

MACQUARIE UNIVERSITY PROGRAM (LEARN TO SWIM, GYMNASTICS, SQUADS & MARTIAL ARTS) TERMS AND CONDITIONS

1. THE ENROLMENT AGREEMENT

These terms, together with the and the following completed documents:

- a. Enrolment Application; and
- b. Your Payment Authority Form.,

make up the terms of the enrolment agreement (**Enrolment Agreement**) between the applicant and U@MQ.

It is important that you have read and understood all of the terms of the Enrolment Agreement before agreeing to these Terms and Conditions.

2. DEFINITIONS

Centre means the Macquarie University Sport and Aquatic Centre owned by Macquarie University and operated by U@MQ.

Conditions of Entry means the terms and conditions of entry which are currently available at <https://sport.mq.edu.au/about>.

Enrolment Application means the application for enrolment in the Program, currently accessible <https://sport.mq.edu.au/programs>.

Enrolee means the person seeking enrolment in the Program.

Guardian means the parent or legal guardian of a child, or Incapable Person who is named as an Enrolee on the Enrolment Agreement.

Health and Fitness Activities means sport, fitness, swimming and exercise or leisure activities or classes.

Incapable Person has the meaning given in section 5M of the *Civil Liability Act 2002* (NSW).

Make Up Class Policy means the policy set out in clause 11 of these Terms and Conditions.

Online Portal means the online portal currently accessible at <https://sport.mq.edu.au/pool-gym/memberships/manage-my-membership>, as updated or replaced from time to time.

Program means any of the following programs offered by U@MQ:

- a. Learn to Swim;
- b. Gymnastics;
- c. Martial Arts; or
- d. Swimming squad.

Program Year means from mid-January until mid-December.

U@MQ means U@MQ Ltd ABN 27 125 926 169, a controlled entity of Macquarie University.

Website means the Centre website currently accessible at <https://sport.mq.edu.au/> or such other website as notified to the Enrolee from time to time.

3. ENROLMENT

a. Enrolment in a Program commences from the date stated on the Enrolment Application and will continue for twelve weeks (**Initial Commitment Period**), unless terminated during the cooling off period in accordance with clause 4.

b. Except for the standard 'Learn to Swim' Program and private/one on one gymnastics lessons, which will automatically cease following completion of the Initial Commitment Period, enrolment in all other Programs will continue on an ongoing basis following completion of the Initial Commitment Period unless cancelled in accordance with clause 5.

- c. Enrolment is personal to the Enrollee. Enrolments cannot be assigned or transferred to another person.
- d. Enrolment in the Program will be for the nominated time and day of lesson as agreed in the Enrolment Application.

4. COOLING OFF PERIOD

All Program enrolments have the benefit of an initial cooling off period on the following terms (**Cooling Off Period**):

- a. The Cooling Off Period is seven (7) days beginning on the date the Enrolment Agreement commences.
- b. A Program enrolment may be cancelled at any time within the Cooling Off Period by submitting a '[Cancellation Request](#)' through the Online Portal.
- c. If a Program enrolment is cancelled during the Cooling Off Period, the Enrollee will be entitled to a refund of the Program fees paid on a pro-rata basis. If the Program has already commenced at the date of cancellation, the Enrollee will be refunded the Program fees paid, less an amount equivalent to value of the Program class that the Enrollee had access to during the Cooling Off Period.
- d. The Cooling Off Period only applies to the first enrolment purchased by an Enrollee for that Program and does not apply to any subsequent purchases or renewals of enrolments in the same Program.

5. CANCELLATION AND TERMINATION

5.1 Cancellations by Enrolees or their Guardians

- a. Except in exceptional circumstances, and subject to any rights available under Australian Consumer Laws, Enrolees are not entitled to terminate the Enrolment Agreement during the Initial Commitment Period.
- b. To cancel a Program enrolment and terminate the Enrolment Agreement after the Initial Commitment Period, the Enrollee must provide us with at least fifteen (15) days' written notice.
- c. Cancellation requests must be submitted through the Online Portal. Cancellations that are provided verbally, via email, or over the phone will not be accepted.
- d. Before submitting an application to cancel enrolment in a Program and terminate the Enrolment Application, the Enrollee must ensure that all outstanding Program fees have been paid and the account is not in arrears.
- e. If you wish to cancel an Enrollee's enrolment in a Program:
 - i. during the Initial Commitment Period;
 - ii. With less than 15 days written notice; or
 - iii. while the relevant account is in arrears,the request must be submitted in writing to macsport@mq.edu.au and be accompanied by supporting documentation. Cancellations of the Program under these circumstances will be at the discretion of U@MQ.

