

# TERMS AND CONDITIONS

## Sports Nutrition Association

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### 1. Definitions and Interpretation

#### 1.1 Definitions

In these Terms a reference to the following words has the meaning set out adjacent to them, unless the context in which the words are used requires otherwise:

**Application** means your application to enrol in a Course.

**Agreement** means your Application, any Direct Debit Request and Direct Debit Agreement that you have completed, these Terms and any schedule, annexure or other attachment and any other practice, rules or directions reasonably provided by the Sports Nutrition Group.

**Confidential Information** means means any and all non-public information disclosed by or accessed through our services, including but not limited to:

- (a) course materials, teaching methodologies, and proprietary educational content related to sports nutrition;
- (b) curriculum development strategies and learning frameworks;
- (c) student and member data, enrollment information and academic records;
- (d) business operations information including pricing structures, marketing strategies and business plans;
- (e) proprietary research, formulations and methodologies related to sports nutrition;
- (f) technical information including software, systems, databases and digital platforms used in course delivery;
- (g) commercial relationships with suppliers, partners and industry affiliates;
- (h) employee information, instructor credentials and internal training materials;
- (i) financial information including revenue data, cost structures and investment plans; and
- (j) trade secrets and Intellectual Property related to our educational content and delivery methods.

Any information marked as "Confidential" or that would reasonably be understood to be confidential given its nature and the circumstances of disclosure shall be treated as Confidential Information. This includes information in any form or medium, whether disclosed verbally, in writing electronically, or through visual observation.

**Course** means any of the following courses offered by Sports Nutrition Group:

- (k) the graduate diploma in sports nutrition;
- (l) the graduate certificate in sports nutrition;
- (m) specialised weight cutting certificate; and
- (n) any other course offered by Sports Nutrition Group from time to time.

**Direct Debit Request** means an application to request that Sports Nutrition Group directly debit payments from your nominated banking account.

**Direct Debit Agreement** means the agreement provided to you by Sports Nutrition Group enabling it to directly debit payments from your nominated banking account.

**Dishonour Fee** means the Dishonour Fee referred to in clause 9.2(a).

**Enrolment Fees** mean the fees payable to Sports Nutrition Group for your enrolment in a Course, as calculated in accordance with clause 8.2.

**Enrolment Schedule** means the document provided to you at the time of enrolment into a Course that specifies the details of the course in which you will be participating, the commencement date of the Course, the Enrolment Fees and other relevant particulars associated with the Course.

**Extension Policy** means Sports Nutrition Group's policy relating to extensions of time to complete course assessment items, as published on the Website or otherwise advised by Sports Nutrition Group to participants enrolled in a Course.

**Fees** means all fees payable to Sports Nutrition Group for participation in a Course, as provided for in these Terms and in any other document forming your Agreement with Sports Nutrition Group.

**Intellectual Property** means any and all intellectual and industrial property rights throughout the world, whether subsisting now or in the future and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), registered and unregistered trademarks, designs (whether or not registered or registrable), circuit layouts, trade names, trade secrets, business names, company names or internet domain names and copyright.

**Payment Plan** means a payment arrangement in respect of the Fees payable for a Course, as defined in clause 5.2 (d).

**Resubmission Policy** means Sports Nutrition Group's policy relating to the resubmission of failed assessment items for Courses, as published on the Website or otherwise advised by Sports Nutrition Group to applicants at the time of enrolment into a Course.

**Sports Nutrition Association** means Regulatory Body for Sports Nutrition Australia Inc ABN 96 569 070 21.

**Sports Nutrition Group** means Sports Nutrition Australia Pty Ltd ACN 621 972 638 and Sports Nutrition Association,, or either of them as the context of these terms requires.

**Terms** means this document and any annexures, schedules or appendices hereto.

**Website** means <https://sportsnutrition.org.au/>, <https://sportsnutritionassociation.com/> and any other website operated by Sports Nutrition Group from time to time, relating to the provision of Courses or membership with the Sports Nutrition Association.

## **1.2 Interpretation**

- (a) Words denoting the singular number include the plural, and vice versa.
- (b) Words denoting any gender include all genders.
- (c) In this Agreement, unless expressly stated otherwise, all references to "\$" or "dollars" are to the lawful currency of Australia (AUD)
- (d) Headings are for convenience only and do not affect interpretation.
- (e) References to clauses and sub-clauses are references to clauses and sub-clauses of these Terms..
- (f) Where any of the parties hereto comprises more than one person, any covenants, agreement or obligation undertaken, or benefits received by virtue of these Terms,, shall be undertaken or received by all of them jointly and each of them severally.
- (g) Reference to any legislation or any section or provision thereof includes any statutory modification or re-enactment, or any statutory provision substituted including any ordinances, by-laws, regulations, or other statutory instruments issued under such legislation.
- (h) References to Sports Nutrition Group include references to each company forming the Sports Nutrition Group as the context and circumstances require.
- (i) Other forms of defined words have corresponding meanings.

