

# Pilates X PT

## Terms & Conditions

### 1. Agreement

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#### 1.1. Service

- (a) Pilates X PT provides the Services to the Member for the Term on the terms and conditions set out in this Agreement.

#### 1.2. Terms of the Agreement

- (a) If one and only one of the following Packages in Item 3 are ticked:

- (i) Intro Pack;
- (ii) Package One;
- (iii) Package Two;
- (iv) Package Three;

this Agreement is a **Fixed Term Agreement** and then but not otherwise clauses 4 and 5 of this Agreement do not apply.

- (b) If one and only one of the following Packages in Item 3 are ticked:

- (i) Silver;
- (ii) Gold; or
- (iii) Pila-tay Your Way

this Agreement is a **Periodic Agreement** and then but not otherwise clauses 3 and 5 of this Agreement do not apply.

- (c) If one and only one of the following Packages in Item 3 are ticked:

- (i) Bronze;

this Agreement is a **Periodic Agreement with a Fixed Initial Term** and then but not otherwise clause 3 of this Agreement does not apply. Clause 4.4 will not apply until the Member has completed the Initial Fixed Term.

### 2. Membership

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#### 2.1. Eligibility

- (a) Members may be required by Pilates X PT to complete a pre-exercise questionnaire to the satisfaction of the Pilates X PT before engaging in any exercise at the Studio.
- (b) Pilates X PT reserves the rights to restrict, suspend or terminate the Agreement in any way in circumstances where Pilates X PT is of the reasonable opinion that the Member is unfit to use the Studio. The Member may be required by Pilates X PT to provide a medical certificate to Pilates X PT confirming that the Member is fit to use the Facilities or participate in the Class.
- (c) Members must ensure that their contact details, including Member's Billing Account, are current at all times and must notify Pilates X PT of any change to Members' details.

#### 2.2. Validity

- (a) Pilates X PT is not required to provide the Services to the Member unless:
- (i) the Member has paid for the Services in accordance with clause 6;
  - (ii) if the Member is participating in a Class, the Member has registered their attendance to the Class on Pilates X PT's Website prior to their participation;
  - (iii) the Package has not expired in accordance with the terms of this Agreement; and
  - (iv) the Member is not in breach of this Agreement.

### 3. Fixed Term Agreement

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#### 3.1. Term

- (a) Pilates X PT provides Services in accordance with the Selected Package to the Member for a Fixed Term.
- (i) commences on the Commencement Date; and
  - (ii) ends on the Expiry Date.

#### 3.2. Class Packages

The Selected Package permits the Member to attend and participate in the Classes for the number of classes specified in the Selected Package

#### 3.1. Payment Schedule

The Member is required to pay Package Fee in full and without deduction on the execution of this Agreement.

### 4. Periodic Agreement

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#### 4.1. Term

- (a) Pilates X PT provides Services in accordance with the Selected Package to the Member on a weekly period that:
- (i) commences on the Commencement Date; and
  - (ii) ends when the Agreement is Terminated in accordance with this Agreement.

#### 4.2. Payment Schedule

- (a) The Member is required to pay Package Fee in advance on a weekly basis in accordance with any direct debit agreement arranged for Pilates X PT and the Member from the Website;
- (b) Pilates X PT may increase the Package Fee in future weekly payments provided that Pilates X PT provides the Member with notice of not less than 2 week before the commencement of the increase

#### 4.3. Class Packages

- (a) The Selected Package permits the Member to attend, participate, and reserve Classes only for the number of classes specified in the Selected Package.

- (b) If the Selected Package does not specify that the Member can access unlimited classes, then the Member will only be entitled to the specified number of classes within a 7-day period commencing from the Commencement Date.
- (c) The Member may attend, participate, and reserve Classes but only for the number of classes specified in the Selected Package provided that there are reservations available.

