**Terms, conditions and privacy notice**

**Basics of the agreement**

1. You pay us for 24/7 access to Functional Fitness Wairau Valley
2. We provide you with 24/7 access to Functional Fitness Wairau Valley

**What we will do**

If you are a verified member, pay your subscription regularly and on time, we will provide you with 24/7 access to our gym facility & equipment.

We will provide you with a personal digital key on your smartphone[[1]](#footnote-1) to enable you to access the gym.

**What you must do**

You must pay us regularly in advance through our app. You set up and make these subscription payments through the app.

You must use your personal digital key to enter the gym. You must not share your key with anyone else, nor allow anyone else to enter the gym with you.

You must use equipment, and exercise, safely and keep the facility clean and tidy.

You must be considerate and respectful of other users of the gym.

You acknowledge that exercise carries risk (as well as rewards!) and absolve us of responsibility for any ill effects or injuries you might suffer while working out at the gym.

**What we may do**

If we have not received your regular, scheduled, subscription payment, we may continue to provide you with access to the facility for a limited period (grace period). Your key card will turn amber in the app. If we do provide access during a grace period, you must still pay us for the access we have provided.

If we have still not received payment after the conclusion of the grace period, we may cancel your membership and de-activate your key. Your key card will turn red in the app. You may re-join the gym by signing up to a new membership and bringing your payments up-to-date. Your new membership may be at a different price point to any rate you previously paid.

We reserve the right to not accept or to cancel your membership at our absolute discretion and will advise you if we make this decision.

We reserve the right to change these terms, conditions and privacy notice from time-to-time and will advise you of such updates via the app.

**What you may do**

If you are a verified member with up-to-date payments, you may enter the facility at any time of the day or night to use equipment and to exercise.

**Account establishment cost**

We may charge a one-off amount at the time of establishing, or re-establishing, your membership. This amount will be clearly indicated during the sign-up process if it is applicable to your membership. If there is an account establishment cost, you will pay this cost plus your first (full or part-period) subscription payment at the time of confirming commencement of your membership.

**Types of memberships**

We provide three kinds of memberships:

* Fully Flexible
* Initial Commitment
* Paid-in-full (or pre-paid)

**Fully Flexible memberships**

A Fully Flexible membership has no commitment beyond the subscription period for which you have paid. With a Fully Flexible membership you can cancel your membership at the end of the current subscription period or any time thereafter.

**Initial Commitment memberships**

An Initial Commitment membership has a period, voluntarily selected by you, that is longer than the current subscription period for which you have paid.

Initial Commitment memberships mean you are promising to continue to pay us for the length of your Initial Commitment period and to not cancel your membership during this period.

When you select an Initial Commitment membership, we will advise you of the total cost of the membership for that Initial Commitment period. This amount is what you are promising to pay us.

In return we offer a reduced price compared to the Fully Flexible membership price and promise to maintain the price point you have selected for the period of your Initial Commitment.

**If you have any doubt about your ability to continue to pay us for the entirety of the Initial Commitment period, e.g., because you might shift your job or you might relocate, we strongly recommend you select the Fully Flexible membership instead.**

If you continue your membership after the end of the Initial Commitment period of an Initial Commitment membership, your membership automatically continues on, becoming a Fully Flexible membership thereafter.

**Paid-in-full (or pre-paid) memberships**

A paid-in-full membership is one in which you pay the full cost for your selected membership period at its commencement. With a paid-in-full membership there are no ongoing payments and the membership does NOT automatically renew.

Paid-in-full memberships are not visible in the app for selection by members but are initiated by staff on a prospective member’s behalf. Members who wish to pay-in-advance for their membership in this way need to engage with staff during staffed hours to initiate the establishment of a Paid-in-full membership.

**Cooling off period**

A Cooling Off Period applies to Initial Term Memberships only, as per the Credit Contracts and Consumer Finance Act. This means that, during the first five (5) business days of an Initial Term Membership, you may cancel the membership without further payment and, if you do so within that five (5) business days period, you do NOT have to pay any Early Cancellation Compensation Fee.

Payments already made are not refunded, as they are for services already provided (access to the gym), but you do not have to complete the remainder of Initial Term Membership to which you committed.

No Cooling Off Period applies to a Flexi membership, because no term commitment is involved, and you are only ever paying for each upcoming subscription period as it comes due.

No Cooling Off Period applies to a Paid-in-full membership, because there are no ongoing payment commitments. It is simply the purchase of a membership for the term you select.

**Payment methods**

We offer two main payment methods:

* automated payments from your bank account OR
* automated payments from your credit or debit card

Payments from your bank account are done through a NZ company called Akahu (part-owned by Westpac). There are no charges for using this payment method, i.e., no surcharge or add-on cost.