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## **2. Agreement and Nature**

### **2.1 Formation**

- (a) Upon making an Application to participate in a Course you agree to be bound by these Terms, and all other documents designated in these Terms as forming our Agreement.
- (b) Our Agreement with you commences upon your submission of an Application and will expire on the later of:
  - (i) your completion of the relevant Course (whether in whole or part and whether successfully or unsuccessfully); and

- (ii) the date that you cease to be a member of the Sports Nutrition Association.
- (c) Each party acknowledges that nothing in this Agreement creates a fiduciary, employment, agency or partnership relationship.

## **2.2 Incorporation of Policies**

- (a) Any policy published by us on our Website or made available on any platform we operate (including but not limited to student portals, learning management systems, or mobile applications) is incorporated into and forms part of this Agreement, provided that such policy:
  - (i) relates to the provision of educational services by us, the operation of our platforms, or matters reasonably connected to your enrolment or membership with us; or
  - (ii) relates to matters that we are required to comply with as a matter of law, or that are considered to be best industry practice.
- (b) You acknowledge that while we will use all reasonable endeavours to ensure that you are notified of any new or amended policy, it is your obligation to ensure that you are periodically checking our Websites and any platform we have made available to you for updates to our policies.
- (c) Where we have amended an existing policy or implemented a new policy, if you do not agree to the new or varied terms, you must provide us with written notice within fourteen (14) days of the policy being published. All new and varied policies will take effect on the fourteenth (14th) day after publication, unless you provide notice that you do not agree to the policy within that timeframe.
- (d) If you notify us that you do not agree to a policy within the timeframe specified in 2.2 (c):
  - (i) either party may terminate this Agreement by providing written notice to the other party; and
  - (ii) you acknowledge that in order to maintain the professional standards of Sports Nutrition Group, it may be necessary for Sports Nutrition Group to terminate your enrolment in a Course, or your membership with Sports Nutrition Association.
- (e) You acknowledge that where your enrolment in a Course or membership with Sports Nutrition Association is terminated in accordance with 2.2 (d) (ii):
  - (i) if implementation of the new or varied policy was necessary in order for Sports Nutrition Group to comply with any legal or regulatory requirements, or to mitigate a legitimate business risk to Sports Nutrition Group, you will not be entitled to a refund of any Fees paid to Sports Nutrition Group (whether in respect of enrolment in a Course or your membership with Sports Nutrition Association); and
  - (ii) if implementation of the new or varied policy was discretionary and not required in order to comply with a legal or regulatory requirement, or to mitigate a legitimate business risk to Sports Nutrition Group, you will be entitled to a pro-rata refund of any Fees paid in respect of a Course, or membership to the Sports Nutrition Association.

## **2.3 Variation to Terms**

- (a) Sports Nutrition Group may from time to time make modifications, variations or amendments (**Variations**) to its Agreement with you, where it becomes necessary:
  - (i) as a result of changes or variations to agreements to which Sports Nutrition Group is itself a party, and where the variations to this Agreement are required in order to enable Sports Nutrition Group to meet its own contractual obligations;
  - (ii) as a result of any changes in law or regulations as imposed by any governmental or supervisory authority; or
  - (iii) where Sports Nutrition Group considers the Variations are necessary, appropriate and do not limit your rights or impose additional obligations on you under this Agreement.
- (b) Where possible and unless a Variation is required to be urgently implemented in order to comply with a change in law or direction of a regulatory authority, Sports Nutrition Group will provide to you with fourteen (14) days notice of the proposed Variation.

- (c) If you do not agree to a proposed Variation:
    - (i) you must provide us with written notice within fourteen (14) days;
    - (ii) if we are unable to reach agreement with you regarding the proposed Variation, either of us are entitled to terminate this Agreement by further written notice, without penalty; and
    - (iii) you acknowledge that Sports Nutrition Group may be required to terminate your enrolment in a Course or membership with Sports Nutrition Association.
  - (d) You acknowledge that where your enrolment in a Course or membership with Sports Nutrition Association is terminated in accordance with **2.3 (c) (ii)**:
    - (i) if the Variation was necessary in order for Sports Nutrition Group to comply with any legal or regulatory requirements, or to mitigate a legitimate business risk to Sports Nutrition Group, you will not be entitled to a refund of any Fees paid to Sports Nutrition Group (whether in respect of enrolment in a Course or your membership with Sports Nutrition Association); and
    - (ii) if implementation of the Variation was discretionary and was not required in order to comply with a legal or regulatory requirement, or to mitigate a legitimate business risk to Sports Nutrition Group, you will be entitled to a pro-rata refund of any Fees paid in respect of a Course or membership to the Sports Nutrition Association.
  - (e) If Sports Nutrition Group does not receive a notice from you objecting to a Variation pursuant to **2.3 (c) (i)**, you will be deemed to have accepted the Variation, which will be binding upon the parties.
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### **3. Application and Eligibility**

