

1. ACCEPTANCE

- 1.1 These Terms are between N.I Hoogstad, trading as Gutsy By Nutrition ABN 123 5302 3707, their successors and assignees (**we, us or our**) and you, the person, organisation or entity that purchases Services from us (referred to as **you or your**), and collectively the Parties. These Terms apply to all sales made by us to you, whether for online or On-Premises Services.
- 1.2 You have requested the Services, described on and able to be booked or ordered via our Site. You accept these Terms by accepting these Terms online.
- 1.3 **You agree that these Terms form the agreement under which we will supply Services to you. Please read these Terms carefully.** Please contact us if you have any questions using the contact details at the end of these Terms. Using or purchasing our Services indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order or use the Services if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you must not use or purchase our Services from us.
- 1.4 These Terms supplement and incorporate our Privacy Policy which is available on our Site and which sets out how we collect, use and protect your personal information.

2. SERVICES

- 2.1 You may book our Services as set on our Site. These Services may include online and On-Premises options. Please make sure you check before booking that you have selected the correct Service and that you are able to attend our premises in person where you book an On-Premises Service.
- 2.2 Some of our Services may be exclusively available online or On-Premises.
- 2.3 You may purchase a single session Service or we may offer a value package of Services.
- 2.4 When you purchase a Service we will ask you to choose from the available times in our booking system on the Site to schedule in your Service.
- 2.5 We agree to perform the Services with due care and skill.
- 2.6 We reserve the right to refuse any request that we deem inappropriate, unreasonable or illegal.

3. FEE, INVOICING AND PAYMENT

- 3.1 You agree to pay us the Fees. All amounts are stated in Australian dollars. All amounts include Australian GST (where applicable). Payment may be made by way of credit card, PayPal or other payment methods as set out on the Site when purchasing our Services.
- 3.2 If you are purchasing an On-Premises Service you may be given the option at checkout on the Site to pay after your session at the premises. If you choose this option, please ensure you bring a credit card or debit card with sufficient funds to your booking.
- 3.3 You agree to pay our Fees by the payment dates set out on the Site. If you do not pay by the payment date, we may cease to provide the Services to you until we receive payment.
- 3.4 We may charge interest at the rate of 3% per month, calculated daily, on any amounts unpaid after the payment date.
- 3.5 If Fees are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us.
- 3.6 We reserve the right to report bad debts to independent credit data agencies.

4. YOUR OBLIGATIONS AND WARRANTIES

- 4.1 You warrant that throughout the term of these Terms that:
 - (a) there are no legal restrictions preventing you from agreeing to these Terms;
 - (b) you will cooperate with us and provide us with information that is reasonably necessary to enable us to perform the Services as requested by us from time to time, and comply with these requests in a timely manner;
 - (c) where you book an On-Premises Service you are willing and able to travel to our premises;
 - (d) where you book an On-Premises Service you understand that in carrying out the Service we may ask you to consent during the provision of the Services to some physical contact as required to provide your chosen Service;

- (e) the information you provide to us is true, correct and complete;
- (f) you will not infringe any third party rights in working with us and receiving the Services;
- (g) you will inform us if you have reasonable concerns relating to our provision of Services under these Terms, with the aim that we and you will use all reasonable efforts to resolve your concerns;
- (h) you are responsible for obtaining any consents, licences and permissions from other parties necessary for the Services to be provided, at your cost, and for providing us with the necessary consents, licences and permissions;
- (i) you consent to the use of your name and Intellectual Property in relation to the Services in a way which may identify you;
- (j) if applicable, you hold a valid ABN which has been advised to us; and
- (k) if applicable, you are registered for GST purposes.

5. OUR INTELLECTUAL PROPERTY

- 5.1 The Materials contain material which is owned by or licensed to us and is protected by Australian and international laws. We own the Intellectual Property rights in the Materials including but not limited to copyright which subsists in all creative and literary works incorporated into our Materials.
- 5.2 You agree that, as between you and us, we own all Intellectual Property rights in our Materials, and that nothing in these Terms constitutes a transfer of any Intellectual Property rights in our Materials, except as stated in these Terms or with our written permission.
- 5.3 Your use of our Materials does not grant you a licence, or act as a right to use, any Intellectual Property in the Materials, whether registered or unregistered, except as stated in these Terms or with our written permission.
- 5.4 You must not breach our Intellectual Property rights by, including but not limited to:
 - (a) altering or modifying any of the Materials;
 - (b) creating derivative works from the Materials; or
 - (c) using our Materials for commercial purposes such as onsale to third parties.
- 5.5 This clause will survive the termination of these Terms.