5.2 Cancellation by an Enrollee if we make a material change to the terms of your enrolment

If we notify you that there will be a material change to the terms of enrolment in accordance with clause 8 of these Terms and Conditions, and as a result of the change, you no longer wish to continue with the current enrolment, you can cancel your enrolment and terminate the Enrolment Agreement by providing us with written notice within 30 days of being notified of the changes. All cancellations must be submitted through the Online Portal. Cancellations in these circumstances may take up to five business days to be processed. Cancellation requests cannot be backdated.

5.3 Cancellations by U@MQ

- a. U@MQ may cancel enrolment in a Program and terminate an Enrolment Agreement to protect the health and safety of all patrons at the Centre, including if we, acting reasonably, believe that the Enrollee or their Guardian (if applicable) has engaged in conduct that compromises or may compromise, the health, safety or wellbeing of any other patron at the Centre or the staff of U@MQ.

- b. If we cancel an enrolment and terminate the Enrolment Agreement in accordance with this clause, the requirement to pay Program fees will cease with effect from the date set out in the termination notice issued by us to the Enrollee and/or their Guardian (if applicable).

5.4 Cancellations by either party for breach

Either party may terminate the Enrolment Agreement if the other party (or their Guardian (if applicable)) breaches a term of this Enrolment Agreement and the breach is incapable of remedy or the Enrollee or their Guardian fails to remedy the breach within 14 days of being notified by U@MQ or the Enrollee or their Guardian continues to breach this Enrolment Agreement.

5.5 Outstanding fees following termination

We will take steps to collect any Program fees that are outstanding at the time that your enrolment in the Program account is cancelled. We may use a third party to assist in the collection of outstanding fees.

6. AGE REQUIREMENTS AND SUPERVISION

- a. Children aged 16 years and under and Incapable Persons must be supervised by an appropriate adult while in the Centre. The requirement to be supervised at all times during a Program class does not apply to swimming squad Programs. Children and Incapable Persons that are not supervised by an appropriate adult will be required to remain at reception until an adult arrives to provide adequate supervision of the child or Incapable Person. Any lesson time missed as a result of the unavailability of adequate adult supervision will be forfeited and will not be eligible for a refund, credit or replacement session.

- b. Guardians are responsible for ensuring they inform U@MQ Ltd if their child or the Incapable Person has any special needs or medical/dietary requirements prior to the child or Incapable Person attending any Program sessions. Unless in an emergency and/or in line with an approved medical action plan, medication will only be administered by U@MQ if the Guardian has completed the 'Permission to Administer Medication Form' or 'Permission to Self-Administer Medication Form' and provided it to U@MQ Ltd staff.

7. CENTRE ACCESS AND GENERAL CONDITIONS OF ENTRY

- a. The Enrollee must present their access card or other appropriate personal identification to gain entry. A nominal fee may be charged to replace lost or stolen access cards.
- b. Enrollees (and their Guardians, if applicable) will be photographed for safety and security reasons. For example, so that Centre staff may verify the Enrollee's identity and to prevent unauthorized use of the facilities at the Centre. Further details regarding how U@MQ holds and uses photos or other identification details are provided in the [Privacy Statement](#).
- c. U@MQ reserves the right, acting reasonably, to place a block on an Enrollee's card if it has reason to believe that a third party has used, or attempted to use, the Enrollee's access card to access the Centre.
- d. To assist us in maintaining a safe and comfortable environment for everyone, all patrons are required to abide by the Conditions of Entry, Centre signage, and the reasonable directions of Centre staff.
- e. Failure to comply with clause 6(d) may result in the cancellation of enrolment in a Program and termination of the Enrolment Agreement.
- f. If an Enrollee is refused entry, or their enrolment is cancelled because of a failure to adhere to the Conditions of Entry, they will not be entitled to a refund of fees due or payable as at the date of refusal or cancellation.

