

SALES TERMS & CONDITIONS

In these Sales Terms and Conditions (**Sales Terms**) “we”, “us” or “our” mean Tammy Hembrow Health & Fitness Pty Ltd (ABN 26 613 660 316), its successors and assignees, (referred to as “we”, “us” or “our”) and you, the person, organisation or entity that purchases products or related services from us (referred to as “you” or “your”), and collectively the Parties. These Sales Terms apply to all sales made by us to you. These Sales Terms are available at Tammyhembrow.org (**Site**).

These Sales Terms form the agreement under which we will supply products and related services to you. Please read these Sales Terms carefully. If you have any questions, please contact us using the contact details below, before you purchase products or related services from us.

You accept our Sales Terms by making a purchase from us. Your purchase from us indicates that you have had sufficient opportunity to access these Sales Terms and contact us, that you have read, accepted and will comply with these Sales Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order products or services from us if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Sales Terms, you should not purchase from us.

Our Website Terms of Use set out the terms and conditions for using the Site. Our Privacy Policy sets out how we collect, use and protect your personal information. These are available on the Site.

1. Products, Services and Orders:

- (a) You may order from us as set out on the Site. We may at our discretion accept or reject an order depending on factors including availability of products or services and our ability to validate payment for the products or services.
- (b) It is your responsibility to check the order details, including product/service, pricing and your personal details (including your delivery email address), before you complete your order on the Site.
- (c) We will provide you with order details, which may include an order number, an order ID, your delivery email address and a description of what was ordered, when you order and pay on the Site and your payment has been validated.
- (d) A binding agreement comes into existence between you and us once we have given you an order number. No changes to these Sales Terms will be effective unless we both agree to the changes in writing.
- (e) You can cancel your order at any time prior to placing your order.
- (f) The products and services are sold to you for your personal use only, and you agree not to on-sell, resell or distribute the products or services to any third party without our written consent.

2. Price and Payments:

- (a) You agree to pay the purchase price specified on the Site at the time that you place your order for the purchase of a product/service. All amounts are stated in Australian dollars. All purchase prices include Australian GST (where applicable).
- (b) You must pay for the product or services by one of the methods set out on the Site, which may include the Stripe© or PayPal© payment software platforms. Your payment will be processed upon receipt of your order. You must not pay, or attempt to pay, for an order through any fraudulent or unlawful means. If your payment is not able to be successfully processed then your order may be cancelled.

3. **Delivery:** If your payment is successfully processed, we will deliver the product to your nominated delivery email address, as provided by you at the time of placing your order.
4. **Discount Codes and Promotions:** We may from time to time offer promotional discount codes, which may be applicable to products or services on the Site, and must be entered at the time of submitting your order. The conditions of use relating to any discount code will be specified at the time that it is issued.
5. **Intellectual Property Rights**
 - (a) Intellectual Property Rights mean all present and future rights in or to any patent, copyright, database rights, registered design or other design right, utility model, trade mark (whether registered or not and including any rights in get up or trade dress), brand name, service mark, trade name, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights (**Intellectual Property Rights**).
 - (b) We own all Intellectual Property Rights in the Site, business, products, services and branding, as between us and you. The products contain material which is owned by or licensed to us and is protected by Australian and international laws (**Materials**). We own the copyright which subsists in all creative and literary works incorporated into our Materials.
 - (c) You must not breach our Intellectual Property Rights by, including but not limited to altering or modifying any of the Materials, creating derivative works from the Materials, distributing the Materials to unauthorised third parties or using our Materials for commercial purposes such as onsale to third parties.

6. Dispute

Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our products or services, please contact us. If there is a dispute between the Parties in relation to these Sale Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).
- (b) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Queensland, Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Sales Terms, by law or in equity.

7. Consumer Law, Return, Refund and Exchange Policy

- (a) **ACL:** 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 services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- (b) **Products & Services:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our products and services come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (**Consumer Guarantees**). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the products replaced if the products fail to be of acceptable quality and the failure does not amount to a major failure."

- (c) Nothing in these Sales Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for products provided to a person or entity defined as a "consumer" under the ACL is governed solely by the ACL and these Sales Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- (d) **Warranties:** Except for your Statutory Rights, all products and services are provided to you without warranties of any kind, either express or implied, and we expressly disclaim all warranties of any kind including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- (e) **Repair, replacement or a refund:** If you wish to seek a refund for a product or service, please contact us and we will explain the requirements to you. This may include you providing proof of purchase and evidence of the faulty product to us.
- (f) **Exchange and Refunds Policy:** We offer refunds where the products are faulty (other than where the fault is caused by you), as determined by us in our sole discretion. We also offer refunds or exchanges where the products are misdescribed by us, or where you have incorrectly ordered the wrong product or multiple products, as determined by us in our sole discretion. We will not offer an exchange or refund for any other reason. If you are entitled to a refund or exchange, we will only grant you the refund or exchange once evidence of the faulty product, misdescription or incorrect purchase is received by us, and we have confirmed that you have not downloaded the product. Any refund we make will be by the same payment method used to purchase the product or service. We will only exchange items of equal or lesser value.
- (g) **Change of mind:** We do not accept returns for change of mind or circumstances.