6. YOUR INTELLECTUAL PROPERTY AND MORAL RIGHTS

- 6.1 If you provide information including any Intellectual Property to us, then you:
 - (a) warrant that you have all necessary rights to provide the Intellectual Property to us;
 - (b) grant us a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use the Intellectual Property in any way we require to provide the Services to you; and
 - (c) consent to any act or omission which would otherwise constitute an infringement of your Moral Rights.
- 6.2 If you (or any employee or agent) have Moral Rights in any Intellectual Property that you provide to us, you:
 - (a) irrevocably consent to any amendment of the Intellectual Property in any manner by us;
 - (b) irrevocably consent to us using or applying the Intellectual Property without any attribution of authorship;
 - (c) agree that your consent extends to acts and omissions of any of our licensees and successors in title; and
 - (d) agree that your consent is a genuine consent under the *Copyright Act 1968* (Cth) and has not been induced by duress or any false or misleading statement.
- 6.3 This clause will survive the termination of these Terms.

7. CONFIDENTIAL INFORMATION

- 7.1 We agree not to disclose your Confidential Information to any third party (other than, where necessary, third party suppliers, or as required by law) other than as set out in our Privacy Policy, which is available on the Site; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; only to use the Confidential Information for the purpose for which it was disclosed by you to provide better quality services to you and not for any other purpose.
- 7.2 You agree not to disclose our Confidential Information to any third party; to use all reasonable endeavours to protect Confidential Information from any unauthorised disclosure; and only to use

the Confidential Information for the purpose for which it was disclosed or provided by us to you, to provide better quality services to you and not for any other purpose.

7.3 These obligations do not apply to Confidential Information that:

- (a) is authorised to be disclosed;
- (b) is in the public domain and/or is no longer confidential, except as a result of breach of these Terms;
- (c) is received from a third party, except where there has been a breach of confidence; or
- (d) must be disclosed by law or by a regulatory authority including under subpoena.

7.4 This clause will survive termination of these Terms.

8. FEEDBACK AND DISPUTE RESOLUTION

8.1 Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Services, please contact us.

8.2 If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

- (a) The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
- (b) If the Parties cannot agree how to resolve the dispute at the initial meeting, any Party may refer the matter to a mediator. If the parties cannot agree on who the mediator should be, the complainant will ask the Law Society of New South Wales to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

8.3 Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

9. TERMINATION

9.1 Either Party may terminate these Terms if there has been a material breach of these Terms, subject to following the dispute resolution procedure.

9.2 We may terminate these Terms immediately, at our sole discretion, if:

- (a) we consider that a request for the Service is inappropriate, improper or unlawful;
- (b) you fail to provide us with clear or timely instructions to enable us to provide the Services;
- (c) we consider that our working relationship has broken down including a loss of confidence and trust;
- (d) you act in a way which we reasonably believe will bring us or our Site into disrepute;
- (e) you provide us with incorrect payment details or any other incorrect information;
- (f) you fail to pay our Fees within seven (7) days of the Fee becoming due or payable; or
- (g) for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe.

9.3 On termination of these Terms you agree that any payments made are not refundable to you, and you are to pay for all Services provided prior to termination, including any Services which have been performed and have not yet been paid by you.

9.4 On termination of these Terms you agree to promptly return (where possible), or delete or destroy (where not possible to return), our Confidential Information and Intellectual Property, and/or documents containing or relating to our Confidential Information and Intellectual Property.

9.5 If requested by you, on termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and Intellectual Property.

9.6 On completion of the Services, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.

- 9.7 The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.
- 10. CONSUMER LAW, LIMITATION OF LIABILITY AND DISCLAIMERS**
- 10.1 Certain legislation including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010* (Cth) and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of Services by us to you which cannot be excluded, restricted or modified (**Statutory Rights**).
- 10.2 We guarantee that the Services we supply to you are rendered with due care and skill, fit for the purpose that we advertise, or that you have told us you are acquiring the Services for, unless we consider and disclose that this purpose is not achievable; and will be supplied within a reasonable time.
- 10.3 Nothing in these Terms excludes your Statutory Rights as a consumer under the ACL. You agree that our liability for the Services is governed solely by the ACL and these Terms. We exclude all conditions and warranties implied by custom, law or statute except for your Statutory Rights.
- 10.4 **Delay:** Where the provision of Services depends on your information or response, we have no liability for a failure to perform the Services in the period set out on the Site where it is affected by your delay in response, or supply of incomplete or incorrect information.
- 10.5 **Referral:** We may provide you with contact details of third party specialists. This is not a recommendation by us for you to seek their advice or to use their services. We make no representation or warranty about the third party advice or provision of services, and we disclaim all responsibility and liability for the third party advice or provision of services, or their failure to advise or provide services.
- 10.6 **Warranties:** Except for your Statutory Rights, we exclude all express and implied warranties representations and guarantees and all material and work is provided to you without warranties, representations and guarantees of any kind, either express or implied. We expressly exclude all warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose.
- 10.7 **Not medical advice disclaimer:** You agree that any information, insights or guidance contained in our Site, Services or Materials is not an attempt to practice medicine or provide medical advice. It is not to be used or relied on for any diagnostic or treatment purposes. Use of our Site, Services or Materials does not establish a doctor-patient relationship. The Materials should not be used as a substitute for professional diagnosis and treatment. Any health information in our Site, Services or Materials, is provided simply for your convenience. The Site, Services and Materials are intended for general information purposes only. They do not take into account your own personal circumstances. They are not intended to be advice, they are not intended to be relied upon and they are not a substitute for professional medical advice based on your personal circumstances. They should not be used to diagnose, treat, prevent or cure any disease or medical condition.
- 10.8 **Not healthcare disclaimer:** The Site, Services and Materials may support the relationship between you and your healthcare provider, but are not intended to replace it. They should not be used as a substitute for professional diagnosis and treatment. If you suffer from any health conditions please consult with your health practitioner.
- 10.9 You are solely responsible for determining the suitability of any of the Services, and your reliance on any information that is provided to you through our Site, Services or Materials are at your own risk.
- 10.10 Through our Services you will set goals but your success depends on your effort and motivation and we cannot guarantee that you will achieve your goals or attain a particular result.
- 10.11 **Limitation:** We are not liable for any loss or cost incurred by you (or any person related to you) in the event of mental, physical, emotional stress or distress (or other ailment or condition) caused either directly or indirectly in relation to the Services.
- 10.12 To the maximum extent permitted by law, we will have no liability and you release and discharge us from all liability arising from or in connection with (i) loss of, or damage to, any property or any injury to, or death of, any person; and (ii) failure or delay in providing the Services where caused or