Payments from your credit or debit card are done through Stripe, an Irish-American multi-national. There are costs to using Stripe, and we pass these costs on to you directly (we don’t charge anything extra for ourselves). Stripe charges 30 cents per transaction PLUS 2.7% of the total transaction value.

Paid-in-full memberships may be paid by EFTPOS in the club during staffed hours or by internet banking transfer to our bank account.

**Payment frequency (for subscription memberships)**

You choose how frequently you pay us. The options are weekly, fortnightly or monthly.

If you choose to pay weekly, for example, on a Monday, we provide access for 7 days from that Monday to midnight the following Monday, and every succeeding Monday at midnight when payment is received.

If you choose to pay fortnightly, for example, on a Wednesday, we provide access for 14 days to midnight on the Wednesday fortnight when your next payment is due, and each succeeding fortnightly Wed at midnight when payment is received.

If you elect to pay monthly, we provide access for a calendar month, until the date of your next scheduled payment. Again, the turnover time is at midnight on that day of payment. For example, if you pay on the 20th of the month, we provide access to midnight on the following 20th of the month.

**Payment frequency (for paid-in-full memberships)**

Payment is one-off at the commencement of the membership, and there is no recurring payment (unless you choose to renew your paid-in-full membership at the end of the term you select).

**Changing your payment frequency or payment day or date**

You can change your payment frequency or payment day or date at any time. The change will take effect at the end of the current period for which you have paid.

There may be a one-off adjustment amount (a pro rata payment) for any part period caused by the change of payment frequency or payment day or date.

Example. If you have been paying on a Monday and wish to change to a Wednesday, there will be an extra two days’ payment due. You will be prompted to make that additional part payment as part of making and agreeing to the changed payment schedule.

If you have been paying on a Wednesday and wish to change to a Monday, your next payment will be reduced by the two days for which you have already paid.

**Casual visit to the gym**

 A casual visit costs the start up fee plus one weeks’ membership of the gym.

If you want to visit and use the gym a single time, select the weekly payment option and pay for one weeks’ access, and then immediately cancel your membership.

**Under 18s**

This facility and payment system is designed for adults. If you are under 18, and your parents or guardians are happy to permit you to use the gym, you and they will need to visit our facility during staffed hours to join the gym; it can’t be done automatically on this app or on-line.

**Pausing your subscription**

Pausing your membership (putting it ‘on hold’) means you do not pay us for, and you do not have, access to the gym, for that temporary period.

Pauses are for a minimum of one week (7 days).

Pauses are time limited, depending on how long you have been a member of the gym.

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|  | **Allowed pauses** |
| In 1st year of membership | Up to 8 weeks |
| In 2nd year of membership | Up to 10 weeks |
| In 3rd & subsequent years of membership | Up to 12 weeks |

Pausing beyond the allowed period is treated as a cancellation.

Pauses allowances are not cumulative, nor are unused balances carried forward from one year to the next.

You are responsible for putting your membership on pause and you do this through our app.

You must pause your membership **in advance** of the start of your pause period. You cannot pause your membership in the past.

If the pause period you choose does not exactly align with your payment frequency or schedule, there will be a different amount to pay when the pause ends. We will automatically calculate the adjustment required and advise that adjusted amount to pay when your payments resume at the end of the pause period.

During a pause period, you may alter the end date of your pause, provided you do so in advance of the change. You can shorten or lengthen the pause by adjusting the end date. Such an adjustment will lead to a revised part payment upon resumption of the membership.

If you increase the pause beyond the allowed pause period, the increase will be treated as a cancellation of the membership.

If you have selected an Initial Commitment membership, any pause you take within the Initial Commitment period will be added onto your Initial Commitment period. This will have the affect of extending the length of your Initial Commitment period by the length of your pause.

Pauses are contingent on your payments being up-to-date immediately prior to the commencement of a pause. If you have set-up a future pause, but a payment fails in the meantime and is not brought up-to-date prior to the commencement of the pause, we will automatically cancel the pause, and your payments and access will continue as normal. If you bring your failed payments up-to-date prior to the start of the pause, the pause will commence as normal. If we have cancelled your scheduled pause because of failed payments, you can bring your payments up-to-date and reinstate your pause.

**Cancellation of Fully Flexible membership**

If you have selected a Fully Flexible membership, you can cancel your membership at any time by stopping your next and any future payments to us. You will continue to have access to the gym for the period for which you have already paid, up until the date your cancellation takes effect.