#### **3.1 Application Approval Process**

- (a) If you wish to enrol in a Course, you must make an Application to Sports Nutrition Group, in the form prescribed by Sports Nutrition Group.
- (b) You acknowledge that Sports Nutrition Group may approve or refuse an Application in its sole discretion.
- (c) Before accepting any Application, Sports Nutrition Group may require you to provide information, supporting documentation and professional references, in addition to the information presented on any Application, in order to properly assess your eligibility to participate in a Course.
- (d) Sports Nutrition Group will, as soon as reasonably practicable, notify you in writing as to whether:
  - (i) your Application has been accepted or refused;
  - (ii) it requires you to provide further information, material or references in order to properly consider your Application; or
  - (iii) whether there are additional educational and competency prerequisites that it requires you to satisfy prior to approving your Application for enrollment.
- (e) If Sports Nutrition Group does not approve your Application it may provide you with a written explanation regarding the basis for the refusal of your Application. However, you acknowledge that Sports Nutrition Group is under no obligation to provide such an explanation.

#### **3.2 Eligibility**

- (a) Sports Nutrition Group reserves the right to prescribe, at its discretion, eligibility criteria and prerequisite requirements (**Prerequisites**) that must be satisfied in order for you to participate in a Course.
- (b) Sports Nutrition Group reserves the right to change Prerequisite requirements for Courses at any time prior to the commencement of the relevant Course.
- (c) Sports Nutrition Group may:
  - (i) publish Prerequisite requirements for Courses on its Website; or
  - (ii) notify you of Prerequisite requirements at the time you submit an Application to participate in a Course.
- (d) Without limiting the generality of clauses **3.2 (a) and 3.2 (b)**, Sports Nutrition Group may prescribe the following Prerequisites (or any of them) in respect of the Courses that it is offering:

- (i) participants must be over the age of eighteen (18);
- (ii) participants must have achieved an English literacy score of at least 5.5;
- (iii) participants must have completed the Language, Literacy, Numeracy and Digital (LLND) Assessment;
- (iv) for certain Courses, participants must:
  - (A) hold a minimum of AQF Level 4 qualification in a relevant discipline (personal training, fitness, nutrition coaching);
  - (B) have at least 2 years of industry relevant experience within the past five (5) years, including for example as a personal trainer, strength and conditioning coach, or in nutrition related services; and
  - (C) have successfully completed any capabilities assessment that Sports Nutrition Group designates, prior to commencement of the Course;
- (v) for certain Courses, participants must:
  - (A) hold a minimum of a Bachelor Degree or higher qualification in nutrition, exercise science, or a related health field; or
  - (B) have successfully completed the Graduate Certificate in Applied Sports Nutrition (11466NAT) in combination with obtaining the level of industry experience deemed by Sports Nutrition Group to be sufficient..

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#### **4. Participation in Course**

##### **4.1 General Conduct**

- (a) You acknowledge and agree when you enrol in a Course that:
  - (i) you must not engage in any conduct that might mislead, deceive, confuse or otherwise misrepresent to any person the nature of your qualifications or the status of your enrollment in a Course;
  - (ii) you must at all times behave respectfully towards all other Course members, lecturers and markers;
  - (iii) you will observe all cultural and religious sensitivities of other members of Courses, as well as lecturers and Course markers;
  - (iv) you will not act in a manner that is disruptive or may be objectionable (viewed reasonably) to other participants in your Course; and
  - (v) you will comply with all reasonable directions of Sports Nutrition Group regarding your conduct and etiquette generally.
- (b) You acknowledge that your failure to comply with the standards of behaviour as prescribed by clause 4.1(a) will entitle Sports Nutrition Group to:
  - (i) suspend, restrict or otherwise limit your participation in the relevant Course; or
  - (ii) immediately terminate your enrolment in a Course where, in the reasonable view of Sports Nutrition Group, your conduct is sufficiently serious as to jeopardise, or likely jeopardise, the health, safety or wellbeing of another participant in the Course, or a staff member of Sports Nutrition Group.
- (c) Where Sports Nutrition Group has exercised its rights of termination in accordance with 4.1(b) (ii):
  - (i) you will not be entitled to any refund of Fees that have been paid to Sports Nutrition Group; and
  - (ii) you must pay on demand all outstanding Fees owed to Sports Nutrition Group.

##### **4.2 Competency**

- (a) Courses provided by Sports Nutrition Group may include examinations, assignments, projects and practical assessments (**Assessments**) that must be successfully completed in order for you to successfully complete the relevant Course.
- (b) All Assessments must be completed within the timeframes specified by Sports Nutrition Group for the relevant Assessment.

- (c) Assessments that have been submitted to Sports Nutrition Group will be marked or graded by appropriately qualified industry professionals that are appointed or engaged by Sports Nutrition Group. Once an Assessment has been marked or graded, you will be notified in writing as to whether you have passed or failed the relevant Assessment.
- (d) If you have failed an Assessment, Sports Nutrition Group may (but is not obligated to) provide you with a written explanation detailing the elements or components of the Assessment that were not completed to the required standard.