contributed to by any event of circumstance beyond our reasonable control or act or omission by you.

10.13 Our total liability to you for all damages in connection with the Services however arising, including under contract, tort including negligence, in equity, under statute or otherwise will not exceed the price paid by you under these Terms for the 12 month period prior to the act which gave rise to the liability, or one hundred dollars (AUD\$100) if no such payments have been made.

10.14 This clause will survive termination of these Terms.

11. INDEMNITY

11.1 You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:

- (a) any information that is not accurate, up to date or complete or is misleading or a misrepresentation;
- (b) your breach of these Terms;
- (c) any misuse of the Services, the Site or the Materials by you, your employees, contractors or agents; and
- (d) your breach of any law or third party rights.

11.2 You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of the Services including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us.

11.3 This clause will survive termination of these Terms.

12. CANCELLATION OF SESSIONS

12.1 The Services may involve telephone, Skype, On-Premises or other communication based sessions with us.

12.2 If you purchase a number of sessions together or in a package, the number of sessions will be set out on the Site (or as otherwise agreed between you and us) and will be scheduled between us in advance via our booking system. You may cancel or reschedule your session by providing us with at least 24 hours' notice. If you provide us with less than 24 hours' notice that you would like to cancel or reschedule your session, we will not be able to reschedule the session and no refund will be provided for the session you miss.

12.3 If you book a one-off session with us, and you cancel or request to reschedule the session, and you give us less than 24 hours' notice, then we may, at our discretion:

- (a) offer to reschedule the session; or
- (b) charge you between 50% and 100% of the cost of the session (and such fee will be a debt due and immediately payable to us). You must pay such fee prior to booking any further sessions with us.

13. GENERAL

13.1 **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.

13.2 **Publicity:** You consent to us using advertising or publicly announcing that we have provided Services to you, including but not limited to mentioning you on our Site and in our promotional material.

13.3 **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.

13.4 **GST:** If and when applicable, GST payable on the Fee for the Services will be set out on our Site. You agree to pay the GST amount at the same time as you pay the Fee.

13.5 **Relationship of parties:** These Terms are not intended to create a relationship between the parties of partnership, joint venture, or employer-employee.

- 13.6 **Assignment:** These Terms are personal to the Parties. A Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent not to be unreasonably withheld).
- 13.7 **Severance:** If any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
- 13.8 **Force Majeure:** We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstance beyond our reasonable control.
- 13.9 **Notice:** Any notice required or permitted to be given by either Party to the other under these conditions will be in writing addressed to you at the address provided at the time you order our Services. Our address is set out at the end of these Terms. Any notice may be sent by standard post or email, and notice will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 13.10 **Jurisdiction & Applicable Law:** These terms are governed by the laws of New South Wales and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales.
- 13.11 **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between you and us and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.
- 14. DEFINITIONS**
- 14.1 **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in New South Wales, Australia.
- 14.2 **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise.
- 14.3 **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and services, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, know-how, Intellectual Property, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
- 14.4 **Fees** are our fees for the Services.
- 14.5 **GST** means GST as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
- 14.6 **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs (whether or not registered or registrable), any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
- 14.7 **Materials** means work and materials that we provide to you in carrying out the Services.
- 14.8 **Moral Rights** means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship, as defined in the *Copyright Act 1968* (Cth).
- 14.9 **On-Premises** means the physical location where we provide a selection of our services (and for the avoidance of doubt, we may, in our sole discretion, conduct home visits).
- 14.10 **Services** means the services described on our Site.

14.11 **Site** means our website at www.gutsybynutrition.com.au.

14.12 **Terms** means these terms and conditions.

Contact details:

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