

# MACQUARIE UNIVERSITY SPORT AND AQUATIC CENTRE MEMBERSHIP TERMS AND CONDITIONS



## 1. THE MEMBERSHIP AGREEMENT

These terms, together with the following completed documents:

- (a) Your Membership Application; and
- (b) Your Payment Authority Form,

make up the terms of a membership agreement (**Membership Agreement**) between the Member and U@MQ.

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

## 2. DEFINITIONS

**Centre** means the Macquarie University Sport & 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>.

**Facilities** means any part of the Centre.

**Guardian** means the parent or legal guardian of a child, or Incapable Person who is named as a Member on the Membership Application.

**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).

**Membership Application** means the application for membership, currently accessible at <https://sport.mq.edu.au/pool-gym/memberships>, as amended, updated or replaced from time to time.

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

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

**You, Your, Member** refers to the individual name in which the membership has been created, or a Guardian, if the Member is under 18 years of age or is an Incapable Person.

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

### **3. MEMBERSHIP ENTITLEMENTS AND LENGTH**

Membership will be for the type of membership (**Membership Type**) stated in the Membership Application.

Membership entitles a Member to:

- (a) maintain a membership account with us;
- (b) access the Member Portal; and
- (c) use the Facilities in accordance with their Membership Type.

Unless cancelled or suspended in accordance with these Terms and Conditions, membership will start and end on the dates stated in the confirmation email sent by U@MQ following its acceptance of a Membership Application provided that:

- (a) the Member or their Guardian (if applicable) has agreed to these Terms and Conditions; and
- (b) we have received the required payments as set out in the confirmation email.

Membership is personal to the Member and cannot be assigned or transferred to another person.

### **4. CANCELLATION AND SUSPENSION**

#### **4.1. Suspension**

Members are entitled to suspend their memberships as follows:

- (a) Membership can be suspended for a minimum period of 7 consecutive days, up to a maximum of 84 days, each calendar year.
- (b) Suspension requests must be submitted via the Member Portal and will take effect from the date:
  - (i) specified in the suspension application; or
  - (ii) that the suspension application is submitted in the Member Portal, whichever occurs later. Suspension requests cannot be backdated.
- (c) Before applying to suspend your membership, your membership fees must be up to date with no arrears outstanding on the membership account.
- (d) Requests to suspend a membership beyond the eighty-four (84) day limit per calendar year or while in arrears, will be at the discretion of U@MQ.
- (e) Members will not be able to access or use the Facilities during any period of suspension.

#### **4.2. General rights of Members to cancel membership**

- (a) Members are entitled to cancel their membership and terminate this Membership Agreement by providing U@MQ with the following prior written notice:

- i. For membership accounts that the parties have agreed will be paid for by way of direct debit or upfront in advance, at least fourteen (14) days' notice is required; or
  - ii. For membership accounts that the parties have agreed will be paid by way of salary sacrifice arrangement, notice of at least one full fortnightly deduction period is required.
- (b) Cancellation requests must be submitted online through the Member Portal and may take up to five business days to be processed. Cancellation requests cannot be backdated.
- (c) Before applying to cancel a membership, you must ensure that your membership fees are up to date and there are no arrears outstanding on the membership account.
- (d) If a Member wishes to cancel their membership by providing U@MQ with less notice than prescribed in clause 4.2(a) or while the Member's account is in arrears, the request must be submitted in writing to [macsport@mq.edu.au](mailto:macsport@mq.edu.au) and accompanied by supporting documentation. Cancellations that do not comply with the requirements set out in clause 4.2(a) or 4.2(c) will be at the discretion of U@MQ.
- (e) Members with a salary sacrifice arrangement are responsible for ensuring that U@MQ is notified in writing via email if their employment at Macquarie University ends to ensure that salary sacrifice deductions are cancelled. Macquarie University Human Resources will not process any changes to deductions directly.
- (f) Memberships cannot be cancelled and suspended simultaneously. If a Member requests a cancellation while a suspension on their membership account is still active, the suspension will cease with immediate effect and the fourteen (14) days' notice period for membership cancellation will begin effective from that day.

#### **4.3. Cooling off period**

All Membership Types 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 Membership Agreement commences.
- (b) A membership may be cancelled during at any time during the Cooling Off Period by submitting a written request to [macsport@mq.edu.au](mailto:macsport@mq.edu.au).
- (c) If membership is cancelled within the Cooling Off Period, the Member will be entitled to a refund of the membership fees that have been paid to us in relation to the services the Member has not used. If a Member has used their membership to access the Centre during the Cooling Off Period, we will refund the relevant membership fees paid to us, less the advertised costs of the services we reasonably consider to have been accessed during the Cooling Off Period (for example the casual visit rate for each visit, the fees for any personal training obtained, or the direct costs of any Centre services that the Member has received) and a reasonable administrative charge.
- (d) The Cooling Off Period only applies to a Member's first membership purchased from U@MQ and does not apply to any subsequent purchases or renewals of memberships of any kind.