#### 4.4. Termination by Member

- (a) The Member may terminate this Agreement if the Member has provided to Pilates X PT two weeks' notice of their intention to terminate this Agreement in writing (**Member Two Week Termination Notice**).
- (b) Upon Pilates X PT receiving the Member Two Week Termination Notice:
  - (i) the Agreement will terminate on fourteen (14) clear days after the end current Supply Period; and
  - (ii) subject to clause 4.4.(c) to 4.4.(f), the Member must pay for the remaining Supply Periods until the Agreement is terminated.
- (c) The Member may terminate this Agreement if the Member has provided to Pilates X PT written notice at any time (**Member Early Termination Notice**).
- (d) Upon Pilates X PT receiving the Member Early Termination Notice:
  - (i) the Agreement will terminate immediately; and
  - (ii) the Member must pay for the remaining Supply Period plus the value of the Supply Period equivalent to two weeks.
- (e) Pilates X PT will not impose any financial penalty for the termination of this Agreement by the Member
- (f) On the termination of this Agreement by the Member, any advance payments paid by the Member to Pilates X PT for more than two Supply Periods will be refunded the advance payments less the value of two Supply Periods.
- (g) **On the termination of the Member must cancel any direct debit authorisation for payments under this Agreement.**

## 5. Periodic with Initial Fixed Term

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### 5.1. Initial Fixed Term

The Initial Fixed Period:

- (a) commences on the Commencement Date;
- (b) ends on the Expiry Date

### 5.2. Minimum Payment

The total amount payable by the Member is the Package Fee multiplied by the number of Supply Periods in the Initial Fixed Period.

## 6. Payments Generally

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### 6.1. Payments

- (a) The Member is required to pay Package Fee on the execution of this Agreement.

- (b) The Member permits Pilates X PT to provide the Member's information to their third party direct debit provider for the purposes of making payments in accordance with this Agreement.
- (c) Pilates X PT will process the first payment Package Fee within 7 days of the Date of this Agreement and (if applicable) any subsequent payment for any subsequent period will be deducted within the next 7 days.
- (d) Pilates X PT may require the Member to pay the Package Fee through Pilates X PT's third party payment provider by way of direct debit from the Member's Billing Account.

### 6.2. Defaults

- (a) The Member is required to pay Package Fee on the execution of this Agreement.
- (b) Pilates X PT may recover from the Member the costs of any fees incurred as a result of any breach by the Member.
- (c) Pilates X PT will process the first payment Package Fee within 7 days of the Date of this Agreement

## 7. Release and Indemnity

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### 7.1. Release

Under this Agreement, to the maximum extent permitted by law, the Member forever abandons and discharges any present or future claim, right or remedy against Pilates X PT and releases Pilates X PT from any present or future claim, right or remedy arising directly or indirectly in respect of or from:

- (a) any statement, representation (including in relation to the operation or effect of federal or state laws imposing taxation or duties), term, warranty, condition, promise or undertaking made, given or agreed to in the course of communication or in any negotiation, arrangement or understanding with respect to the subject matter or any term of this Agreement, whether:
  - (i) oral, written or implied; or
  - (ii) made, given or agreed to before or during the making of this Agreement; and
- (b) any conduct in relation to any prior negotiation, arrangement, understanding or Agreement with respect to the subject matter or any term of this Agreement, whether the conduct occurred before or during the making of this Agreement.

### 7.2. Indemnity

The Member hereby agrees to:

- (a) release, indemnify, to keep indemnified and hold harmless the Pilates X PT, its officers, employees and agents, from and against all claims, demands, actions, damages, costs, losses and expenses of any nature whatsoever ("**Claims**") which may be incurred directly or indirectly by reason of or in relation to:
  - (i) a Force Majeure;
  - (ii) the use of the Studio by the Member;
  - (iii) any accident, damage, loss or injury occurring to the Member as a result of the Member's own negligence

or failure to follow the instructions of Pilates X PT;  
except to the extent that any Claim arises wholly out of  
any act or omission of Pilates X PT.

