

WEBSITE TERMS OF SERVICE - MASSAGE

These are the terms and conditions (**Terms**) of **JAN MARIE KENNEDY (ABN 60 940 397 129) trading as JAN KENNEDY MESSAGE & PILATES (Jan Kennedy Massage & Pilates, we, our, us)** for the supply of Massage Therapy to the **CLIENT (Client, you, your)**. These Terms incorporate our Website Terms of Use and Privacy Policy, which are published on the Website.

1. AGREEMENT TO THE TERMS

- 1.1. The Client agrees to the Terms:
 - 1.1.1. by clicking to agree to the Terms made available to the Client in the user interface on the Website; or
 - 1.1.2. by agreeing to the Terms made available to the Client by email.
- 1.2. These Terms are published on the Website. You can request a hard copy of the Terms by way of email.
- 1.3. The Terms may be amended at any time. Notice of any changes to the Terms will be published on the Website or made available by way of email.

2. REGISTRATION OF ACCOUNT

- 2.1. The Client must first register an Account through the Website before he or she can pay for Massage Therapy.
- 2.2. To register for an Account, you will be required to provide personal information including:
 - 2.2.1. email address;
 - 2.2.2. user name;
 - 2.2.3. mailing address;
 - 2.2.4. telephone number;
 - 2.2.5. password;
 - 2.2.6. relevant health information.
- 2.3. You warrant that any information you give to Jan Kennedy Massage & Pilates in completing registration for an Account is accurate and complete. If there are changes to your personal information, you must notify us as soon as possible at <https://jkmp.com.au>
- 2.4. When an Account is opened, you will be granted access to purchase Massage Therapy.

3. FEES AND PAYMENT

- 3.1. The Client agrees to pay the Fees for Massage Therapy.
- 3.2. In paying the Fees, you acknowledge and agree that it is your responsibility to ensure that Massage Therapy is suitable for your use and enjoyment.
- 3.3. Payment of the Fees is made using client management software owned and operated by Bookings Essential Pty Ltd (**Bookings Essential**). In using the Website and paying the Fees, you warrant that you have read, understood and agree to be bound by Bookings Essential Terms of Service which are available on their website.
- 3.4. Otherwise, you can pay the Fees by way of:
 - 3.4.1. electronic funds transfer into our nominated bank account; or
 - 3.4.2. cash.
- 3.5. You acknowledge and agree that where a request for the payment of the Fees is returned or denied, for whatever reason, by your financial institution or is unpaid by

you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the Fees.

- 3.6. You acknowledge and agree that Jan Kennedy Massage & Pilates can vary the Fees at any time and that the varied Fees will come into effect following the conclusion of the existing Massage Therapy.

4. **ATTENDANCE AND CANCELLATION OR FAILURE TO ATTEND**

- 4.1. The Client must pre-book his or her attendance at Massage Therapy delivered at the Clinic through Bookings Essential available on the Website.
- 4.2. If you cancel your booking for Massage Therapy up to twenty-four (24) hours prior to the scheduled commencement of the Massage Therapy, you will not be charged for that Massage Therapy.
- 4.3. If you cancel your booking for Massage Therapy less than twenty-four (24) hours prior to the scheduled commencement of the Massage Therapy or fail to attend the scheduled Massage Therapy, Jan Kennedy Massage & Pilates will charge a cancellation fee of **TWENTY FIVE DOLLARS (\$25)**.
- 4.4. If your cancellation of Massage Therapy or failure to attend a Massage Therapy is by reason of extenuating circumstances, Jan Kennedy Massage & Pilates may, at its absolute discretion, refund, or issue a credit for, the Fees, paid for that Massage Therapy.

5. **YOUR OBLIGATIONS AS A CLIENT**

You agree:

- 5.1. that you are solely responsible for protecting the confidentiality of your password and/or email address;
- 5.2. that use of your registration information by any other person is strictly prohibited. You agree to immediately notify Jan Kennedy Massage & Pilates of any unauthorised use of your password or email address or any breach of security of which you have become aware;
- 5.3. that any authorised use of your password and/or email address may result in the immediate cancellation of your Account.

