

# The 'Fine Print'

**1. PARTIES:** The undersigned ("buyer", "member" or "you") has purchased a membership from EveryDay Fitness and Training (EDFT) and by signing this agreement, agrees to all of the terms. You also agree to follow all written or posted rules and regulations now in effect and to become effective at any future date. You agree to pay all sums due for membership plans and other services purchased. You understand and agree the EDFT has the right to revoke your membership and discontinue your privilege of using any EDFT or affiliated facility if you fail to follow the rules and regulations, display improper conduct or default on any obligation to EDFT. In such an event you will remain liable for any unpaid balance due to EDFT. Your membership does not give you any rights in EDFT, its management, property or operations. All memberships require final approval from EDFT. It is your responsibility to notify EDFT of any changes to your address or phone number.

**2. WAIVER OF LIABILITY AND RELEASE: Nature of the Activity:** Being physically fit and in good condition produces many benefits for the client – including pleasure, more energy, greater enjoyment of life, and many health benefits. Physical conditioning and training, however, by their very nature, carry with them certain inherent risks that cannot be eliminated regardless of the care taken to avoid injuries. Every Day Fitness & Training (hereafter referred to as EDFT), its exercise physiologists, its personal trainers, and other employees provide an opportunity for clients to improve their strength and cardiovascular fitness in a pleasant environment using a variety of equipment. Members may elect to take advantage of a personalized program that is designed specifically for each individual by a trained exercise physiologist and individually monitored by a trained personal trainer. Regardless of the reasonable care taken by EDFT in providing appropriate equipment and trained personnel, however, accidents and injuries can occur through no fault of the client and no fault of EDFT, its staff, or agents. EDFT feels that the benefits of physical conditioning and training far outweigh the risks involved, but feels it is important for you to know both the benefits and the risks so that you can make an informed decision regarding your participation in such activities.

**Strength-building activities** include exercises on apparatus to develop leg strength, arm strength, abdominal strength and strength of various muscle groups. Strength-building activities place additional and unusual demands upon the body since they involve strenuous maximal, or near-maximal, exertions of force using various muscle groups. **Cardiovascular activities** also place additional demands upon the body since they generally involve prolonged moderate to vigorous exercise on running tracks, exercise bikes, treadmills, steppers, and other types of cardiovascular equipment. All activities utilized for developing cardiovascular fitness involve sustained physical activity that places significant stress on the cardiovascular system. Additionally, all types of **exercise equipment** carry with them risks due to user misuse as well as those of equipment failure. Likewise, **fitness testing** carries with it certain inherent risks due to the strenuous, all-out effort required. Injuries can be a result of any number of inherent risks of conditioning and training, including such factors as excess stress during training or testing activities, inadvertent user inattention, unexpected equipment failure, inadvertent instructor error, and misjudgments of client ability by the client or instructor. **If you have questions regarding the benefits or risks of these, or any other activities available at EDFT, please consult with any of our staff.**

**Recreational and Competitive sports activities** include running, quick movements, strenuous exertion, and the potential for stress and fatigue. Normal participation will involve slips, falls, and collisions with other players. A few of the risks include stress on the cardiovascular system possibly resulting in heart attack or stroke, possible muscle, joint, and ligament injuries ranging from minor to serious, and head injuries (including eyes).

**Assumption of Risk:** I understand that the inherent risks of physical conditioning, training (including strength-building and cardiovascular activities), and recreational/competitive sports activities vary with the activity, the muscle group involved, and with the exercise equipment used. Common minor risks include minor muscle strains, muscle sprains, muscular fatigue, contusions, and post-exercise soreness. More serious, but less frequent, risks include joint injuries, torn muscles, heat-related illnesses, eye injuries, and back injuries. There is also the more remote risks of a catastrophic incident (e.g., stroke, heart attack, paralysis, or death).

