

SportMatch

TERMS AND CONDITIONS OF USE

Welcome to www.sportmatch.com.au physical education software. Please take the time to read these Terms and Conditions. Using or reading the Website signifies that you have read, understood and agree to these Terms. These Terms create a contract between you and SportMatch.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this agreement unless the context otherwise requires.

Agreement means these terms and conditions.

Australian Consumer Law means schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Australian Copyright Law means the *Copyright Act 1968* (Cth).

GST means the same as in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and words and expressions defined in the GST Law have the same meaning in clauses concerning GST.

Order Form means an ordering document or online order specifying the Products, services, subscription or package to be provided and forming part of these Terms between a User and SportMatch.

Privacy Policy means the supplementary privacy policy of SportMatch available on the Website.

Products means any of the products or services that are available for sale on the Website. This includes but is not limited to subscriptions to SportMatch physical education software, the SportMatch online tool, accompanying lesson plans and guides, any intellectual property owned by the SportMatch and any additional product or service introduced from time to time by SportMatch.

Purchase Price means the total amount of fees paid in an applicable Order Form.

Purchase Service means the purchasing facility for tests and packages hosted on the Website.

SportMatch means the operator of the Website, Adelaide Fitness Solutions Pty Ltd and any of its subsidiaries, affiliates, directors, officers, employees, agents, contributors or licensors.

Subscription Term means the prescribed time specified in the applicable Order Form.

Terms and Conditions mean the terms and conditions contained within this Agreement.

User means any organisation or individual purchaser of the Services.

Warranty means the rights of remedy available under clause 4.3 of these Terms.

Website means www.sportmatch.com.au, any included links, and associated addresses.

1.2 Interpretation

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to we/us means SportMatch, Adelaide Fitness Solutions Pty Ltd and any subsidiaries, affiliates, employees, officers, agents or assigns.

2 About the Website

2.1 About

The Website is owned and run by SportMatch. Access to and use of the Website or any of its Products is provided by SportMatch. The Website is only made available for use on acceptance and compliance with the Terms of this Agreement. Using and reading the Website signifies that you have read, understood and agree to these Terms.

2.2 Accuracy

Any information provided on the Website and contained in the Products is intended as an educational tool only. We have taken reasonable steps to ensure that the information we provide on this Website is accurate. However, we do not guarantee the accuracy, reliability, currency or completeness of anything contained in the Website or Products. The information contained on this Website should not take the place of professional advice.

2.3 Amendment

SportMatch reserves the right to review and amend, novate, supplement or replace any of the Terms from time to time, at its sole discretion. SportMatch will use reasonable endeavours to provide notice of any updates to the Users. Any changes to these Terms are to take immediate effect upon publication.

2.4 Acceptance

By using, viewing or browsing the Website or purchasing any of its Products, you are accepting these Terms. Options may also be made available for you to accept these terms during use of the Website.

3 Use

3.1 Registration and purchase of products

3.1.1 In order to use the Products, you must first register as a User of the Website. Registration may require providing personal information including, but not limited to;

- a) Identification;

- b) Contact details; and
- c) Location.

3.1.2 Once you have completed registration you will be a registered User of the Website and agree to be bound by the Terms

3.2 Scope of Use

3.2.1 As a User, you agree to use the Products only for purposes permitted by:

- a) the Terms; or
- b) any applicable law, rules or regulations in the relevant jurisdiction.

3.2.2 You will not use the Products, or Website for any illegal or unauthorised use including but not limited to;

- a) collecting registration information of Users;
- b) reverse engineering any of the Website or Products for the purpose of extracting the intellectual property of SportMatch; or
- c) dissemination of the lesson plans, user guides or other supporting learning materials to third parties outside of authorised use.

3.2.3 You have the sole responsibility for protecting the confidentiality of your password, email address or other registration information. Use of your registration information or password by any other person may result in cancellation of the Products.

3.2.4 You agree to immediately notify SportMatch of any unauthorised use of your registration information, or any breach of security of which you become aware.

3.2.5 SportMatch reserves the right to refuse or terminate services or Products for any breach of these Terms or unacceptable use of the Products.

4 Purchase of products, returns and warranties

4.1 Purchase of products

4.1.1 SportMatch provides the ability to purchase the Products through the Purchase Service. Use of the Purchase Service warrants that you understand and agree to the Terms, Privacy Policy and other applicable SportMatch policies.

4.1.2 Using the Purchase Service, you agree to the payment of all fees specified in any relevant Order Form.

4.1.3 Purchase Price for Australian sales will include GST, but may be subject to additional tax, conversions or other fees. The User will be responsible for any additional fees or charges which may apply.

4.1.4 Following payment of the Purchase Price being confirmed by SportMatch, you will be issued with a receipt to confirm payment has been received, and the Product will be applied to your User account.

4.1.5 SportMatch may record your payment details for future use by the User in accordance with our Privacy Policy.

4.1.6 Products purchased are valid for the duration of Subscription Term. Any unused Products at the end of this period are expired and removed from the User's account.

4.2 Returns

4.2.1 The Products purchased are non-refundable and non-transferable

4.2.2 Fees are based on Services and subscriptions purchased and not on actual usage. Payment obligations are non-cancellable, and fees paid are non-refundable. Any refunds or transfers of Products is at the sole discretion of SportMatch.

4.2.3 Products, services or subscriptions purchased cannot be decreased during the relevant Subscription Term.

4.3 Warranties

4.3.1 The Products come with guarantees which cannot be excluded under Australian Consumer Law. Users are entitled to replacement or refund for major failure of the Product and compensation for any reasonably foreseeable loss or damage. Users are also entitled to have the Products replaced if they fail to be of acceptable quality and does not amount to a major failure.