#### **4.3 Resubmission**

- (a) Where you have failed an Assessment, you may be entitled to resubmit or reperform the assessment item, in accordance with the Sports Nutrition Association Resubmission Policy.
- (b) Sports Nutrition Group may at its sole discretion amend the Resubmission Policy:
  - (i) at any time prior to the commencement of a Course; or
  - (ii) during a Course, upon the provision of fourteen (14) days written notice.
- (c) You acknowledge that:
  - (i) the Resubmission Policy may comprise both complimentary resubmissions and paid resubmissions (that requirement payments in addition to the Fees paid for enrolment in a Course); and
  - (ii) notwithstanding clause 4.3 (a), where it deems it appropriate, Sports Nutrition Group reserves the right to refuse to accept a resubmission and to notify you that you have failed the relevant Course.

#### **4.4 Extension Policy**

- (a) If you are unable to complete an Assessment within the timeframe prescribed, you may make an application for an extension of time to complete the Assessment (**Extension Application**), in accordance with the Extension Policy.
- (b) Without limiting any terms specified in the Extension Policy:
  - (i) an Extension Application must be made prior to the end date or submission date for the relevant Assessment;
  - (ii) Sports Nutrition Group will consider each Extension Application on its merits, however Extension Applications will be granted at the sole discretion of Sports Nutrition Group (including with respect to the period of the extension if granted);
  - (iii) extensions of time will not be extended beyond two years after the relevant Course completion date; and
  - (iv) if an Extension Application is not approved (and the date for submission or completion of the Assessment has passed), Sports Nutrition Group may:
    - (A) terminate your enrolment in the relevant Course by providing you with notice in writing; or
    - (B) notify you that you have failed the relevant assessment or unit.

#### **4.5 Course Failure**

- (a) Where you have failed to successfully complete an Assessment within the specified timeframes (including any extended period pursuant to an Extension Application), you will fail the relevant Course (**Course Failure**).
- (b) You acknowledge that:
  - (i) Course Failure does not entitle you to any refund of Fees that have been paid to Sports Nutrition Group;
  - (ii) you remain liable for payment of any outstanding Fees that would have otherwise been payable to Sports Nutrition Group, had you participated and completed the full Course; and
  - (iii) if you are paying Fees in respect of a Course pursuant to a Payment Plan, you remain liable for payment of the full amount of the Fees for the relevant Course, which must be paid to Sports Nutrition Group on demand.

#### **4.6 Regulatory Body Membership**

- (a) Sports Nutrition Group may at its discretion require that in order for a Course to be successfully completed, participants obtain and maintain membership with an appropriate professional standards body or regulator (**Professional Standards Body**).
- (b) Without limitation, a Professional Standards Body will be deemed appropriate where:

- (i) it has been incorporated or constituted in Australia;
  - (ii) it enables members to access and obtain an appropriate insurance policy, which considers and insures the member in respect of the delivery of sports nutrition advice and services; and
  - (iii) it requires members to engage in continuing professional development on at least an annual basis, and has implemented a process for reviewing and auditing compliance of members with its continuing professional development obligations.
- (c) Notwithstanding **clause 4.6 (b)** Sports Nutrition Group reserves the right to prescribe (acting reasonably) which Professional Standards Bodies a member may choose to join, in order to successfully complete a Course.
- (d) You acknowledge that where Sports Nutrition Group has prescribed membership with a Professional Standards Body as a completion requirement for any Course, if you do not obtain membership with one of the specified bodies, you will be deemed to have failed the Course.
- (e) You acknowledge that **clauses 4.6 (a) - 4.6 (d)** are reasonable and necessary to:
- (i) enable Sports Nutrition Group to maintain the quality and standards of sports nutritionists that have completed Courses; and
  - (ii) protect the interests of the public, by ensuring that persons practising as "sports nutritionists" are appropriately insured.
- (f) Where you have failed a Course due to non-registration with a Professional Standards Body, you acknowledge:
- (i) you are not entitled to a refund of any Fees paid as part of your Course; and
  - (ii) you remain liable for payment of any outstanding Fees that would have been payable if you had completed the Course.

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## **5. Fees**

### **5.1 Cooling-off Period**

- (a) Where you have made an Application to enrol in a Course and your Application has been accepted:
- (i) you will be provided with a three (3) day cooling-off period (**Cooling Off Period**), which will commence on the date we notify you that your Application has been accepted, in which you can withdraw from the relevant Course without incurring any liability for the Enrolment Fees associated with a Course; and
  - (ii) you acknowledge that if you choose to withdraw from a Course after the expiry of the Cooling Off Period, you will become liable for the Enrolment Fees that would have otherwise been payable for the relevant Course, as calculated in accordance with **clause 5.3**.
- (b) You acknowledge that:
- (i) Sports Nutrition Group incurs significant costs in:
    - (A) receiving and processing Applications for participation in a Course;
    - (B) reviewing and vetting applicants who wish to participate in a Course, to determine their eligibility;
    - (C) engaging third parties to assist in the processes referred to in (A) and (B) above; and
  - (ii) the number of participants in any Course is limited and once you are allocated a position in a Course, if you do not proceed, Sports Nutrition Group may be unable to "fill" or "replace" the position that you would have otherwise occupied; and
  - (iii) in the circumstances of 5.1 (b) (i) and (ii), your liability for payment of Enrolment Fees pursuant to clause 5.1 (a) (ii) notwithstanding your withdrawal from a Course, is reasonable and appropriate.