8. Limitation of Liability and Disclaimers:

- (a) While the information and material contained on the Site and our products are believed to be accurate and current, it is provided by us in good faith on an "as is" basis, and we and our directors, officers, employees, contractors and agents accept no responsibility for and make no representations or warranties to you or to any other person as to the reliability, accuracy or completeness of the information contained on the Site or our products.
- (b) We strongly advise that you consult with a medical professional before beginning any workout program or nutrition plan outlined in our products, as not all workout programs or nutrition plans are suitable for all individuals. The programs and plans outlined in our products have been designed for healthy individuals with a solid baseline of fitness. You acknowledge and agree that we (and Tammy Hembrow) have no medical or nutritional experience or qualifications and cannot suggest which workout programs or nutrition plans will work for specific individuals. Our products are provided for educational purposes only and should not be used as a substitute for professional medical, dietary or nutritional advice. You acknowledge and agree that there is the possibility of physical injury when participating in the workout programs contained our products. To the extent permitted by law, you agree to use our products at your own risk, that you are voluntarily using our products, and assume all risk of injury to yourself, and agree to release and discharge us from any and all claims or causes of action, known or unknown, arising out of your purchase and use of our products.
- (c) Our liability is governed solely by the ACL and these Sales Terms.
- (d) To the extent permitted by law, we exclude all conditions, warranties, representations and liabilities in relation to the Site and the products, including but not limited to the following:
 - i. we expressly disclaim any implied or express guarantees, representations or conditions of any kind, which are not stated in these Sales Terms;
 - ii. we take no responsibility for, and will not be liable for the Site or the products or services being unavailable, failing to meet your expectations or medical or nutritional needs, failing to result in any desired health or nutritional benefit or outcome, or resulting in any injury, harm or any other undesired outcome or effect on you or any third party; and

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- iii. we will not be liable for any loss, damage, injury, death, costs including legal costs, or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use or any indirect, remote, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or costs of replacement products, or otherwise, suffered by you or claims made against you, arising out of or in connection with the Site, inability to access or use the Site, the products, the services, the late supply of products or services, or these Sales Terms, even if we were expressly advised of the likelihood of such loss or damage.
 - (e) To the extent permitted by law, our total liability arising out of or in connection with the products, the services or these Sales Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of products and/or services under these Sales Terms.
 - (f) This clause will survive termination of these Sales Terms.
9. **Indemnity:** You indemnify us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from your breach of these Sales Terms. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our products or services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us. The obligations under this clause will survive termination of these Sales Terms.
10. **General:**
- (a) **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.
 - (b) **Accuracy:** While we endeavour to keep information up to date and correct, we make no representations, warranties or guarantee, express or implied, about the completeness, accuracy, reliability, suitability or availability of any information, images, products, services, or related graphics contained on the Site for any particular purpose. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permissible by law.
 - (c) **Termination:** We reserve the right to refuse supply of the products or services ordered by you if you breach any of these Sales Terms, including if we suspect that you are on-selling or reselling the products or services to third parties without our consent, at our sole and unfettered discretion.
 - (d) **GST:** If and when applicable, GST payable on our services or products will be set out on the Site. By accepting these Sales Terms you agree to pay us an amount equivalent to the GST imposed on these charges.
 - (e) **Relationship of Parties:** These Sales Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.
 - (f) **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Sales Terms if such delay is due to any circumstance beyond our reasonable control.
 - (g) **Notice:** Any notice in connection with these Sales Terms will be deemed to have been duly given when made in writing and delivered or sent by email, facsimile or post to the Party to whom such notice is intended to be given or to such other address, email address or facsimile number as may from time to time be notified in writing to the other Party.

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- (h) **Waiver:** Any failure by a Party to insist upon strict performance by the other of any provision in these Sales Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by us of any of these Sales Terms shall be effective unless we expressly state it is a waiver and we communicate to you in writing.
 - (i) **Assignment:** You must not assign any rights and obligations under these Sales Terms, whether in whole or in part, without our prior written consent.
 - (j) **Severability:** If any of these Sales Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.
 - (k) **Jurisdiction and Applicable Law:** Your use of the Site and any dispute arising out of your use of it is subject to the laws of Queensland and the Commonwealth of Australia. These Sales Terms are governed by the laws of Queensland and the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts operating in Queensland. The Site may be accessed throughout Australia and overseas. We make no representation that the Site complies with the laws (including intellectual property laws) of any country outside Australia. If you access the Site from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place where you access the Site.
 - (l) **Entire Agreement:** These Sales Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

For any questions or notice, please contact us at:

Tammy Hembrow Health & Fitness Pty Ltd (ABN 26 613 660 316)

fitness@tammyhembrow.org

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