from time to time.
- 8.4. Our promotions are not negotiable or transferable, save for the circumstances set out in clause 12.2.

## **9. Our website and app**

- 9.1. Our website and app are provided “as is” and on an “as available” basis and we reserve the right to withdraw, suspend or amend these without notice.
- 9.2. We will not be liable if for any reason our website and/or app is unavailable at any time or for any period.
- 9.3. We give no warranty that the website and/or app will be free of defects and/or faults.
- 9.4. To the maximum extent permitted by law, we provide no warranties (express or implied) of the website and/or app’s fitness for a particular purpose, accuracy of information, compatibility with your devices and satisfactory quality.
- 9.5. From time to time we may restrict to some parts or the whole of the website or app to carry out work on these in accordance with our rights under clause 9.1, or if either encounters technical problems or required maintenance.
- 9.6. You will choose a username and password to gain access to our secure member’s area on the website and app and you will be asked to create these as part of our security procedures upon registration. You must treat such information as confidential, and you must not disclose it to any third party. We have the right to disable any username or password registered to our website or app at any time if, in our opinion, you have failed to comply with any of the provisions of these Terms.
- 9.7. You are responsible for making all arrangements necessary to access and use our website and app.

## **10. Rules of Membership**

- 10.1. It will always remain your responsibility throughout your time as a member with us to ensure that you are both mentally and physically able and well enough to use our facilities as intended as a place of exercise.
- 10.2. All members must be 16 years of age or older at the date of their registration with us. By submitting your registration form to us, you are confirming that you are 16 years of age or older.

- 10.3. You are not permitted to bring your own personal trainers to the gym. If you would like a personal training session, please contact us to discuss or book a session via our website or app but please note that this will not be provided as part of your membership fees and an additional charge will be payable and due in advance at the time of booking.
- 10.4. You acknowledge that we will not be responsible for any injury or loss, theft or damage to property sustained or incurred whilst on our premises (save for our negligence).

## **11. QR Access Code Terms**

- 11.1. You will need to have downloaded and be registered to our app to access the gym.
- 11.2. Our app will generate a QR barcode each time you wish to access the gym which you can scan at our entrance turnstiles to gain access.
- 11.3. Please note that this QR barcode is personal to you and your membership. Your QR barcode will expire 15 seconds after it has been generated so you will not be able to share this with anyone else.
- 11.4. The two free passes you are entitled to receive under clause 6.4.5 will each be given their own QR barcode (stored separately to yours in the app) and subject to the same terms and conditions as your own QR barcode.

## **12. Terminating your Membership**

### **How you may terminate your membership:**

- 12.1. Under the Consumer Contracts Regulations 2013, you have a legal right to change your mind about your membership and receive a refund within 14 days of your commencement date. This is known as your **cancellation period**.
- 12.2. If your membership is provided by your employee then instead of terminating your membership with us, you have the option to transfer your membership to another employee within your then current employer's business provided you get written confirmation from the employer that they agree to the transfer. If they do not agree to the transfer, the rest of this clause 12 applies.
- 12.3. Once your cancellation period has elapsed and unless clause 12.4 applies, you may end the contract immediately and we will not take another direct debit payment (or, if you end the contract less than five days before your next payment date, we will refund this to you) by contacting us in any of the following circumstances:
  - 12.3.1. we have told you about an upcoming change to your membership or these terms which you do not agree to;
  - 12.3.2. we have told you about an error in your membership fee or description of your membership and you do not wish to proceed; or
  - 12.3.3. there is a risk that you may not be entitled to receive the benefits of your membership because of events outside our control (please see clause 14 for more information on events outside our control).

- 12.4. Once your cancellation period has elapsed and unless clause 12.3 applies, you may end the contract after your first contract month .The contract will end one calendar month after the day on which you notify us and we will refund you any advance payment you have made for your membership.
- 12.5. Where a refund is due, this will be made within 14 days of you notifying us of your intention to cancel the contract.
- 12.6. You will be responsible for cancelling your direct debit with your Bank.

**How we may terminate your membership:**

- 12.7. We may end your contract at any time by contacting you if:
  - 12.7.1. you do not make any payment to us when it is due and you still do not make payment within five working days of us reminding you that payment is due;
  - 12.7.2. you do not, within a reasonable time of us asking for it, provide us with information that is necessary for us to provide your membership to you; or
  - 12.7.3. you are in breach of any term of these Terms, including but not limited to the Rules of Membership.

**13. Our liability to you**

- 13.1. Insofar as is permitted by law, we, our employees, agents, contractors, sub-contractors or their employees will not in any circumstances be responsible or accept any liability for any loss, damage, personal injury or death occurring as a result of attending and/or using the gym (including but not limited to you and your guests) except where it is caused by our negligence or the negligence of our employees, agents, contractors, sub-contractors or their employees or fraud or fraudulent misrepresentation by any of the aforementioned parties. Your statutory rights are not affected.
- 13.2. If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a **foreseeable** result of our breaking this contract or our failing to use reasonable care and skill in carrying out our services, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen, for example, if you discussed it with us during your on-boarding process.
- 13.3. If defective digital content which we have supplied damages a device or digital content belonging to you and this is caused by our failure to use reasonable care and skill we will either repair the damage or pay you compensation. However, we will not be liable for damage which you could have avoided by following our advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised by us or law.

13.4. We only supply memberships for domestic and private use. If you use your membership for any commercial, business or re-sale purpose in breach of these Terms, we will have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.

#### **14. Events outside our control**

14.1. We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under these Terms that is caused by an event outside our control.

14.2. An **event outside our control** means any act or event beyond our reasonable control, including without limitation, strikes, lock-outs, or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, natural disaster or other act of God, failure of public or private telecommunications networks, or non-performance by third parties integral to the provision of your membership including but not limited to the company or companies engaged to develop the website and app.

14.3. If an event outside our control takes place that affects the performance of our obligations under these Terms:

14.3.1. we will contact you as soon as reasonably possible to notify you; and

14.3.2. our obligations under these Terms will be suspended and the time for performance of our obligations will be extended for the duration of the event outside our control. Where the event outside our control affects your membership and/or our performance of this contract, we will restart your membership and/or our performance of this contract as soon as reasonably possible after the event outside our control is over.

#### **15. Your personal information**

15.1. We will only use and process your personal information in accordance with our Privacy Policy. We give you a copy of our privacy policy when you register as a member, and this is available any time thereafter via our website.

15.2. By registering as a member, you consent to such processing of your personal information and you warrant that all data and information provided by you is true and accurate.

#### **16. Other important terms**

16.1. **Intellectual Property Rights:** We are the owner or licensee of all intellectual property rights in (1) the website; (2) the app; and (3) any deliverables provided as part of your membership (other than intellectual property rights in any materials provided by you). Those works are protected by copyright laws and treaties around the world. All such rights are reserved.



- 16.2. **Transferring the contract:** We may transfer our rights and obligations under these Terms to another organisation. We will contact you to let you know if we plan to do this.
- 16.3. **Rights under this contract:** This contract is between you and us. No other person shall have any rights to enforce any of its terms.
- 16.4. **Severability:** Each clause in these Terms operates separately. If any court or relevant authority decides that any clause is unlawful, the remaining clauses will remain in full force and effect.
- 16.5. **No delay or failure to perform this contract:** If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date. For example, if you miss a payment and we do not chase you but we continue to provide your membership, we can still require you to make the payment at a later date.
- 16.6. **Governing law and jurisdiction:** These Terms are governed by English law and you can bring legal proceedings in respect this contract in the English courts.