6. **PRIVACY**

- 6.1. Jan Kennedy Massage & Pilates takes your privacy seriously. Any personal information provided through your use of the Website and the supply of Massage Therapy is subject to our Privacy Policy, which is available on the Website.
- 6.2. In order to create a client profile, Jan Kennedy Massage & Pilates provides your personal information to Bookings Essential. Bookings Essential collect, store, use and disclose your personal information in accordance with their Privacy Policy. You acknowledge that you have read, understood and agreed to be bound by their Privacy Policy.

7. **GENERAL CONDITIONS OF ENTRY AND SUPPLY OF MASSAGE THERAPY**

- 7.1. Jan Kennedy Massage & Pilates reserves the right to refuse the Client entry to the Clinic or eject the Client from the Clinic in the event the Client:
 - 7.1.1. is affected by drugs and/or alcohol;
 - 7.1.2. engages in unlawful or unauthorised conduct including, but not limited to, obscene, offensive, disorderly, aggressive or dangerous behaviour that threatens the health and safety of other persons at the Clinic.
- 7.2. Jan Kennedy Massage & Pilates endeavours to supply Massage Therapy in accordance with the Massage Therapy Schedule. However, Massage Therapy is subject to change or cancellation. We will give you notice of any changes or cancellation to Massage Therapy.

- 7.3. Jan Kennedy Massage & Pilates provides open storage for your personal belongings at the Clinic. However, you acknowledge and agree that you use that storage at your own risk. We take no responsibility for the safekeeping of any personal belongings.
- 7.4. If the Client does not collect his or her personal belongings within a period of sixty (60) days after they are found, Jan Kennedy Massage & Pilates reserves the right to donate those personal belongings to charity or dispose of them.
- 7.5. Our massage therapists are not medically qualified to assess your physical and mental health and fitness and cannot provide advice on your ability to participate in Massage Therapy without causing harm to your health and safety. You acknowledge and agree that you participate in Massage Therapy at your own risk.
- 7.6. Our massage therapists are qualified in Massage Therapy. We ask that you pay attention to directions from the massage therapist during a Massage Therapy to reduce the risk of injury, pain or discomfort. If you feel any discomfort or pain during the Massage Therapy, you must immediately inform our massage therapist and we will adjust our practice methods or stop the Massage Therapy.
- 7.7. You must inform us if you have any medical condition that puts your health and safety at risk. If you have a medical condition, we ask that you seek professional advice and approval to participate in the Massage Therapy. You acknowledge and agree that you participate in the Massage Therapy at your own risk.
- 7.8. You acknowledge that our massage therapists need to make physical contact with you in accordance with industry practice methods. These practice methods are designed to maintain a safe Massage Therapy experience for you. You acknowledge and agree that your participation in these practice methods is entirely at your own risk.

8. DUTY TO REIMBURSE FOR DAMAGE OR LOSS

- 8.1. The Client must leave the Clinic supplied by Jan Kennedy Massage & Pilates in a tidy, safe and proper condition to our reasonable satisfaction.
- 8.2. The Client is liable for:
 - 8.2.1. any damage to the Clinic including any equipment or items in the Clinic supplied by Jan Kennedy Massage & Pilates;
 - 8.2.2. replacement of any equipment or items in the Clinic damaged beyond repair or that are missing;caused by the wrongful act or omission of the Client.

9. INTELLECTUAL PROPERTY

- 9.1. All Intellectual Property created by Jan Kennedy Massage & Pilates for Massage Therapy and any related products is the exclusive and sole property of Jan Kennedy Massage & Pilates, together with any derivatives of the Intellectual Property.
- 9.2. You are expressly prohibited from reproducing any materials provided by us to you and understand and agree that such an action would amount to a breach of our Intellectual Property Rights, entitling us to take immediate action against you to enforce our rights.