### **5.2 Enrolment Fees**

- (a) The Enrolment Fees for each Course will be:
- (i) displayed on our Website; or
  - (ii) notified to you at the time of making your Application.

- (b) Your first payment of Enrolment Fees for a Course will be due on the date that approval of your Application is granted. Where you have entered into a Payment Plan with Sports Nutrition Group (pursuant to 5.2 (d) below), your recurring payments will be due on the same date of each following month/week based on the payment plan chosen.
- (c) You acknowledge that the Enrolment Fees are a "lump sum" fee for your participation in a Course. Sports Nutrition Group may in its discretion offer to allow you to pay the lump sum Enrolment Fees in periodic installments (**Payment Plan**). However, you specifically acknowledge that the Enrolment Fees are not payable as a "subscription", or on a "month-to-month" or "pay-as-you-go" basis. The Enrolment Fees are a lump sum for which you become liable upon acceptance into the Course (unless otherwise specified in these Terms).
- (d) Where you have entered into a Payment Plan with Sports Nutrition Group:
  - (i) you may be required to pay a deposit, which in certain circumstances (as prescribed in clause 5.3) will be non-refundable; and
  - (ii) if you withdraw from the Course, or your entitlement to participate in the Course is terminated by Sports Nutrition Group due to a breach of these Terms, then you will be required to pay the balance of any portion of the Enrolment Fees that is outstanding, immediately upon demand from Sports Nutrition Group.

### 5.3 Liability for Payment of Enrolment Fees

- (a) In the event that you:
  - (i) have enrolled in a Course and:
    - (A) withdraw from the Course in the Cooling Off Period; or
    - (B) prior to the commencement of the Course, Sports Nutrition Group terminates your enrolment,
 you will be refunded the full amount of any deposit that was paid to Sports Nutrition Group, as well as any Enrolment Fees paid to Sports Nutrition Group;
  - (ii) have enrolled in a Course and following the expiry of the Cooling Off Period:
    - (A) you choose to terminate your Graduate Certificate in Sports Nutrition enrolment at least four (4) weeks prior to the commencement of the Course, Sports Nutrition Group will refund your deposit (if any) and any Enrolment Fees paid, less a \$1948.00AUD fee for the costs and expenses incurred by Sports Nutrition Group; and
    - (B) you choose to terminate your Graduate Diploma in Sports Nutrition enrolment at least four (4) weeks prior to the commencement of the Course, Sports Nutrition Group will refund your deposit (if any) and any Enrolment Fees paid, less a \$2,532.00AUD fee for the costs and expenses incurred by Sports Nutrition Group; and
    - (C) you choose to terminate within the period of four (4) weeks prior to the commencement date of the Course, you acknowledge and agree that you will not be entitled to a refund of any deposit or Enrolment Fees paid to Sports Nutrition Group, and that you are liable for payment of the full amount of the Enrolment Fees;
  - (iii) have failed a core component or competency required for you to participate in a Course and as a consequence are unable to continue with completing the Course, you acknowledge that you remain liable and must pay on demand any portion of the Enrolment Fees (as well as any other Fees that are outstanding), notwithstanding that you did not successfully complete the Course.
- (b) You acknowledge that clause 5.3 (a), and in particular clause 5.3 (a) (ii) (B) and 5.3 (a) (iii), are reasonable in circumstances where:
  - (i) Sports Nutrition Group incurs significant costs in:
    - (A) receiving and processing Applications for participation in a Course;
    - (B) reviewing and vetting applicants who wish to participate in a Course, to determine their eligibility;
    - (C) engaging third parties to assist in the processes referred to in (A) and (B) above; and
  - (ii) the number of participants in any Course is limited and once you are allocated a position in a Course, if you do not proceed, Sports Nutrition Group may be unable to "fill" or "replace" the position that you would have otherwise occupied.



- (c) You agree that any amounts charged in accordance with clause 5.3 (a) (ii) and 5.3 (a) (iii) do not constitute a penalty, but account for the costs, expenses and loss incurred by Sports Nutrition Group as a consequence of your withdrawal from enrolment in a Course.