If you wish to cancel your membership, **you must do it before the next payment occurs**. Once you have made a payment to us, we provide access to the gym (whether you use it or not), so we do not provide refunds for payments already made to us.

If the cancellation date you have chosen does not coincide with your regular payment date, your final payment will be a part payment, adjusted for the number of days you have access.

If you do not pay us regularly according to the payment schedule you have chosen, we have the right to cancel your membership.

We don’t want to cancel your membership and would much prefer that you take responsibility for cancelling your own membership. We make it easy to cancel your membership and encourage you to manage your membership proactively yourself.

**Early Cancellation of Initial Commitment membership**

If you have selected an Initial Commitment membership, the expectation is that you will not cancel your membership during the Initial Commitment period.

If, despite this promise to us, you do cancel during your Initial Commitment period, you will pay us an Early Cancellation Compensation Fee prior to your cancellation taking effect. The Early Cancellation Compensation Fee is calculated as a percentage of the money you promised to pay us and which we reasonably expected to receive based on your promise.

If you wish to cancel early due to circumstances beyond your control, or if you otherwise consider it reasonable for you to cancel early, you may contact us to request that we reduce or waive the Early Cancellation Compensation Fee. Whether we do so, is entirely at our discretion, but we must reasonably consider your request.

**Resuming a cancelled membership**

If you have previously been a member, you can re-activate your membership at any time, by signing up again and re-instating regular payments to us.

The payment rate available when you re-join may not be the same payment rate you previously paid.

If there are payments owing from a previous membership you had with us, you will need to bring these payments up-to-date, in order to be able to reinstate your membership.

**Changes to payment rates**

We may need to change the price we charge from time to time. If we do so, we will advise you of the changed payment amount at least one month in advance of when it is scheduled to take effect.

We will not change the price you are paying for an Initial Commitment membership within the period of your Initial Commitment.

If you do not wish to pay the revised amount you can cancel your membership prior to the change taking effect.

**Facility repairs and refurbishment**

We may need to temporarily close the facility to safely conduct repairs, maintenance and refurbishment from time to time. If we do so, we will advise you of the effect for you in terms of access and payment.

**Force majeure**

When something outside our control\* means we cannot provide you with access to our equipment and facility, we will use best endeavours to resolve the problem and get our facility back ‘on-line’ and available for you as soon as possible. We will also communicate with you as soon as we reasonably can so that you know what is going on. We may communicate via our app, e-mail, txt or social media.

\* *This includes things such as natural disasters, emergencies, war, failure of essential services and government mandates or actions or orders.*

**Privacy**

We collect your name, date of birth, phone number, e-mail address, home address, photo and bank account and/or credit card and/or debit card details directly from you, in order to facilitate your membership of our gym.

You can up-date these personal details yourself in our app. We are unable to update your bank account or card details or change bank accounts or cards for you – only you can do that.

You have the right to ask for a copy of any personal information we hold about you, and to ask for it to be corrected if you think it is wrong. If you’d like to ask for a copy of your information, or to have it corrected, please message us in the app or contact us via info@tortoise.nz.

Over time we collect information about your regular payments, your gym visits, any pauses in your membership and any change to your information, in order to facilitate your membership of our gym and improvements in our service and in the app.

We share your personal information with Tortoise, Akahu and Stripe. Tortoise provides the app and database that collects and stores your data. Akahu provides the fintech backbone that enables you to pay us by connecting your bank account to our bank account. Stripe provides the card payment method.

We, Tortoise and Akahu store the information you provide and we collect on cloud-based servers. These are currently hosted by Amazon Web Services (AWS).

All access to this data is limited to authorised users, whose logins requires passwords with two-factor authentication. This applies to staff, contractors and developers of ourselves, Tortoise and Akahu.

Stripe has its own detailed privacy arrangements, which you can find out about here: <https://stripe.com/nz/legal/privacy-center>

*We use Stripe for payments, analytics, and other business services. Stripe may collect personal data including via cookies and similar technologies. The personal data Stripe collects may include transactional data and identifying information about devices that connect to its services. Stripe uses this information to operate and improve the services it provides to us, including for fraud detection, loss prevention, authentication, and analytics related to the performance of its services. You can learn more about Stripe and read its privacy policy at*[*https://stripe.com/privacy*](https://stripe.com/nz/privacy)*.*

When you cancel your membership, we retain your personal and transaction details for our own record-keeping, accounting and taxation requirements, EXCEPT THAT we do **not** keep the token by which you previously enabled payments from your bank account to ours.

1. Requires NFC and Bluetooth to be enabled. If your phone does not have these capabilities or they are not enabled, you can purchase a physical key tag during staffed hours. [↑](#footnote-ref-1)