8. CHANGES TO ENROLMENT AND/OR THESE TERMS AND CONDITIONS

- a. Enrollees or their Guardians (if applicable) must promptly tell us about anything that affects their enrolment in the Program, including any changes to contact information and payment details. All changes to enrolments (including contact details) must be made via the Online Portal.

b. Excepting cancellations approved following a request made in accordance with clause 5.1(e), U@MQ will not process enrolment changes, including enrolment cancellation requests or updates to payment details, verbally, over the phone or via email.

c. We periodically review these enrolment Terms and Conditions and our Program fees and inclusions. If we reasonably consider that any change to the Terms and Conditions is likely to benefit to the Enrollee or be of no, or immaterial, detriment, we will make the change immediately. For all other changes, we will provide the Enrollee with reasonable prior notice of any changes, for instance by writing to the last email address provided to us, placing a notice in the Centre or publishing the changes on our Website. If the Enrollee does not wish to accept the changes notified to them, they are entitled to cancel the enrolment and terminate the Enrolment Agreement in accordance with clause 5.

9. PAYMENT OF PROGRAM FEES

9.1 General Program Fees

a. Program fees vary depending on the Program selected and are detailed on the [Fees and Charges](#) section on the Website.

b. Program enrolments are paid via ongoing fortnightly direct debit payment, with the first payment commencing within 24 hours of U@MQ confirming that the Enrolment Application has been accepted.

c. Subject to clause 10, Program fees are payable irrespective of frequency of use or attendance in the Program, including in the event that an Enrollee applies for a replacement session in accordance with the Make-Class Policy. Except as required by law, including under Australian Consumer Laws, credits and refunds will not be available.

d. U@MQ may charge a nominal failed payment fee for each unsuccessful debit transaction as well as dishonour fees charged by U@MQ's financial institution, in addition to any charges it receives from the Enrollee's financial institution. This fee is not refundable and cannot be waived.

e. U@MQ will take reasonable steps to contact Enrollees if a direct debit payment is missed. U@MQ will implement re-debit measures as necessary to recover any outstanding debts. U@MQ will continue to debit from the Enrollee's nominated account even in circumstances where the Enrolment is cancelled, until all debts have been paid, unless otherwise agreed in writing with U@MQ.

f. U@MQ may, at its discretion, but acting reasonably, cancel an enrolment if fees are in arrears. The amount owing may be passed on to a debt collection agency for recovery. Any costs associated with this are at the Enrollee's expense.

9.2 Annual Registration Fee

Enrollees in the gymnastics or martial arts Programs must pay an annual registration fee in addition to any applicable ongoing Program fees. The registration fee must be paid to U@MQ who will remit it to the relevant Program's governing body. The registration fee must be paid at the time of joining the Program and again on an annual basis as outlined by the relevant governing body. Further details regarding the registration fee for gymnastics and martial arts Programs can be found at <https://sport.mq.edu.au/about/fees-charges>.

10. VARIATION/UNAVAILABILITY OF FACILITIES OR SERVICES

1. Closures due to Government directive

If we are required by state or federal government to temporarily close the Centre, we will suspend your enrolment in the Program, including any direct debit payment for Program classes that are cancelled during the relevant closure period.

2. Temporary changes to Centre facilities

We may need to adjust the availability of certain facilities at the Centre on a temporary basis, including for the purposes of cleaning, improvement work, repairs, upgrades, maintenance and holidays.

Fees already paid for classes cancelled because of a temporary closure of the Centre will automatically be entitled to a credit. Refunds for missed classes as a result of a temporary closure of the Centre are also available on request.

11. REPLACEMENT SESSION POLICY (Learn to Swim & Gymnastics Programs only)

- a. Enrolees in group Programs for standard Learn to Swim and gymnastics may be eligible for a maximum of twelve (12) 'replacement sessions' for each Program they are enrolled in, per Program Year. Replacement sessions are not available to other Programs, including holiday Programs. Any unused replacement sessions will be forfeited at the end of the Program Year and/or once a request to cancel enrolment in a Program has been cancelled.
- b. To be eligible for a replacement session, the Enrollee must:
 - i. report their absence via the Online Portal at least 2 hours prior to the scheduled commencement of the relevant Program class that the Enrollee will not be attending; and
 - ii. use the Online Portal to book a replacement session in another class for the same Program that was missed by the Enrollee within 30 days of the date of the lesson that was missed.
- c. If the missed lesson relates to a Program that involves a private or one-on-one session, the Enrollee will only be entitled to a maximum of 3 replacement sessions in a 12-week period and the lesson must be used in the same 12-week period of enrolment for that Program.
- d. Replacement sessions for a missed private 'Learn to Swim' or private gymnastics class, will only be available for group lessons. One-on-one lessons are not eligible for selection as a replacement session.
- e. Replacement sessions cannot be redeemed for cash or a credit the Program or another Program under any circumstances.
- f. Replacement session bookings can only be made within 72 hours of the desired class time via the Online Portal and are subject to availability.
- g. If an Enrollee fails to attend a replacement session following successful enrolment in it, the missed lesson will be forfeited, regardless of whether notice of non-attendance is provided in advance. No further replacement sessions, credits or refunds will be available for the initial missed lesson.
- h. Replacement sessions are not issued if an account is