#### **5.4 Extension Fees**

- (a) If you are participating in a Course and you are late to submit or complete any content, module or assessment that forms part of a Course (**Late Submissions**), Sports Nutrition Group reserves the right to charge additional fees to you, which are proportionate to the additional time, expense and cost incurred by Sports Nutrition Group in engaging third parties to assess and grade the Late Submissions.
- (b) The current rate for additional fees associated with Late Submissions will be advised to you at the time of submitting your Application and commencing the Course. If no additional fee for Late Submission is so specified, the additional fees for Late Submission will be calculated on the following basis:
- (i) Graduate Certificate in Sports Nutrition:
    - (A) 6-month extension - \$1,098AUD
    - (B) 12-month extension - \$1,854AUD
      - (1) A maximum of 2 years of extension can be applied, as outlined in 7.2.(d)
  - (ii) Graduate Diploma in Sports Nutrition:
    - (A) 6-month extension - \$1,428AUD
    - (B) 12-month extension - \$2,410AUD
- (c) Any extension fees payable pursuant to 5.4 (a) - 5.4 (b) are due on the same date that the relevant extension is agreed by Sports Nutrition Group.

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### **6. Payments Generally**

#### **6.1 General**

- (a) You acknowledge and agree:
- (i) a surcharge of 2% will apply to all credit card payments that are processed by Sports Nutrition Group;
  - (ii) if your credit or debit card expires or is cancelled, it is your responsibility to provide Sports Nutrition Group with new card details to ensure payments continue to be successfully debited; and
  - (iii) direct debits are subject to the Direct Debit Request and Direct Debit Agreement that are provided by Sports Nutrition Group at the time of submitting an Application, or if a third-party direct debit provider is used, that party's direct debit terms and conditions.
- (b) Sports Nutrition Group's pricing structures, payment methods, payment processes and these Terms may be amended from time to time upon the provision of reasonable notice to you. All changes will apply from the date that the amended or new pricing structures, payment methods or payment processes are posted on the website of Sports Nutrition Group, or are otherwise provided to you directly.
- (c) Where you do not agree with any variation of the nature contemplated in clause 6.1 (b), you must notify us in writing within seven (7) days of receiving notice of the relevant variation. You will then be entitled to terminate this Agreement without penalty, effective from the date the relevant variation is implemented.

#### **6.2 Dishonoured Payment and Chargebacks**

- (a) If any payment of Fees that you are required to make to Sports Nutrition Group is dishonoured and reinstatement is required, then you will be liable to pay a dishonour fee of \$49.00USD/\$73.00AUD (**Dishonour Fee**), to account for the additional administrative fees and burden incurred by Sports Nutrition Group in addressing the dishonoured payment.
- (b) If a payment is declined at the time of attempting to process the payment, Sports Nutrition Group will attempt to process the declined amount once every forty-eight (48) hours for ninety-six (96) hours (four (4) times in seven (7) days).
- (c) If a payment remains outstanding and in arrears after an attempt to process that payment in the manner described at 6.2 (b), Sports Nutrition Group may:

- (i) charge you the Dishonour Fee;
- (ii) suspend your access to Course materials and content, including your access to any online platform, resource or communication channel hosted by any of the Sports Nutrition Group;
- (iii) commence charging interest on the outstanding payment and Dishonour Fee, in accordance with clause 6.3.

### 6.3 Late Payments

- (a) Sports Nutrition Group may charge interest at the rate of 12.5% per annum on any payment that remains unpaid fourteen (14) days after the payment was due.
- (b) Where payments rightfully due and owing remain outstanding for more than fourteen (14) days after the payment was due, Sports Nutrition Group reserves the right to:
  - (i) engage external debt collection services for the collection of unpaid debts; or
  - (ii) commence legal proceedings for any outstanding amounts owed to any member of Sports Nutrition Group, and you acknowledge that you will be liable for all costs and expenses involved in the recovery of unpaid debts, including legal fees on a solicitor/client basis, as well as the costs incurred by Sports Nutrition Group in appointing an agent or debt collection firm to recover the unpaid debt.
- (c) Sports Nutrition Group reserves the right at its discretion to provide information regarding any unpaid debt or credit position to the relevant credit reporting agencies.

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## 7. Privacy

- (a) Sports Nutrition Group complies with the requirements of the *Privacy Act 1988* (Cth) with respect to its collection, use and storage of personal information.
- (b) All personal information that is collected by Sports Nutrition Group will be dealt with in accordance with the Sports Nutrition Group Privacy Policy.
- (c) In addition to the circumstances specified in the Sports Nutrition Privacy Policy, Sports Nutrition Group may disclose your personal information to third parties:
  - (i) as required for the legitimate interests of the Sports Nutrition Group business;
  - (ii) to the extent that the disclosure relates only to the fact that:
    - (A) you have previously participated in programs offered by Sports Nutrition Group;
    - (B) that your accreditation with the membership body of Sports Nutrition Association has expired; and
    - (C) that you are no longer affiliated with or endorsed by Sports Nutrition Group;
  - (iii) where Sports Nutrition Group is legally required to do so;
  - (iv) where it is necessary for the purpose of enabling Sports Nutrition Group to defend or prosecute any legal proceedings; and
  - (v) as part of a sale or proposed sale of Sports Nutrition Group (or any of its constituent entities) to a third party buyer.