4.3.2 Users may make a claim under this clause from the date of purchase. Proof of purchase must be provided to SportMatch showing date of purchase, and a description of the Products including reason for the Warranty claim by sending written notice to admin@sportmatch.com.au.

4.3.3 If the Warranty claim is accepted then SportMatch will, at its sole discretion, replace or refund any defective Product or part thereof at no charge to the User.

4.3.4 The Warranty is the sole and exclusive remedy made available by SportMatch, notwithstanding available remedy under applicable Australian Consumer Law or equivalent local, state, national and international laws in applicable jurisdictions.

4.3.5 The Warranty does not apply to Products which have been misused, misappropriated or otherwise purchased or used in breach of these Terms.

4.4 Renewal of Subscription Terms

4.4.1 Through the Purchase Service, you will provide us with valid credit card information, or with a valid purchase order or alternative document reasonably acceptable to us. By providing this information you authorise us to charge this credit card or other account for all fees listed in the Order Form for the initial Subscription Term and any renewal Subscription Term(s).

4.4.2 Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring Subscription Term, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant Subscription Term.

4.5 Overdue Charges

4.5.1 If any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, we may suspend or deactivate any overdue accounts.

5 Copyright, intellectual property and trademarks

5.1 Copyright and Intellectual Property

- 5.1.1 The Website, Products and all other related products and services of SportMatch are subject to copyright. The material on this Website is protected by Australian Copyright Law and international conventions. Unless otherwise indicated, all rights in the site content including all text, files, codes, databases, algorithms, guides, lesson plans, layouts, designs, graphics, articles, file content, and supplementary materials contained on the Website or in connection with the Products or SportMatch are owned, controlled and reserved by SportMatch.
- 5.1.2 SportMatch retains all rights, title and interest in the Website and all related content. Nothing you do on or in relation to the Website will transfer to you;
- 5.1.3 the business name, trading name, domain name, trademark, industrial design, patent, registered design or copyright of SportMatch or its Products.
- 5.1.4 You must not use or replicate our copyright material other than as permitted by these Terms or applicable law. Specifically, you must not use or replicate our copyright material for commercial purposes unless expressly agreed to by SportMatch.
- 5.1.5 You will not remove, alter or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Products, Website or all other related products and services of SportMatch.
- 5.1.6 If you wish to use content, images or any other intellectual property of SportMatch, you should submit your request to us at the following email address: admin@sportmatch.com.au

5.2 Trademarks

- 5.2.1 The trademarks, designs and logos contained on the Website and Products are trademarks of SportMatch. Use of these trademarks is prohibited except without the express written consent of SportMatch.

6 Privacy

6.1 Use of information

- 6.1.1 SportMatch may, from time to time, collect some of the information provided by its Users.
- 6.1.2 SportMatch will deal with this information in confidential manner in accordance with our Privacy Policy.

7 General disclaimer

7.1 Disclaimer

- 7.1.1 You acknowledge that SportMatch does not make any terms, guarantees, warranties, representations or conditions whatsoever regarding the Products other than provided pursuant to these Terms.
- 7.1.2 SportMatch will make reasonable effort to ensure the Product is accurately depicted on the Website, however, you acknowledge that some features may differ from what is displayed on the Website
- 7.1.3 Subject to this clause, and to the extent permitted by law:
 - a) All terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms are excluded; and

- b) SportMatch will not be liable for any special, indirect or consequential loss or damage, loss of profit or opportunity or damage to goodwill arising out of or in connection with SportMatch, the Products or the Purchase Services or these Terms.

7.1.4 Use of the Website, the Purchase Services and any of the Products of SportMatch is at your own risk. Everything on the Website, the Purchase Services and any of the Products, are provided to you without warranty or condition of any kind. SportMatch makes no express or implied representation or warranty about its content or any Products referred to on the Website.

7.2 Limitation of liability

7.2.1 SportMatch's total liability arising out of or in connection with these Terms, regardless of circumstance, will not exceed the most recent Purchase Price paid by you in connection with the Product under these Terms.

7.2.2 You expressly agree that SportMatch is not liable for any direct, indirect, incidental or consequential damages which you may incur, however caused. This includes, but is not limited to, any loss of profit, goodwill or business reputation, or any other intangible loss.

7.3 Dispute resolution

7.3.1 If a dispute arises in relation to these Terms, the Products or Website, a party must not commence any tribunal, court or arbitration proceedings in relation to the dispute until the following clauses have been complied with. (This does not apply to situations where urgent interlocutory relief is sought).

7.3.2 A party to the Terms claiming a dispute has arisen must give written notice to the other party detailing the nature of the dispute, the desired outcome and the required action to settle the dispute.

7.3.3 On receipt of that notice by the other party, the parties must follow the following procedure of resolution:

- a) Within 21 days of receiving notice, endeavour to resolve the dispute in good faith, by negotiation or other means which they may mutually agree;
- b) If after 21 days after notice has been received by a party the dispute is unable to be resolved, the parties must agree on the selection of an independent mediator or request that the President of the Law Society in the home state of SportMatch appoint a mediator.
- c) The fee's payable for a mediator's service will be shared equally between parties unless otherwise agreed by both parties or determined by the mediator
- d) The parties must mediate the dispute in good faith and with genuine commitment to participate
- e) The mediation will be held in the capital city of the State which SportMatch is registered in, alternate methods of attendance including video or phone link may be agreed upon by both parties

7.3.4 All communication concerning negotiations arising out of this dispute resolution clause are confidential and are considered without prejudice.

7.4 Independent legal advice

7.4.1 By agreeing you confirm and declare that the provisions of these Terms are fair and reasonable. You declare that you have had opportunity to obtain independent legal advice and declare the Terms are not unfair or unjust.

Agree

Last updated: May 2020