12. ADDITIONAL PROGRAM SPECIFIC TERMS

1. Learn to Swim – Pool access

- a. Enrolees for the 'Learn to Swim' Program are entitled to access to the Centre's pools at any time within opening hours.
- b. Guests of Enrolees in a Program, including Guardians who are supervising children who are six (6) years of age or older, must pay a casual entry fee.
- c. A maximum of one (1) Guardian of an Enrollee aged five (5) years and under or Incapable Persons is allowed entry free of charge if their child or the Incapable Person is attending a Program lesson. Access to the Centre outside of the Program class time and/or use of additional facilities must be paid for.

2. Holiday Programs

- c. U@MQ Ltd may, acting reasonably, cancel any 'Holiday' Program session. Enrolees or their Guardians (if applicable) will be notified of any cancellations via SMS and email using the details last provided to U@MQ. A full credit will be issued for cancellations under this clause 12.2. Refunds are available, on request.
- d. Except as set out in paragraph (c), cancellation or non-attendance at a 'Holiday' Program class will not be eligible for a refund. It may be possible for an Enrollee to transfer to a class for the same Program being held on a different day during the same holiday period, subject to availability of spaces and excepting 'Learn to Swim' holiday Programs, which are not eligible for transfers to an alternative day, except at the discretion of U@MQ.

- e. In addition to an Enrollee's rights under Australian Consumer Laws, an Enrollee may be entitled to cancel enrolment in a Program and obtain a full or partial refund due to medical or other exceptional reasons.
- f. Program activities may be altered on the day of the class to accommodate student interest, weather, or other unavoidable and unforeseeable situations. Advertised activities may not always go ahead as planned.

13. LIABILITY

1. Recreational activities – risk warning to participants

Enrolees and Guardians understand, acknowledge and agree that:

- a. participation in Health and Fitness Activities supplied by or on behalf of U@MQ or at the Centre, are considered "recreational activities" or "dangerous recreational activities" as those terms are defined in Part 1A, Division 5, of the *Civil Liability Act 2002* (NSW);
- b. participation in Health and Fitness Activities at the Centre or use of the facilities involves a general risk of harm that may result in loss or damage to participants including personal injury or death. The sources of the risk of harm include (but are not limited to):
 - 1. impacts from equipment, poor, wet or slippery surfaces, physical exertion, intentional or accidental contact or collisions with other participants;
 - 2. damage or loss to personal property as a result of participation in the Health and Fitness Activity, including injuries arising from physical combat or team sports and water immersion; and
 - 3. inadequate facilities for treatment or transport in the event of injury;
- c. participation in the Health and Fitness Activities is at the Enrollee's own risk. If an Enrollee does not wish to be exposed to such risks, then they should not participate in the Health and Fitness Activity;
- d. Enrolees must be at least 18 years of age at the date of participating in the Health and Fitness Activities or have obtained the written consent of a Guardian to participate in the Health and Fitness Activity; and
- e. that this clause 13.1 constitutes a risk warning by U@MQ under the *Civil Liability Act 2002* (NSW), for and on behalf of themselves and/or the Incapable Person (if applicable). They agree that, during all times that they and/or the Incapable Person are participating in the Health and Fitness Activities or are in or around the Centre, they and/or the Incapable Person are doing so voluntarily and at their own risk.

2. No warranty

To the maximum extent permitted by law, U@MQ makes no warranties in respect of any services to be provided in connection with the Program and to the extent permitted by law any such implied warranties are expressly excluded.

13.3 Waiver of statutory guarantees under Australian Consumer Law

A supplier of recreational services or recreational activities is entitled to ask you to agree that statutory guarantees under the Australian Consumer Law (which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) do not apply to you (or a person for whom or on whose behalf you are acquiring the services or activities).

By accepting these Terms and Conditions, you agree that the liability of Macquarie University and/or U@MQ in relation to recreational services (as that term is defined in s 139A of the *Competition and Consumer Act 2010* (Cth)) for any:

- i. death;
- ii) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
- iii) the contraction, aggravation or acceleration of a disease;
- iv) the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs:

- a. that is or may be harmful or disadvantageous to you or the community;
- b. that may result in harm or disadvantage to you or the community,

that may be suffered by you (or a person for whom or on whose behalf you are acquiring the services) resulting from the supply of recreational services is excluded and the application of any express or implied term that any services will be provided with due care and skill is hereby excluded.