I have read the previous paragraphs and **I know and understand the nature of the activities** at EDFT, **I understand the demands** of those activities relative to my physical condition and skill level, and **I appreciate the types of injuries** that may occur as a result of activities made possible at EDFT and their potential impact on my well-being and lifestyle. **I hereby assert that my participation is voluntary and that I knowingly assume all such risks.**

## **Acknowledgements, Assertions, and Agreements:**

- I acknowledge that EDFT recommends and encourages each client to get medical clearance from his/her personal physician prior to participation in physical conditioning and training.

- I assert that I possess a sufficient level of physical fitness to enable me to safely participate in the fitness program at EDFT.
- I authorize EDFT to administer emergency first aid, CPR, and use an AED when deemed necessary by EDFT
- I authorize EDFT to secure emergency medical care or transportation (i.e., EMS) when deemed necessary by EDFT.
- I authorize EDFT to share my medical history with emergency medical personnel when deemed necessary by EDFT.
- I agree to assume all costs of emergency medical care and transportation.
  - I give consent to certain physical touching that may be necessary to ensure proper technique and body alignment.
- I acknowledge that it is my duty to inform my personal trainer or the facility staff and cease exercise immediately if I should feel any unusual discomfort (e.g., faintness, shortness of breath, high anxiety, chest pains) whether during testing, strength training, cardiovascular training, or any other activity.
- I acknowledge that the provider will maintain the facilities and conduct the activity in good faith and may find it necessary to terminate my participation in an activity when he/she judges me to be incapable of safely meeting the rigors of the activity. I accept your right to take such actions for the safety of myself and/or other clients.

**Waiver of Liability for Ordinary Negligence:** In consideration of permission to use the property, facilities, and services of EDFT, today and on all future dates, I (on behalf of myself, my heirs, personal representatives, and assigns) **do hereby release, waive, and discharge EDFT**, its owner, directors, officers, employees, volunteers, independent contractors, and agents from liability **from any and all claims arising from the ordinary negligence** of EDFT, its employees, or agents.

This agreement applies to 1) personal injury (including death) from incidents or illnesses arising from participation in EDFT activities (including, but not limited to, organized training activities, fitness tests, classes, observation, individual use of facilities or equipment, and all premises including the associated sidewalks and parking lots); and to 2) any and all claims resulting from the damage to, loss of, or theft of property.

**Indemnification: I agree to hold harmless, defend, and indemnify EDFT** (that is, defend and pay any judgment and costs, including investigation costs and attorney's fees) from any and all claims of mine, my spouse, personal representatives, or assigns arising from my injury or loss due to my participation at EDFT.

**I further agree to hold harmless, defend, and indemnify EDFT** (that is, defend and pay any judgment and costs, including investigation costs and attorney's fees) against any and all claims of co-participants, rescuers, and others arising from my conduct in the course of my participation at EDFT.

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**Covenant Not To Sue: I covenant not to sue EDFT**, its owner, directors, officers, employees, volunteers, independent contractors, and agents for any present or future claim I might have. This includes claims resulting from 1) the inherent risks of physical conditioning and training and 2) the ordinary negligence of EDFT, its employees, and its agents.

**Mediation and Arbitration:** I agree to engage in good faith efforts to **mediate** any dispute that might arise. Any agreement reached will be formalized by a written contractual agreement at that time. Should the issue not be resolved by mediation, I agree that all disputes, controversies, or claims arising out of or relating to this contract shall be submitted to binding arbitration in accordance with the applicable rules of the American Arbitration Association then in effect.

**Severability and Venue:** I further expressly agree that the foregoing Assumption of Risk, Waiver of Liability, and Indemnification Agreement is intended to be as broad and inclusive as is permitted by the laws of the State of California and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect. Likewise, I understand that if legal action is brought, the appropriate trial court for the State of California has the sole and exclusive jurisdiction and that only the substantive laws of the State of California shall apply.