### **7.3. Member's Acknowledgement**

The Member acknowledges and agrees that the member:

- (a) participates in the Classes at their own risk;
- (b) participating in physical exercise has inherent risks and undertaking such activity may result in personal injury, illness or death;
- (c) will comply with all reasonable directions that are given to the Member by Pilates X PT during the provision of the Service to ensure safe and proper participation;
- (d) is responsible for the safekeeping of their own property they bring into the Premise; and
- (e) will pay to Pilates X PT the cost of repairing or making good any damage to the Premises or Pilates X PT's property or equipment caused wholly by the negligence of the Member.

## **8. Default**

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### **8.1. Default of Obligations**

If at any time:

- (a) the Member commits a breach of any provision of this Agreement; or
- (b) in Pilates X's opinion:
  - (i) there is a likelihood that damage may be caused to the Premises or Pilates X PT's property by the Member; or
  - (ii) the manner in which the Member is using the Services or proposes to use the Services is likely to injure or prejudice the reputation of Pilates X PT; or
  - (iii) the manner in which the Member is using the Services is illegal;

then notwithstanding any prior waiver, or indulgence granted by Pilates X PT to the Member, Pilates X PT may, after providing 7 days' notice to the member to remedy the default and the Member has not remedied the default, Pilates X PT may terminate this Agreement by giving the Member further written notice, whereupon this Agreement shall terminate immediately but without prejudice to any right or remedy of Pilates X PT for any breach by the Member of this Agreement.

## **9. Confidentiality**

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### **9.1. General Obligations**

The parties to this Agreement must keep confidential and not allow, make or cause any disclosure of or in relation to:

- (a) the terms of this Agreement; and
- (b) any documents which are or information which is confidential under this Agreement;

without the prior written consent of the other parties, which consent may be given or withheld, or given with conditions, at the other parties' sole discretion.

### **9.2. Exceptions**

The parties' obligations in this clause do not apply to disclosures to the extent that the disclosure is:

- (a) by a party to its legal and other professional advisors, auditors and other consultants (consultants) and employees of that party or that party's related bodies corporate requiring the information for the purposes of this Agreement or any transaction contemplated by it or for the purposes of advising that party in relation thereto;
- (b) of information which is at the time lawfully in the possession of the proposed recipient of the information through sources other than a party;
- (c) required by law or by a lawful requirement of any government or governmental body, authority or agency having jurisdiction over a party or its related bodies corporate; or
- (d) of information which is at the time generally and publicly available other than as a result of breach of confidence by the party wishing to disclose the information it discloses.

## **10. General**

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### **10.1. Governing Law**

This Agreement is governed by the law of South Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **10.2. Assignment**

The Member must not assign its rights or obligations under this Agreement, Pilates X PT may assign its interest in this Agreement to any person, which by reason of assignment, appointment or by or through any other means, has legal possession of Pilates X PT. If requested by Pilates X PT, the Member will enter into an instrument of assignment in relation to this Agreement on such terms as may reasonably be required by Pilates X PT.

### **10.3. Entire Agreement**

This Agreement contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Agreement was executed.

### **10.4. Unfair Terms**

If, but for this clause, a provision in this Agreement would be deemed "unfair" within the meaning of Part 2-3 of the Australian Consumer Law, then:

- (a) such provision will be construed, as nearly as possible, to operate without the parts of the provision that deem it to be "unfair" and, if that is not possible, such provision will be of no effect; and
- (b) the balance of this Agreement will continue unaffected.

## 10.5. Variation

No variation of this Agreement will be of any force or effect unless it is in writing and signed by each party to this Agreement.

## 10.6. Privacy

Pilates X PT may seek the Member's consent to utilise photos, videos, and media taken at the Studio for promotional and marketing purposes. The Member must comply with the Australian Privacy Principles and the *Privacy Act 1988* (Cth) in relation to the collection of information and media from other members at the Studio.

