



## TERMS AND CONDITIONS

Effective from: 3 July 2020

PLEASE READ THESE TERMS AND CONDITIONS BEFORE CONTINUING TO BROWSE THE WEBSITE.

BY USING THE WEBSITE YOU AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS,  
INCLUDING ANY FUTURE AMENDMENTS.

IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS,  
PLEASE DO NOT CONTINUE BROWSING OR USING THE WEBSITE.

### 1. DEFINITIONS

- 1.1. "The Company" means the Fit and Functional Personal Training (Pty) Ltd registered in South Africa with Reg No: 2017/237121/07
- 1.2. "You" or "User" means any person who accesses and uses The Company's website for any reason.
- 1.3. "Website" means the website of The Company currently hosted at [www.fitandfunctional.studio](http://www.fitandfunctional.studio), [www.fitandfunctional.co.za](http://www.fitandfunctional.co.za) or any URL as The Company may choose to use from time to time.

### 2. USE SUBJECT TO THESE TERMS AND CONDITIONS

- 2.1. This website is run by The Company based in South Africa. By accessing and using this website you agree to be bound by these terms and conditions from the time you first access the Website.
- 2.2. The Company may, in its sole discretion, change this agreement or any part thereof at any time without notice.
- 2.3. The effective date of the Terms and Conditions is indicated in the header. The effective date governs browsing and using of the Website from that date until the next revision of the Terms and Conditions becomes effective.
- 2.4. You are responsible to remain aware of the current version of the Terms and Conditions.
- 2.5. By continuing to browse or use the Website after a revised Terms and Conditions becomes effective, constitutes your agreement to observe these Terms and Conditions as they may have been revised.
- 2.6. The Company's Privacy Statement may be accessed and read at <http://www.fitandfunctional.studio/privacy>.

### 3. CONTENT

- 3.1. All information available on the Website is provided "as is".
- 3.2. While the Company shall endeavour to ensure that all material published on the website is accurate at the time of its publication, it does not warrant the accuracy of the information.
- 3.3. The information provided on the Website does not represent any medical advice. Your use of the information is entirely at your own risk and no liability will arise against the Company resulting from your browsing the Website or using the information provided on the Website.
  - 3.3.1. The Company highly recommends that you first consult with your healthcare provider and/or medical doctor before commencing with any exercise program. You should be in good physical condition and be able to participate in the exercises offered by The Company. You should never train or participate in any exercise that is too strenuous or challenging for your level of fitness, taking into account your health and any medical advice you have previously

received. The Company is not a licensed medical care provider and represents that it has no expertise in diagnosing, examining, or treating medical conditions of any kind, or in determining the effect of any specific exercise on a medical condition. By participating in the exercises offered, you accept all responsibilities and risks which may arise therefrom.

- 3.3.2. The Company is not responsible or liable for any advice, course of treatment, diagnosis or any other information, services or products that you obtain through this Website. You are encouraged to consult with your healthcare provider and/or medical doctor with regards to any information contained on or obtained through this website. After reading articles, watching videos or perusing other content from this Website, you are encouraged to review and discuss the information carefully with your healthcare provider and/or medical doctor.
- 3.3.3. You acknowledge and understand that when participating in any exercise or exercise program, there is the possibility of physical injury. If you engage in this exercise or exercise program, you agree that you do so at your own risk, and you understand and agree that The Company, or any of their associates and affiliates who allow you access to their online platform, that their directors, employees and known associates shall not be liable for any loss or damage arising from or suffered by you or any of your dependents, including loss or damage to your person or property from any negligent act or omission of The Company.
- 3.4. The Company does not warrant that this Website or the delivery, hosting and ancillary services or facilities of third party suppliers utilised by the Company will continue to operate, will operate without interruptions or will be error-free or that it will be free of any software virus or other harmful component.
- 3.5. You will be entirely responsible for any resulting damage to software or computer systems and/or any resulting loss of data caused as a result of any use of the Website.
- 3.6. The Company is a business in the health and fitness industry offering training on-site and via online resources as well as related equipment and/or consumables.