10. LIMITATION OF LIABILITY

- 10.1. Subject to clause 10.2, Jan Kennedy Massage & Pilates total liability to the Client whether in contract, tort or under statute in connection with the supply of Massage Therapy is limited to the supply of Massage Therapy again or paying the cost of supplying the Massage Therapy again.
- 10.2. Jan Kennedy Massage & Pilates has no liability for the death of the Client or for any personal injury suffered by the Client arising out of related to the supply of Massage Therapy except only where the death of the Client or a significant personal injury is suffered by the Client and in both events caused by the reckless conduct of Jan Kennedy Massage and Pilates;

10.3. In conformity with clause 7.3, Jan Kennedy Massage & Pilates has no liability for the loss of, or damage, however caused to any property of the Client stored at the Clinic .

11. **INDEMNITY**

The Client indemnifies Jan Kennedy Massage & Pilates against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from the Client's use of Massage Therapy.

12. **TERMINATION OF CONTRACT**

12.1. If the Client wants to terminate the Terms, the Client may do so by not renewing their Account.

12.2. Jan Kennedy Massage & Pilates may at any time, terminate the Terms with you if:

12.2.1. you do not renew your Account;

12.2.2. you have breached any provision of the Terms or intend to breach any provision of the Terms;

12.2.3. we are required to do so by law;

12.2.4. the provision of Massage Therapy, in our opinion, is no longer commercially viable.

12.3. Jan Kennedy Massage & Pilates reserves the right to discontinue or cancel your Account at any time and we may suspend or deny, in our sole discretion, your access to the Website or the Clinic and Massage Therapy without notice if you breach any provision of these Terms or any applicable law or if your conduct impacts Jan Kennedy Massage & Pilates name or reputation or violates the rights of those of another party.

13. **REFUND POLICY**

Jan Kennedy Massage & Pilates will only refund the Fees if:

13.1. in our opinion, it is no longer commercially viable to continue to provide Massage Therapy;

13.2. at our absolute discretion, it is reasonable to do so under the circumstances.

14. **WAIVER**

14.1. Any waiver of any provision of these Terms is ineffective unless it is in writing and signed by the party waiving its rights.

14.2. A waiver by either party in respect of a breach of a provision of these Terms by the other party is not a waiver in respect of any other breach of that or any other provision.

14.3. The failure of either party to enforce at any time any of the provisions of these Terms must not be interpreted as a waiver of such provision.

15. **SEVERANCE**

If a court of competent jurisdiction deems any part of these Terms is unenforceable, invalid, illegal, void or voidable, that part will be severed, and the remaining Terms remain in force.

16. **GOVERNING LAW AND JURISDICTION**

These Terms are governed by and construed in accordance with the laws in force in New South Wales and the Commonwealth and the parties agree to submit to the exclusive jurisdiction of the courts of New South Wales.

17. **DEFINITIONS**

In these Terms, unless a contrary intention is apparent:

17.1. **Account** means the completion of a registration form and acceptance as a Client by Jan Kennedy Massage & Pilates;

- 17.2. **Massage Therapy Schedule** means a written schedule identifying the date and time of Therapy published on the Website and also available at the Clinic;
- 17.3. **Fees** means the fees for Massage Therapy published on the Website;
- 17.4. **Client, you, your** means a person who has agreed to the supply of Massage Therapy;
- 17.5. **Intellectual Property Rights** means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, company, business or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of Confidential Information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration, and all digital and electronic rights;
- 17.6. **Jan Kennedy Massage & Pilates, we, our, us** includes any employee, servant, contractor, subcontractor, agent, partner, director or officer of Jan Kennedy Massage & Pilates;
- 17.7. **Massage Therapy** means and includes remedial, therapeutic, sports and pregnancy massage;
- 17.8. **Clinic** means the clinic at the Northmead Sports Centre, of 201 Windsor Road, Northmead NSW 2152;
- 17.9. **Website** means the website owned and operated by Jan Kennedy Massage & Pilates and located at <https://jkmp.com.au>.