#### **4.4. Cancellation by U@MQ**

U@MQ may cancel a Member's membership and terminate the Membership Agreement in any of the following circumstances:

- (a) the Member or their Guardian (if applicable) breaches a term of this Membership Agreement and the breach is incapable of remedy or the Member or their Guardian fails to remedy the breach within 14 days of being notified by U@MQ or the Member or their Guardian continues to breach this Membership Agreement; or
- (b) to protect the health and safety of all patrons at the Centre, including if we, acting reasonably, believe that the Member 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.

If we cancel a membership and terminate the Membership Agreement in accordance with this clause, the requirement to pay membership fees will cease with effect from the date set out in the termination notice issued by us to the Member and/or their Guardian (if applicable).

#### **4.5. Cancellation by Members if we make a material change to the terms of your membership**

If we notify you that there will be a material change to the terms of your membership in accordance with clause 7 of these Terms and Conditions, and as a result of the change, you no longer wish to continue with the current membership, you can cancel your membership and terminate the Membership Agreement by providing us with written notice within 30 days of being notified of the changes. All cancellations must be submitted online through the Member Portal. Cancellations in these circumstances may take up to five business days to be processed. Cancellation requests cannot be backdated.

#### **4.6. Outstanding fees following termination**

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

### **5. AGE REQUIREMENTS**

For safety reasons, membership will only be available to children between the ages of 16 to 18 years and provided a Guardian has provided consent to the membership and signs the Membership Agreement. U@MQ will consider applications for memberships from a child (or their Guardian) under the age of 16 on a case-by-case basis.

### **6. CENTRE ACCESS**

- (a) The Member must present their membership card, wristband or other appropriate personal identification to gain entry. A nominal fee will be charged to replace lost or stolen membership cards or wristbands.

- (b) Members will be photographed for safety and security reasons. For example, so that Centre staff may verify your membership and to prevent unauthorized use of the Facilities. 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 a Member's card or wristband if it has reason to believe that a third party has used, or attempted to use, the Member's access card or wristband to access the Centre access for a Member for any breach of these Terms and Conditions or the Conditions of Entry. This block may continue indefinitely and will be lifted only at management discretion.

## **7. CHANGES TO MEMBERSHIP AND/OR THESE TERMS**

- (a) You must promptly tell us about anything that affects a Member's membership, and any changes to your contact information and payment details. All changes to memberships (including contact details) must be made via the online Member Portal. U@MQ will not process membership changes, including suspension and cancellation requests and updates to payment details, verbally, over the phone or via email.
- (b) We periodically review our membership Terms and Conditions and membership fees and inclusions. If we reasonably consider that any change to the Terms and Conditions is likely to benefit you or be of no, or immaterial, detriment to you, we will make the change immediately. For all other changes, we will give you reasonable prior notice of any changes, for instance by writing to the email address you last gave us, placing a notice in the Centre or publishing the changes on our Website. If you do not wish to accept the changes notified to you, you may terminate the membership in accordance with clause 4.5.

## **8. PAYMENT OF MEMBERSHIP FEES**

- (a) Membership fees vary depending on your Membership Type and are set out on the [fees and charges section](#) of the Website. You must pay the membership fees applicable to your Membership Type in accordance with the payment frequency set out in your Membership Application.
- (b) Your responsibility to pay the membership fees does not depend on how often the Facilities are used.

### **8.1. Memberships paid upfront in advance**

If you have agreed in your Membership Application to pay the applicable membership fees in advance, you will be required to pay the full amount of the membership fees by the date

stipulated in the email confirmation sent by U@MQ following acceptance of the Membership Application.

## **8.2. Memberships paid via direct debit arrangement**

- (a) If the parties have agreed that payment of a membership will be by way of direct debit, the applicable membership fees will be charged fortnightly.
- (b) Members must have sufficient funds in their nominated account and must provide U@MQ with a direct debit authority for all membership fees.
- (c) A Member may be denied access to the Facilities if they have any outstanding membership fees.
- (d) It is the responsibility of the Member to provide U@MQ with up-to-date account information.
- (e) U@MQ may charge a nominal failed payment fee for each unsuccessful debit transaction as well as dishonor fees charged by U@MQ's financial institution, in addition to any charges it receives from the Member's financial institution. This fee is not refundable and cannot be waived.
- (f) U@MQ will take reasonable steps to contact Members 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 Member's nominated account even in circumstances where the Membership is suspended or cancelled, until all debts have been paid, unless otherwise agreed in writing with U@MQ.
- (g) U@MQ may, at its discretion, but acting reasonably cancel a membership 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 Member's expense.

