

Balance Minder – Terms and Conditions

1 Introduction

- 1.1 This agreement is between you and B.C. Simpson & L. Simpson trading as Balance Minder ABN 51 602 019 194 (**Balance Minder**) to provide to you deeply grounded tai chi exercise video sessions (**Sessions**), and other tools and resources designed to help you improve physical, mental and social wellbeing (**Goods and Services**) to you (**this Agreement**).
- 1.2 When you accept these Terms and Conditions, you will become a client (referred to as a "**Client**" or "**you**"). The terms of this Agreement apply to the Goods and Services provided by Balance Minder to you.

2 Duration of packages

- 2.1 You acknowledge and agree that if you have purchased:
- (a) the **Off your feet** or **On your feet package**, you will:
 - (i) have access to two Sessions per week for one month from entering into this Agreement; and
 - (ii) automatically subscribed to the **Follow-on package**;
 - (b) the **Follow-on package**, you have access to one Session per week; and
 - (c) the **professional development training course** you have access to online resources, including but not limited to documents and powerpoint presentations.
- 2.2 Balance Minder is not obliged to provide Goods and Services where the duration of the package under **clause 2.1** has expired, you have not paid Balance Minder's fees, or you are otherwise in breach of your obligations under this Agreement.

3 Payment of fees

- 3.1 You agree that all packages provided by Balance Minder must be paid in advance for at the time of entering into this Agreement.
- 3.2 Balance Minder will be under no obligation to provide the Goods and Services unless they have been paid for in full and in advance.
- 3.3 By nominating a credit or debit account, you are authorising Balance Minder to deduct from that account all fees and other charges for which you may be responsible under this Agreement. Accordingly, it is essential that you keep your account details up to date.

- 3.4 You are responsible for making sure that there is enough money in your nominated account on the usual payment day or the next working day if that falls on a day when banks do not process payments.
- 3.5 Any bank fees charged to Balance Minder because of a rejection when Balance Minder attempts to collect payments from you may be charged directly to you by Balance Minder or by its appointed direct debit provider (**Direct Debit Provider**).
- 3.6 If a payment remains outstanding, you agree that, unless Balance Minder is in breach of its obligations under this Agreement, Balance Minder (or its Direct Debit Provider) may continue to debit the nominated account for the total amount due without notice to you.
- 3.7 If you choose to pay fees by direct debit, then this will be through the Direct Debit Provider. The Direct Debit Provider may be Balance Minder (if it is authorised) or a third party provider who is not a party to this Agreement and whose only role is to provide direct debit services.
- 3.8 Balance Minder will provide you with a copy of the terms and conditions that apply to the direct debit services. Those terms and conditions are entirely separate to this Agreement and you may have rights and obligations under those terms and conditions. As such, the Direct Debit Provider acting in its capacity as such has no liability to you in connection with your involvement in exercise activities under this Agreement.

4 Fees non-refundable

You agree that fees paid to Balance Minder are **non-refundable** (whether in whole or in part) in any circumstances and including where:

- (a) you fail to provide notice of cancellation in accordance with this Agreement;
- (b) you fail to use all the exercise videos in a package within the specified period of the package;
- (c) you behave in a way that is seriously risky or inappropriate; or
- (d) you cancel this Agreement.

5 Cancellation by you

- 5.1 You agree to provide at least five Business Days' notice of cancellation of any package (**cancellation notice period**). Cancellation of any package by other methods such as calling, emailing or text messaging will not be accepted unless permitted by us in writing.

6 Temporary medical conditions which prevent attending any Sessions

If you are diagnosed with a medical condition or injury and have been advised by your medical practitioner to discontinue participating in these Sessions or other forms of exercise on a temporary basis then you may ask Balance Minder to freeze your package for up to two months upon receipt by Balance Minder of a medical certificate confirming your condition.

7 Pre-exercise screening for the Sessions

- 7.1 You agree to take part in a pre-exercise screening process as directed by Balance Minder (**Screening Process**) which aims to identify individuals who may be at a higher risk of an adverse event during physical activity. This is in the form of an Exercise Readiness Questionnaire and/or Fitness Australia Adult Pre-Exercise Screening Tool.
- 7.2 You agree to provide the information required for the Screening Process fully and accurately.
- 7.3 You acknowledge and agree that the Screening Process is not designed to provide health advice, and is not a substitute for advice from an appropriately qualified health professional.
- 7.4 Balance Minder provides no warranty or representation that you will undertake Sessions safely and without risk after completion of the Screening Process.
- 7.5 If you are in any doubt about your risks of undertaking Sessions then you must consult a qualified medical or other appropriate health practitioner prior to taking part in Sessions.
- 7.6 You agree to disclose fully and promptly to Balance Minder any risks to health and safety which you or your medical or health practitioner identifies after the Screening Process has been completed.

8 Amendment of terms, additional services purchased and renewal of packages

- 8.1 You agree that Balance Minder may amend these terms and conditions at any time by 30 days' notice in writing to you, and will apply to Sessions and packages purchased after the date the amendment becomes effective.
- 8.2 You agree that these terms and conditions (or amended terms and conditions which have been notified to you in writing) will apply to any additional services purchased or renewed packages booked in the future.
- 8.3 The written notice may be given by email, publication or on our website.

- 8.4 If you do not agree with the amendment and the amendment is not necessary to comply with a law or any direction of a competent authority, you can notify us and cancel this Agreement in accordance with **clause 5.1**. Any unused fees will be refunded.