#### **4. THIRD PARTY WEBSITES**

- 4.1. The Website may contain hyperlinks to Websites owned or operated by third parties. The Company is not responsible for the content of such Websites, and does not endorse or approve the contents thereof. The fact that a website is linked to this Company's Website does not imply that the Company sponsors, endorses or is affiliated or associated with the entity that owns or is responsible for the website. As such, the Company is not liable for the operation and content of any third party websites that may be linked to this Website (regardless of whether or not a link has been permitted by the Company).

#### **5. INTELLECTUAL PROPERTY**

- 5.1. Except where expressly stated to the contrary, copyright in the HTML, text, graphics, audio clips, video clips, source and / or object code and all other works contained in this Website is owned by the Company, which asserts and reserves all of its rights in this regard. Access to or use of this Website will not in any way result in an assignment or license of any intellectual property owned by the Company or any other party.
- 5.2. The contents of the Website may not be transmitted, transcribed, reproduced, stored or translated into any other form without the prior written permission of the Company.
- 5.3. No other use of the Website is permitted.

#### **6. LINKING, FRAMING AND CRAWLING**

- 6.1. The prior written authority of the Company is required before any hyperlink is created. Authority, if granted, will be subject to the condition that the party linking to this Website alerts users to the

application of these terms and conditions. Requests for authority can be emailed to [info@fitandfunctional.studio](mailto:info@fitandfunctional.studio)

- 6.2. Permission to link to this website will be granted strictly without the assumption of any liability on the part of the Company. The Company reserves the right to withdraw permission granted to link to the Website at any time in the entire discretion of the Company.
- 6.3. The prior written authority of the Company, which may be subject to conditions, is required before this website, any of its pages and/or any of the information contained on the Website is framed. Requests for authority can be emailed to [info@fitandfunctional.studio](mailto:info@fitandfunctional.studio)
- 6.4. Save for the use of bona-fide search engine and the search facility provided on the website for users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from the Website for any purpose without the prior written consent of the Company. Any attempt to do so, whether successful or not, is an offence as contemplated in point 7.1.

## **7. SECURITY**

- 7.1. Any person who in any manner interferes with the data or information displayed on this website in any way which causes it to be modified, destroyed or otherwise rendered ineffective or inaccurate, acts contrary to the provisions of the Electronic Communications and Transactions Act 25 of 2002 and is guilty of an offence.
- 7.2. Any person who in any manner interferes with any third party's access to the Website or denies access to the Website, whether partial or absolute, is guilty of an offence in terms of the Electronic Communications and Transactions Act 25 of 2002.
- 7.3. Any attempt to commit or aid and abet someone in the commission of the offences referred to in 7.1 and 7.2 is guilty of an offence in terms of the Electronic Communications and Transactions Act 25 of 2002.
- 7.4. The Company will, as it may be advised, cause the prosecution of any person who is guilty of an offence described in 7.1 and 7.2.
- 7.5. The Company will, as it may be advised, institute appropriate action to obtain relief against the perpetrator of the actions contemplated in 7.1, 7.2 and 7.3, with a view to recovering any damages that it may suffer and to protect the Website against defacement, unauthorised amendment of content and disruption of the use of the website.
- 7.6. While the Company will take appropriate security precautions to protect the Website against abuse by third parties, by accessing and browsing the Website you accept that no liability will lie against the Company for any damages caused to you by the malicious interference with the operation of the Website, and/or any destructive data or code that may be communicated to computers or information systems used by you as a result of your access and browsing of the Website.

## **8. PERSONAL INFORMATION**

- 8.1. The processing of all Personal Information by the Company is governed by the Company's Privacy Policy which is available at <https://fitandfunctional.studio/privacy/>.
- 8.2. The Company shall take reasonable steps to protect the Personal Information of users. For the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). The PAIA may be downloaded from: [http://www.polity.org.za/attachment.php?aa\\_id=3569](http://www.polity.org.za/attachment.php?aa_id=3569). Any Personal Information which may be provided to the Company through the use of the Website will be processed in accordance with the Protection of Personal Information Act 4 of 2013. Details of the processing of Personal Information are contained in the Company's Privacy Policy Statement. The processing of Personal Information which may be collected through interactive communications facilitated by this Website, are subject to the Privacy Statement published on the Website.