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## 8. Publicity

- (a) You must not make any public comment or remark that is, or is likely to be, disparaging, derogatory or harmful to Sports Nutrition Group regarding:
  - (i) the nature and quality of the education services provided by Sports Nutrition Group;
  - (ii) the membership and association services provided by the Association; and
  - (iii) any of the directors, agents, employees or other personnel of the Sports Nutrition Group.
- (b) Where you have a complaint or criticism regarding Sports Nutrition Group, you must notify Sports Nutrition Group of the complaint or criticism in writing, with sufficient detail to enable Sports Nutrition Group to properly assess the nature of the complaint (**Complaint Notice**).
- (c) Upon receipt of a Complaint Notice Sports Nutrition Group will contact you within ten (10) business days:

- (i) requesting further information to enable it to properly consider the nature of the complaint; or
  - (ii) advising what action (if any) it intends to undertake to resolve the matters the subject of the Complaint Notice.
- (d) For the avoidance of doubt this clause 8 applies only in respect of public comments or remarks as contemplated by clause 8(a). Any disputes regarding the terms of this Agreement or the performance of the obligations of the parties under this Agreement are subject to and must be dealt with in accordance with the process specified in clause 13.

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## **9. Confidential Information**

### **9.1 Obligations**

Upon entering this Agreement, you acknowledge that you must:

- (a) keep all Confidential Information strictly confidential;
- (b) use Confidential Information solely for the purposes in respect of which it was provided under this Agreement (namely your participation in Courses);
- (c) not disclose Confidential Information to any third party without Sports Nutrition Group's prior written consent;
- (d) take all reasonable precautions to prevent unauthorised access, use or disclosure of Confidential Information; and
- (e) immediately notify us of any actual or suspected unauthorised use or disclosure.

### **9.2 Exceptions**

The obligations of confidentiality set out in this clause 9 do not apply to information that:

- (a) is or becomes publicly available through no fault of you as the receiving party;
- (b) is independently developed without the use of Confidential Information that you received from Sports Nutrition Group;
- (c) is received by you from a third party without breach of any confidentiality obligation; or
- (d) is required to be disclosed by law, government order or regulatory body provided you give prompt notice to Sports Nutrition Group, sufficient to allow that party to seek a protective order.

### **9.3 Return of Information**

Upon termination of this Agreement or at our request, you must promptly return or destroy all Confidential Information that Sports Nutrition Group has provided to you.

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## **10. Intellectual Property**

- (a) Sports Nutrition Group owns all Intellectual Property Rights in the content, materials, documents, videos, sound-recordings, seminar content, programs, meal plans, exercise regimes, business plans, social media strategies, data and other analogous materials (**SNG Materials**), that Sports Nutrition Group provides to you.
- (b) Nothing in this Agreement has the effect of transferring ownership of any Intellectual Property Rights in SNG Materials from Sports Nutrition Group to you.
- (c) You are entitled on a non-exclusive, revocable basis to use SNG Materials for the purposes of your participation in Courses conducted by Sports Nutrition Group, as well as for any other purpose expressly permitted by Sports Nutrition Group.
- (d) Without limiting any other right of Sports Nutrition Group, and for the avoidance of doubt, you acknowledge and agree that you must not:
  - (i) alter or modify any of the SNG Materials;
  - (ii) create derivative works from the SNG Materials;
  - (iii) provide SNG Materials to third parties; or

- (iv) use SNG Materials for any commercial purpose, without Sports Nutrition Group's prior express written permission.
- (e) You acknowledge and agree that you must not use SNG Materials for the purpose of creating or engaging in any business that is similar to that of the Sports Nutrition Group.
- (f) Without limiting any other provision of this Agreement, it is intended that this clause survives termination of the Agreement.

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#### **11. Indemnity**

- (a) You hereby indemnify in full Sports Nutrition Group in respect of all claims, liabilities, suits, actions, loss and expenses, including costs of litigation and legal costs (**Loss**), suffered or incurred by Sports Nutrition Group in connection with:
  - (i) any breach of this Agreement by you;
  - (ii) any negligent act or omission by you under this Agreement;
  - (iii) the breach by you of any third party Intellectual Property Rights;
  - (iv) the breach by you of any Intellectual Property Rights of Sports Nutrition Group; and
  - (v) any information that you provide to Sports Nutrition Group being inaccurate or incomplete.
- (b) You agree to cooperate with Sports Nutrition Group (at your own expense) in the handling of third party disputes, complaints, investigations, or litigation that arises as a result of any of your conduct, including in particular where you have provided incorrect information to Sports Nutrition Group.
- (c) Sports Nutrition Group indemnifies you in full in respect of all Loss suffered or incurred by you as a direct result of the grossly negligent or wilfully reckless acts or omissions of Sports Nutrition Group and its employees.
- (d) Without limiting any other provision of this Agreement, it is intended that this clause survives termination of the Agreement.

