

BETTER BEING TERMS & CONDITIONS

These Terms and Conditions (**T&Cs**) set out the under the terms under which you or, where applicable, the person for whom you are the parent or guardian, (the **Client, you, your**) will obtain fitness training, personal training, nutrition or health coaching or any other services (whether in-person, via video recording or over live video stream) (**Activities**) from Stark Concepts Pty Limited ABN 49 676 731 598 t/a Better Being (**Better Being, we, us, our**) or, where the Client is an organisation, its employees or contractors (**Personnel**).

You will be taken to have accepted these T&Cs if you indicate your assent, or if you consent to receive any Activities provided by Better Being after receiving or becoming aware of these T&Cs.

Please read these T&Cs carefully as they contain important health and safety information and risk disclaimers.

1. INSTRUCTIONS AND SAFETY

The Client warrants that they:

- (a) will comply with any safety guidelines, instructions and/or rules that Better Being's Personnel provide to them;
- (b) will stop participating in any Activities, and alert Better Being or its Personnel, if the Client has any concerns about their health or safety or if they start feeling dizzy, faint, unwell or feel any unusual pain during the Activities;
- (c) will be responsible for their own safety and that of any person under the age of 18 years for whom they have responsibility;
- (d) are not pregnant and do not have a health condition which might have the effect of making it more likely that they will be involved in an accident or injury while participating in the Activities (**Condition**);
- (e) will notify Better Being immediately if they develop a Condition;
- (f) are aware and agree that if they have a Condition, Better Being might refuse them participation in some and/or all Activities;
- (g) are aware that the Activities, even when no accident occurs, may involve risk to health;
- (h) will not participate in the Activities under the influence of drugs, alcohol or illicit substances;
- (i) will not participate in the Activities, if ill, injured or feeling unwell; and
- (j) will warm-up prior to participating in the Activities.

2. LIABILITY AND INDEMNITIES

- (a) (**No Reliance**) The Client acknowledges that in deciding to undertake the Activities or agree to these T&Cs, the Client has not relied on the skill or judgment of Better Being and that the Client has satisfied itself as to the condition and suitability of the Activities and their fitness for the Client's purpose.
- (b) (**Liability**) To the maximum extent permitted under applicable law, and without limiting any of the Client's rights under the *Competition and Consumer Act 2010* (Cth) (**CCA**), Better Being's liability for all claims in aggregate (whether those claims be for breach of contract, negligence or otherwise, and whether those claims are for economic loss, or for personal injury or other damage) arising under or in connection with these T&Cs:
 - (i) is excluded, to the extent it concerns liability for indirect, special and consequential damages, and damages (whether direct or indirect) reflecting loss of revenue, loss of profits or loss of goodwill, and only where permitted by the CCA; and
 - (ii) is limited, insofar as concerns other liability, to the total money paid by the Client to Better Being in the 6 months prior to the date the event giving rise to the relevant liability occurred (or, where there are multiple events, the date of the first such event).
- (c) (**Risk**) The Client acknowledges and agrees that:

- (i) Participating in the Activities involves the potential for injury and the Client is participating in any Activities at their own risk with knowledge of the dangers involved, including but not limited to, physical injury, muscle and ligament strains, illness, bruising, falls, injury through equipment failure, injury through impact during boxing participation and death.
 - (ii) there will be times where the Client will be unsupervised by any Better Being Personnel and agrees to accept any risks of loss, injury, damage or death arising out of the Client's unsupervised Activities, unless there is reckless disregard or gross negligence on Better Being's behalf.
 - (iii) while Better Being uses its best endeavours to ensure that the Activities and any facilities and/or equipment provided to the Client are free of faults and safety issues, there may be instances of equipment failure.
 - (iv) if the Client elects to participate in recorded video or video-streamed training classes with Better Being, that Better Being has a very limited ability to ensure the safety of the Client and cannot ensure the Client's equipment or work-out environment will be safe and free from the potential for injury. As such, the Client agrees to assume these additional risks by participating in remote or video-streamed training classes.
 - (v) Better Being will not be liable for any loss or damage arising out of any Activities unless there is reckless disregard or gross negligence on Better Being's behalf.
 - (vi) the Client will bear all risk of loss or destruction of, or damage to, any equipment and/or other property and/or people arising out or contributed to by their participation in the Activities.
- (d) (**Indemnity**) The Client indemnifies Better Being from and against all losses, claims, expenses, damages and liabilities (including any taxes, fees or costs) which arise out of:
- (i) any breach of these T&Cs by the Client;
 - (ii) any negligent, fraudulent or criminal act or omission of the Client; or
 - (iii) an event, where circumstances giving rise to a claim, were caused or contributed to by the Client.

3. PRIVACY

Better Being's Privacy Policy, available at <https://betterbeing.com.au/privacy-policy/> or as otherwise notified to the Client, is incorporated into and forms part of these T&Cs.

4. WARRANTIES

To the maximum extent permitted by applicable law, all express or implied representations and warranties (whether relating to fitness for purpose or performance, or otherwise) not expressly stated in these T&Cs are excluded.

- (a) Nothing in this agreement is intended to limit the operation of the Australian Consumer Law contained in the *Competition and Consumer Act 2010* (Cth) (**ACL**). Under the ACL, the Client may be entitled to certain remedies (like a refund, replacement or repair) if there is a failure with the goods or services provided.

5. GENERAL

- (a) These T&Cs are governed by the law applying in NSW. Each party irrevocably submits to the exclusive jurisdiction of the courts of NSW and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.
- (b) These T&Cs embody the entire agreement between the parties and supersede any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of the terms.