## **8.3. Staff Memberships paid via salary sacrifice arrangement**

Membership fees that are payable via a salary sacrifice arrangement with Macquarie University will be deducted from the Member's pre-tax salary on a fortnightly basis.

## **9. GENERAL CONDITIONS OF ENTRY**

- (a) To assist us in maintaining a safe and comfortable environment for everyone, you are required to abide by the [Conditions of Entry](#), Facilities signage, and the reasonable directions of Centre staff.
- (b) Failure to comply with clause 9(a) may result in the suspension or termination of membership.
- (c) If a Member is refused entry, or their membership 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.

## **10. VARIATION/UNAVAILABILITY OF FACILITIES OR SERVICES**

### **10.1. Closures due to Government directive**

If we are required by state or federal government to temporarily close the Facilities, we will suspend your membership, including any fees payable in connection with the suspended membership for that closure period.

Any membership suspension which occurs as a result of a closure period will not cause a reduction in your entitlement to a free membership suspension as per clause 4.2.

## **10.2. Temporary changes to 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. If the Centre is not available for a period of more than seven consecutive days (excluding public holidays), you may request that your membership be suspended until the Facilities are accessible. This will not cause a reduction in your entitlement to a free membership suspension as per clause 4.2.

## **11. LIABILITY**

### **11.1. Recreational activities – risk warning to participants**

Members 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 Facilities, 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 Facilities or use of the Facilities involves a general risk of harm that may result in loss or damage to participants in the Health Fitness Activities, including personal injury or death. The sources of the risk of harm include (but are not limited to):
  - a. impacts from equipment, poor, wet or slippery surfaces, physical exertion, intentional or accidental contact or collisions with other participants;
  - b. 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
  - c. inadequate facilities for treatment or transport in the event of injury;
- (c) participation in the Health and Fitness Activities is at the Member’s own risk. If a member does not wish to be exposed to such risks, then they should not participate in the Health and Fitness Activity;
- (d) Members must be at least 18 years of age at the date of participating in the Health and Fitness Activities or have obtained the written approval of a Guardian to participate in the

- Health and Fitness Activity; and
- (e) that this clause 11.1 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. They agree that, during all times that they and/or the Incapable Person are participating in the Health and Fitness Activities or are on or about the Facilities, they and/or the Incapable Person are doing so voluntarily and at their own risk.

#### **11.2. 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 Health and Fitness Activities and to the extent permitted by law any such implied warranties are expressly excluded.

#### **11.3. 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 does not apply to a significant personal injury suffered by you that is caused by the reckless conduct of U@MQ.

#### **11.4. 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 11.1) howsoever arising in



connection with the presence of a Member, Incapable Person or Guardian in or about the Facilities 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.

#### **11.5. 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 Member or their Guardian (if applicable) acknowledges and agrees with U@MQ that the Member:

- (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 Member 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) and their Guardian (if applicable) acknowledges that the Indemnified Parties do not owe the Member a duty of care in respect of any risks associated with the Health Fitness Activities or their participation in it;
- (c) and their Guardian (if applicable) has received a risk warning in relation to the Health Fitness Activities;
- (d) and their Guardian (if applicable) will not bring a claim, or commence any legal proceedings, against the Indemnified Parties in the event that the Member is injured, or their property is damaged; and
- (e) and their Guardian (if applicable) hereby releases and holds harmless the Indemnified Parties from and against all actions, demands, suits, proceedings or claims which may be made by the Member 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 Member 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.

#### **12. MEMBER AND/OR GUARDIAN'S WARRANTY**

By accepting these Terms and Conditions, Members or Guardians (if applicable) warrant that

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

### **13. GENERAL**

This Membership Agreement is governed by the laws in force in New South Wales and the Member 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 Membership Agreement.

### **14. PRIVACY**

Your personal information will be collected and used by us in accordance with the Privacy Statement.

### **ACCEPTANCE OF TERMS AND CONDITIONS**

- \*I have read, understood and accept these Terms and Conditions, including the risk warning, waiver of statutory guarantees and release set out in clause 11 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.

### **Members under the age of 18 or Incapable Persons**

- \*I warrant that I am the Guardian of the Member and have read, understood and agree to be bound by these Terms and Conditions, including the Guardian warranty set out in clause 12, on behalf of the Member.