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#### **12. Limitation of Liability**

- (a) To the maximum extent permitted by law Sports Nutrition Group's total liability arising out of or in connection with this Agreement, regardless of the cause of action (whether in contract, tort, breach of statutory duty or otherwise), will not exceed the total amount paid by you to Sports Nutrition Group.
- (b) Neither party will be liable to the other for any indirect, incidental, special, consequential or punitive damages, including without limitation, loss of profits, data, business opportunities, reputation or goodwill, even if advised of the possibility of such damages.
- (c) Sports Nutrition Group will not be liable for any loss, damage, expense, cost or penalty arising from or relating to:
  - (i) your failure to provide accurate, complete, or timely information; and
  - (ii) the performance or non-performance of any third-party engaged in connection with Sports Nutrition Group's delivery of any goods and services under this Agreement.
- (d) Notwithstanding any other provision of this Agreement, if a statutory guarantee under the Australian Consumer Law (**ACL**) as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) applies to any goods or services supplied under this Agreement which cannot be excluded, Sports Nutrition Group's liability for a failure to comply with such a guarantee is limited to one or more of the following, at Sports Nutrition Group's option:
  - (i) the supplying of the goods or services again; or
  - (ii) the payment of the cost of having the goods or services supplied again.

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#### **13. Dispute Resolution**

- (a) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen may deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).

- (b) During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties to the Dispute (**Participants**) must meet and use their reasonable endeavours and act in good faith in an attempt to resolve the Dispute.
- (c) If the Participants cannot resolve the Dispute then unless they all agree otherwise, the Participants must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. All Participants must participate in the mediation in good faith.
- (d) The mediator must be agreed on by the Participants within 10 Business Days after the Dispute Notice is given to the Participants and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (e) The mediation concludes when:
  - (i) all the Participants agree in writing on a resolution of the Dispute; or
  - (ii) a Participant, not earlier than 20 Business Days after appointment of the mediator, has given 5 Business Days' notice to the other Participants and to the mediator, terminating the mediation, and that 5 Business Days has expired without all the Participants agreeing in writing on a resolution of the issue.
- (f) Nothing in this clause prevents a party from seeking urgent interlocutory and injunctive relief from a court of competent jurisdiction, where such relief is necessary to protect the party's rights or interests.

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#### **14. Goods and Services Tax**

- (a) Unless otherwise expressly stated, all amounts stated to be payable under this document are exclusive of goods and services tax (**GST**). If GST is imposed on any supply made under or in accordance with this document, then the GST payable must be paid to the supplier as an additional amount by the recipient of the supply, provided the supplier provides a tax invoice in respect of the taxable supply.
- (b) If a party is entitled to be reimbursed or receive compensation for any of its costs, expenses or liabilities then the amount to be paid is to be reduced by the input tax credits to which that party is entitled to receive in relation to those amounts.

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#### **15. General Matters**

- (a) Neither party may assign, novate or otherwise transfer any of its rights or obligations under this document without the prior written consent of the other party. However, you agree that Sports Nutrition Group may do so in relation to:
  - (i) any bona fide restructure of the Sports Nutrition Group; or
  - (ii) the sale of the business (or any part of the business) of Sports Nutrition Group to a third party.
- (b) Neither party is liable for any breach of its obligations under this document to the extent that the breach resulted from any event that is outside the reasonable control of the affected party and could not have been prevented by that party taking reasonable steps or overcome by the exercise of reasonable diligence and at a reasonable cost (including lack of supply, industrial action, fire, riot, war, embargo, civil commotion for act of God) provided that the affected party:
  - (i) promptly notifies the other party of the event (with appropriate details); and
  - (ii) takes all reasonable steps to work around or reduce the effects of the event.
- (c) Any amendments to this Agreement must be made in writing and signed by the parties.
- (d) You agree that Sports Nutrition Group may use electronic means, including email to the email address that you have provided, to communicate with you and to deliver any notice to you under these Terms.
- (e) You agree to release the Sports Nutrition Group from any liability for any loss which you might incur if an email is intercepted or corrupted during transmission, or if a document which any of the members of the Sports Nutrition Group prepared for you is altered by you or any other party without the written consent of the Sports Nutrition Group.
- (f) This Agreement is governed by the laws of Queensland, Australia and you agree to submit to the non-exclusive jurisdiction of the courts of Queensland, Australia.

- (g) Unless this document expressly states otherwise, a party may in its absolute discretion, give conditionally or unconditionally or withhold, any consent under this document. To be effective any consent under this document must be in writing.
- (h) If any provision of these Terms, or any document forming part of this Agreement, is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (i) The provisions of this Agreement that by their nature and content must survive the completion, rescission, termination or expiration of this Agreement to achieve the purposes of this Agreement shall so survive and continue to bind the parties.