The waiver of liability set out in this clause change to your rights does not apply to a significant personal injury suffered by you that is caused by the reckless conduct of U@MQ.

13.4 Liability for supply of other services

To the maximum extent permitted by law, the liability of Macquarie University and/or U@MQ for loss or damage (not being a liability the subject of clause 13.1) howsoever arising in connection with the presence of a Enrollee, Incapable Person or Guardian in or around the Centre or for the supply of goods or services is limited, including in tort (including in negligence), contract or pursuant to statute, to:

- a. in the case of goods, five (5) times the costs of the goods, or if the cost of the goods cannot be ascertained, five (5) times the market price of equivalent goods;
- b. in the case of services, five (5) times the costs of the services, or, if the cost of the services cannot be ascertained, five (5) times the market price of equivalent services; and
- c. in any other case, \$2,500.

13.5 Release

In consideration of U@MQ allowing participation in the Health and Fitness Activities (and except to the extent that the same may be precluded by statute), each Enrollee or their Guardian (if applicable) acknowledges and agrees with U@MQ that the Enrollee:

- a. will participate in the Health and Fitness Activities at their own risk and that neither Macquarie University nor U@MQ, their staff, contractors, suppliers, insurers, agents and representatives (**Indemnified Parties**) will, to the extent permitted by law, be liable for:
 - i. their personal injury (including personal injury causing death) suffered by the Enrollee as a result of participating in the Health and Fitness Activities; or
 - ii. breach of any express or implied warranty by the Indemnified Parties that any services in connection with the Health and Fitness Activities will be rendered with due or reasonable care and skill;
- b. acknowledges that the Indemnified Parties does not owe them a duty of care in respect of any risks associated with the Health Fitness Activities or their participation in it;
- c. has received a risk warning in relation to the Health Fitness Activities;
- d. will not bring a claim, or commence any legal proceedings, against the Indemnified Parties in the event that they are injured, or their property is damaged; and
- e. hereby release and hold harmless the Indemnified Parties from and against all actions, demands, suits, proceedings or claims which may be made by the Enrollee or on its behalf or by other parties on its behalf for or in respect of or arising out of any injury, loss, damage (including economic, consequential, exemplary and punitive) to person or property, or death caused to them or their property whether by negligence, breach of contract, breach of any express or implied warranty that the Health Fitness Activities or any associated services will be rendered with reasonable care or skill, breach of any statute or statutory duty or in any way whatsoever and execution of these Terms and Conditions by the Enrollee or their Guardian (if applicable) shall serve as a release and assumption of risk for their heirs, estate executor, administrator, assignees and for all their family members.

14. ENROLLEE AND/OR GUARDIAN'S WARRANTY

By signing this Enrolment Agreement, Enrolees or Guardians (as applicable) warrant that they or the Incapable Persons (as applicable):

- a. are physically and mentally sound and are not suffering from any condition, impairment, disease, infirmity, or other illness that would prevent or impact their participation in the Program at the Centre;

- b. are responsible for any costs associated with any medical emergency services required as a result of their personal injury or death; and
- c. they or the Incapable Person have either had a physical examination and been given their physician's permission to participate in the Program, or if they have chosen not to obtain a physician's permission prior to participating in the Program, they or the Incapable Persons are participating in the Program at their own risk.

15. GENERAL

This Enrolment Agreement is governed by the laws in force in New South Wales and the Enrolee submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts competent to hear appeals from the courts of New South Wales in respect of all proceedings arising in connection with this Enrolment Agreement.

ACCEPTANCE OF TERMS AND CONDITIONS

- I have read, understood and accept these Terms and Conditions, including the Risk Warning provided at clause 13.1 and Guardian warranty included at clause 13, and agree to be bound by those terms.
- * I have read, understood and accept the terms of the [Privacy Statement](#).
- I would like to receive promotional messages from U@MQ about events and services that may be of interest to me, to my nominated email account/mobile phone number.

Enrolees under the age of 18 or Incapable Persons

- *I warrant that I am the Guardian of the Enrolee and have read, understood and agree to be bound by these Terms and Conditions, including the Guardian warranty set out in clause 13, on behalf of the Enrolee.