9 Exclusion of liability

- 9.1 You understand and agree that your participation in activities, Sessions and services offered by Balance Minder and the activities or methods used during the Sessions and exercise equipment are potentially hazardous activities. It is your responsibility not to use any equipment or undertake any exercise that you suspect may adversely affect your health.
- 9.2 The Australian Consumer Law (**ACL**) contained in the *Competition and Consumer Act 2010* (Cth) (**CCA**) provides certain guarantees (**statutory guarantees**) which generally require that services supplied to you:
 - (a) are rendered with due care and skill;
 - (b) are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier and might reasonably be expected to achieve any result you have made known to the supplier; and
 - (c) are supplied within a reasonable time (when no time is set).
- 9.3 However, Balance Minder is entitled under the CCA to ask you to accept limitations on these statutory guarantees. Accordingly, to the extent permitted by section 139A of the CCA, you agree that Balance Minder excludes all liability to you for death or injury resulting from a failure by Balance Minder to comply with any statutory guarantee.
- 9.4 In **clause 9.3**, "injury" means:
 - (a) physical or mental injury (including the aggravation, acceleration or recurrence of such an injury);
 - (b) the contraction, aggravation or acceleration of a disease; or
 - (c) the coming into existence, the aggravation, acceleration or recurrence of any condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to you that is or may be harmful or disadvantageous to you or the community, or that may result in harm or disadvantage to you or the community.
- 9.5 This exclusion of liability does not apply if you have suffered any significant personal injury that is caused by our reckless conduct (within the meaning given to those terms by the CCA).

9.6 If you are participating in these Sessions and any other services provided by Balance Minder in the **State of Victoria**, please refer to the **attached ACL Exclusion Notice** which contains complementary information about the statutory guarantees and the limitations Balance Minder is allowed to place on you. These are without prejudice to the limitations contained in this **clause 9**.

9.7 If you are participating in these Sessions and any other services provided by Balance Minder in the **State of South Australia**, you must sign and return the **attached ACL Exclusion Notice** before you can participate in these Sessions.

9.8 Nothing in this Agreement excludes, restricts or modifies any term, condition, warranty, guarantee, right or remedy (including under a statutory guarantee) which cannot lawfully be excluded, restricted or modified.

9.9 Otherwise, and except as expressly included in this Agreement, all implied terms, conditions, warranties, rights or other additional obligations that can be lawfully excluded are excluded from this Agreement. In particular, but subject to the preceding paragraph, we are not liable for:

(a) negligence; or

(b) breach of terms implied that services will be provided with reasonable care and skill,

at common law that in either case results in your death or injury (as defined in **clause 9.4**) in connection with or under this Agreement, but to avoid doubt Balance Minder does not exclude liability for its reckless conduct.

10 Acknowledgements by you

10.1 You confirm that you have disclosed any medical or other conditions, illnesses, injuries, characteristics or health or medical concerns which might influence your capacity to take part in the Sessions or other services offered by Balance Minder.

10.2 You acknowledge that the results of any program cannot be guaranteed.

11 Intellectual property

11.1 Any marketing, educational or other materials, including the program designed by us and any variations to that program that is made available to you will at all times remain the property of Balance Minder and is subject to copyright laws.

11.2 You undertake to use these materials only for your own personal development and not to copy, publish or

reproduce any such materials without prior consent of Balance Minder.

12 Your privacy

12.1 You are responsible for telling Balance Minder promptly if you change your address, phone number, email, bank account, credit card information for payment or if there is a change to any other personal information relevant to Balance Minder. This includes any matters that affect the health or safety of you or others.

12.2 Balance Minder will keep your personal information strictly private and confidential.

12.3 You acknowledge and agree that you have read and understood Balance Minder's Privacy Policy and that Balance Minder may collect, use and disclose your personal information in accordance with Balance Minder's Privacy Policy.

13 Termination

13.1 You may cancel a package and terminate this Agreement by providing notice to Balance Minder in accordance with **clause 5.1**.

13.2 In the event of termination under **clause 13.1**, no refund of fees will be payable to you.

14 Minors

You warrant that you are 18 years of age or above. You acknowledge that if you are under 18 years of age you are not permitted to enter into this Agreement unless permitted by Balance Minder in writing.

15 No waiver

A failure, delay or indulgence on the part of Balance Minder in exercising any powers or rights conferred upon it under this Agreement does not operate as a waiver of such power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement. A waiver of a breach does not operate as a waiver of any other breach.

16 Assignment

16.1 You cannot assign or otherwise transfer the benefit of this Agreement and any Session, package or service offered by Balance Minder without the prior written consent of Balance Minder.

16.2 Balance Minder may transfer all or part of this Agreement to another studio or third party without notice to you but in doing so Balance Minder will make sure that the new provider agrees to honour the terms in this Agreement.

17 Severability

If any term or provision of this Agreement is held to be illegal, void or unenforceable (in whole or in part) in any jurisdiction, such term or provision or part of such term or provision will be deemed not to form part of this Agreement in that jurisdiction, but the validity and enforceability of the remainder of this Agreement in that jurisdiction and the validity and enforceability of that

term or provision in any other jurisdiction will not be affected.

18 Governing Law

This Agreement is governed by and must be construed according to the law applying in the State of Queensland, Australia.

ACL Exclusion Notice

WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that recreational services it supplies to you –

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the *Australian Consumer Law and Fair Trading Act 2012 (ACL)*, the supplier is entitled to ask you to agree that these statutory guarantees do not apply to you. If you sign this form, you will be agreeing that your rights to sue the supplier under the ACL if you are killed or injured because the services provided were not in accordance with these guarantees, are excluded, restricted or modified in the way set out in this form.

NOTE: The change to your rights as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's part. Gross negligence, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the *Australian Consumer Law and Fair Trading Regulations 2012* and section 22(3)(b) of the ACL.