## **9. DISCLAIMER AND INDEMNITY**

- 9.1. The Company expressly disclaims all liability for any direct, indirect or consequential loss or damage occasioned by your accessing and browsing of the Website or your inability to access and browse this Website, or whether caused directly or indirectly by inaccuracies, defects, errors (whether typographical or otherwise), omissions, out of date information or for any other reason, even if such loss was reasonably foreseeable and the Company had been advised of the possibility of the loss occurring.
- 9.2. You agree to indemnify and hold harmless the Company, its servants, subcontractors, subsidiaries and affiliates from any demand, action or application or other proceedings, including for attorney's fees and related costs such as tracing fees, made by any third party and arising out of or in connection with the your use of or access, browsing or use of this website.

## **10. JURISDICTION AND COUNTRY OF DOMICILE**

- 10.1. These terms and conditions are governed by and construed in accordance with the law of the Republic of South Africa; you and the Company both agree to submit any dispute arising out of the use of the Website to the exclusive jurisdiction of the courts of the Republic of South Africa.
- 10.2. The Company chooses as its *domicilium citandi et executandi* for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature, the Registered Office at the time of The Company which for the time being is 39 Beach Road, Nahoon, East London, 5213, South Africa. Any legal notice or document should also be sent to The Company email to [sharon@fitandfunctional.studio](mailto:sharon@fitandfunctional.studio).

## **11. ONLINE TRANSACTIONS AND PAYMENT PROCESSING**

### 11.1. Delivery policy

- 11.1.1. Subject to availability and receipt of payment, requests will be processed within 7 days and delivery confirmed by way of email.

### 11.2. Return and Refunds policy

- 11.2.1. The provision of goods and services by The Company is subject to availability. In cases of unavailability, The Company will refund the client in full within 30 days.
- 11.2.2. Cancellation of online bookings by the client will not be charged for unless such cancellation is done less than 24 hours prior to the booking time in which case a 100% administration fee will be levied. For cancellation of any other orders The Company reserves the right to charge up to a 10% administration fee.

### 11.3. Payment options accepted

- 11.3.1. Payment may be made via Visa, MasterCard, Diners or American Express Cards or by bank transfer into The Company bank account, the details of which will be provided on request.

### 11.4. Card acquiring and security

- 11.4.1. Card transactions will be acquired for The Company via PayGate (Pty) Ltd who are the approved payment gateway for all South African Acquiring Banks. DPO PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no Card details are stored on the website. Users may go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.

### 11.5. Customer details separate from card details

11.5.1. Customer details will be stored by The Company separately from card details which are entered by the client on DPO PayGate's secure site. For more detail on DPO PayGate refer to [www.paygate.co.za](http://www.paygate.co.za).

11.6. Merchant Outlet country and transaction currency

11.6.1. The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction currency is South African Rand (ZAR).

11.7. 10. Responsibility

11.7.1. The Company takes responsibility for all aspects relating to the transaction including sale of goods and services sold on this website, customer service and support, dispute resolution and delivery of goods.

## **12. GENERAL**

12.1. These terms and conditions record the entire agreement between you and the Company in respect of your access, browsing and use of the Website.

12.2. If any provision of these terms and conditions is found to be invalid by any court having competent jurisdiction, the invalidity of that provision will not affect the validity of the remaining provisions which will remain in full force and effect.

12.3. The Company's omission to exercise any right under these terms and conditions will not constitute a waiver of any such right unless expressly accepted by the Company in writing.

12.4. Notwithstanding the fact that hyperlinks in these terms and conditions to certain documents should be deemed part of these terms and conditions in terms of section 11 of the Electronic Communications and Transactions Act 25 of 2002, the fact that some or all of the hyperlinks may be non-operational, will not play a role in determination of the validity and interpretation of these terms and conditions.

## **13. CONTACT DETAILS**

13.1. Registered physical address at the time, currently: 39 Beach road, Nahoon, East London, 5213, South Africa.

13.2. Email: [sharon@fitandfunctional.studio](mailto:sharon@fitandfunctional.studio) or [info@fitandfunctional.studio](mailto:info@fitandfunctional.studio)

13.3. Telephone: 082 851 6347

13.4. Contact details may be accessed and read at <https://fitandfunctional.studio/contacts/>