## 11. Preliminary

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### 11.1. Definitions

In this Agreement, unless the context requires otherwise, the following words and expressions have the following meanings:

**Agreement** means this Agreement between the Member and the Trader;

**Class** means supervised pilates classes provided by Pilates X PT;

**Commencement Date** means the date of the Agreement

**Date of this Agreement** means the date this Agreement was last signed by the Member and Pilates X PT;

**Expiry Date** means the date that is calculated by adding to the Commencement Date the number of days specified after the word "expiry" in the selected Package in **Error! Reference source not found.**;

**Force Majeure** means a circumstance beyond the reasonable control of a party which occurs without the fault or negligence of the party affected, and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, executive or administrative order or act of either general or particular application of any government, whether de jure or de facto, or of any official purporting to act under the authority of that government, prohibition or restriction by domestic or foreign laws, regulations or policies, quarantine or customs restrictions, breakdown or damage to or confiscation of property;

**Member** means the person in Item 1;

**Member's Billing Account** means the Member's account details in Item 6;

**Package Fee** means the fee for the Selected Package;

**Payment Date** means the dates which the Member has paid for the Services;

**Studio** means the pilates studio operated by the Trader at the Premises;

**Selected Package** means the Package that was ticked;

**Services** means the Class and the Facilities provided by Pilates X PT at the Premises;

**Supply Period** means the period for which the Member is entitled to the Services in accordance with the Selected Package commencing on and ending seven (7) clear days after the Payment Date.

**Term** means the period commencing on the Commencement Date and ending on the Expiry Date

Pilates X PT means the person in Item 2;

**Package** means the Packages provided by Pilates X PT in Item 3;

**Premises** means the premises in Item 5;

**Terms and Conditions** means the terms and conditions herein; and

**Website** means the website in Item 4.

### 11.2. Interpretation

In the interpretation of this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a gender includes a reference to all genders;
- (c) a reference to a person includes a reference to a firm, corporation or other corporate body;
- (d) a reference to a statute, regulation, or provision of a statute or regulation includes a reference to that statute, regulation or provision as amended, replaced or re-enacted from time to time;
- (e) a reference to writing includes a reference to printing, typing and other methods of producing words in a visible form;
- (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word replace or expression have corresponding meanings;
- (g) headings are for ease of reference and do not affect the construction of this Agreement;
- (h) a reference to a clause or sub-clause is a reference to a clause or sub-clause of this Agreement;
- (i) if a party consists of more than one person, this Agreement binds them jointly and each of them severally; and
- (j) this Agreement binds in addition to the parties, their respective legal personal representatives and successors.

## 12. Schedule

<b>Item 1 – Member</b>	<b>Full Name</b>							
	<b>Address</b>							
	<b>Email</b>							
	<b>Mobile</b>							
	<b>Date of Birth</b>							
<b>Item 2– Pilates X PT</b>	JAI ESPOSITO trading as PILATES X PT (ABN 76 446 320 961) of c/- PREMISES ADDRESS IN MUNNO PARRA							
<b>Item 3 – Packages</b>	<table border="1"> <tr> <td> <b>Intro Pack</b>                      Fee: \$50 for 5 Classes                      Expiry: 12 days                 </td> <td><input type="checkbox"/></td> <td> <b>Pila-tay your way</b>                      \$6.69 per week                      Periodic                 </td> <td><input type="checkbox"/></td> </tr> </table>	<b>Intro Pack</b> Fee: \$50 for 5 Classes Expiry: 12 days	<input type="checkbox"/>	<b>Pila-tay your way</b> \$6.69 per week Periodic	<input type="checkbox"/>			
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<b>Item 4 – Website</b>	<a href="https://www.pilatesxpt.com/">https://www.pilatesxpt.com/</a>							
<b>Item 5 – Premises</b>	Shop 6, 254 Curtis Road, Munno Para SA 5115							
<b>Item 6 Member’s Billing Account</b>	<b>Account Name</b>							
	<b>BSB</b>							
	<b>Account Number</b>							

Signed

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Signed by **PILATES X PT (ABN 76 446 320 961)**

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Signed by **the Member**

.....  
Date signed

.....  
Date signed