

WEBSITE TERMS OF SERVICE - PILATES

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 Services 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 a Class or Class Package enabling delivery of the Services.
- 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 a Class or Class Package to enable delivery of the Services for the Services Period.

3. FEES AND PAYMENT

- 3.1. The Client agrees to pay the Fees for the selected Services.
- 3.2. In paying the Fees, you acknowledge and agree that it is your responsibility to ensure that the Services are suitable for your use.
- 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 Services Period.

4. CLASS ATTENDANCE AND CANCELLATION OR FAILURE TO ATTEND

- 4.1. The Client must pre-book his or her attendance at a Class delivered at the Rooms or online through Bookings Essential available on the Website.
- 4.2. If you cancel your booking for a Class up to twenty-four (24) hours prior to the scheduled commencement of the Class, you will not be charged for that Class.
- 4.3. If you cancel your booking for a Class less than twenty-four (24) hours prior to the scheduled commencement of the Class or fail to attend the scheduled Class, Jan Kennedy Massage & Pilates is not liable for any refund of, or credit for, the Fees paid for that Class or compensation of any kind.
- 4.4. If your cancellation of a Class or failure to attend a Class 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 Class.

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 for delivery of the Services 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 DELIVERY OF SERVICES

- 7.1. Jan Kennedy Massage & Pilates reserves the right to refuse the Client entry to the Rooms or to participate online or remove the Client from the Rooms or online 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 Rooms.
- 7.2. Jan Kennedy Massage & Pilates endeavours to deliver their Services in accordance with the Class Schedule. However, a Class is subject to change or cancellation. We will give you notice of any changes or cancellation to a Class.
- 7.3. Jan Kennedy Massage & Pilates provides open storage for your personal belongings at the Rooms. 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. If you tamper with, steal, or cause loss or damage to the personal belongings of another person at the Rooms, you will be permanently banned from entering the Rooms and accessing the Services.
- 7.6. You are required to wear appropriate attire for participation in a Class at our Rooms or online. We reserve the right to refuse you entry to a Class or participate online if your attire is inappropriate or contains offensive prints or design.
- 7.7. Our Pilates instructors are not medically qualified to assess your physical and mental health and fitness and cannot provide advice on your ability to participate in a Class without causing harm to your health and safety. You acknowledge and agree that you participate in any form of exercise and movement in a Class at your own risk.
- 7.8. Our instructors are qualified Pilates instructors. We ask that you pay attention to directions from the Pilates instructor during a Class to reduce the risk of injury, pain or discomfort.
- 7.9. 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 a Class. You acknowledge and agree that you participate in a Class at your own risk.
- 7.10. You acknowledge that our Pilates instructors may make physical contact with you to assist with the use of Props or to correct your body position and movement during a Class in accordance with industry practice methods. These practice methods are designed to maintain a safe Pilates experience for you, to enhance your learning of Pilates and grow your capacity to practice Pilates. You acknowledge and agree that your participation in these practice methods is entirely at your own risk.
- 7.11. You are required to wear socks and use a towel in a Class in order to maintain appropriate standards of hygiene.
- 7.12. You must only use Props in accordance with instructions given as to their use and for no other purpose.
- 7.13. You must not damage or remove any Props supplied by Jan Kennedy Massage & Pilates from the Rooms.

8. DUTY TO REIMBURSE FOR DAMAGE OR LOSS

- 8.1. The Client must leave the Rooms and Props 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 Rooms or Props supplied by Jan Kennedy Massage & Pilates;
 - 8.2.2. replacement of any Props 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 the Services 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 Services is limited to the supply of Services again or paying the cost of supplying the Services 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 Services

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 Rooms while the Client attends a Class.

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 the Services.

12. **TERMINATION OF CONTRACT**

- 12.1. If the Client wants to terminate the Terms, the Client may do so by not renewing their Account prior to the end of the Services Period.
- 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 at the end of the Services Period;
 - 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 the Services, 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 Rooms and Services 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 or the portion of Fees that remains unused if:

- 13.1. in our opinion, it is no longer commercially viable to continue to provide the Services;
- 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. **Class or Classes** means a class for delivery of the Services at the Rooms or online;

- 17.3. **Class Package** means a package of Classes for delivery of the Services at the Rooms or online;
- 17.4. **Class Schedule** means a written schedule identifying the date and time of Classes published on the Website and also available at the Rooms;
- 17.5. **Fees** means the fees for the Class or Class Package published on the Website;
- 17.6. **Client, you, your** means a person who has agreed to the supply of Services;
- 17.7. **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;
- 17.8. **Jan Kennedy Massage & Pilates, we, our, us** includes any employee, servant, contractor, subcontractor, agent, partner, director or officer of Jan Kennedy Massage & Pilates;
- 17.9. **Props** means a foam roller, weights, ChiBall or any other item supplied by Jan Kennedy Massage & Pilates for use in a Class;
- 17.10. **Services** means matwork pilates and fitness instruction for physical exercise and movement delivered at the Rooms or online;
- 17.11. **Services Period** means the duration of the Services set out on the Website;
- 17.12. **Rooms** means the premises occupied by Jan Kennedy Massage & Pilates in New South Wales for delivery of the Services.
- 17.13. **Website** means the website owned and operated by Jan Kennedy Massage & Pilates and located at <https://jkmp.com.au>.