**3. REPRESENTATIONS:** You acknowledge that neither EDFT nor anyone else has made any representation or promises upon which you relied that are not stated in this agreement. Your membership allows you to use only the EDFT facilities, equipment and services as shown and limited to on the front page of this agreement. EDFT reserves the right to charge extra fees and/or dues for your use of any facility or services not included. This document contains the entire agreement between you and EDFT and replaces any previous

or other written agreement. If EDFT does not enforce any rights in this agreement for any reason, EDFT does not waive its right to enforce it later. EDFT is not obligated to repurchase any memberships. EDFT reserves the right to sell membership at different rates and terms than yours. If a court declares any part of this agreement invalid, it will not invalidate the remaining parts, which continue unaffected. EDFT reserves the right to change prices of any fees and/or dues for new and/or existing members.

**4. LIABILITY FOR PERSONAL PROPERTY:** EDFT is not responsible for any personal property damaged, lost or stolen in or around EDFT's premises, including that which arises out of EDFT's negligence. If you or your guest cause any damage to EDFT's property, you are liable to EDFT for the cost of repair or replacement.

**5. REGISTRATION/MEMBERSHIP ID CARDS:** All members must check in with the front desk staff and present their membership card to gain admission to the club. EDFT requires each member to have a photo taken for your membership. Upon request, you must show a photo ID to the front desk staff. Once you have received your membership card, you will be required to present it to the front desk staff each time you enter an EDFT facility. There is a \$5 administrative charge for replacement of membership cards. If you do not have your membership card, EDFT reserves the right to require you to replace it in order to gain admission to the club. Your membership is not transferable. You may not let anyone use your membership card or your membership will be revoked according to section 1 of this agreement. If for any reason, at any time, you do not have your membership card with you, you will be denied access to the facility.

**6. HOURS OF OPERATION/AVAILABILITY:** EDFT may change, add or delete operation hours, classes or equipment without any effect on this agreement. If a majority of the EDFT facilities or classes are unavailable for more than 30 days for any reason except acts of nature, upon written request and approval, EDFT will extend your membership for the same period the facilities were unavailable and for which you have paid dues but were unable to use.

**7. OBLIGATION TO PAY:** You agree to pay the dues and fees on page one of this agreement. Whether or not you use the facilities, you still must pay your monthly dues. If you are under 18 years of age, an adult is required to sign the guarantee of payment. Membership must begin within six months of execution of this membership agreement. Only one family member can be responsible to pay all dues if there are multiple parties to this agreement. A \$15 administrative charge will be levied to any account for returned payments or rejected EFTs. (Non usage or non-payment of dues are not methods of termination of membership). EDFT may draft for any unpaid balances, including return fees, late fees and monthly dues until the membership is brought current. You are responsible for notifying your bank and EDFT of any error that appears on your bank or credit card statement in a timely manner. EDFT must receive written proof that EDFT was in error for any electronic funds transfer (EFT) which you claim should not have been deducted in order for you to receive reimbursement. You are in full control of your payment and if you decide to discontinue your current method of payment you must notify EDFT a minimum of 10 days prior to your next membership payment due date to allow EDFT sufficient time for processing. You are responsible for your monthly payment, and EDFT has the right to apply a \$10 statement fee for any dues transaction that does not debit electronically.

**Payment Default:** Should you default on monthly installments with any membership, the entire past due balance owed will become due and payable upon demand. Should you default on your payment obligation, you agree to pay all cost of late fees and collections, including court costs and attorney's fees.

A membership that is 'Paid In Full' is non-refundable. If there are special circumstances regarding the reason for cancelling a 'Paid In Full' Membership, a 50% refund may be paid to the member for the remaining balance of the membership at the discretion of management.

**8. ANNUAL MAINTENANCE FEE:** Each year there will be maintenance fees in addition to your monthly dues. These fees will go towards new equipment, facility improvements and general maintenance. EDFT reserves the right to select the month the fee will be charged. If the month(s) are changed to anything other than what is stated on the front page you will be notified at least 30 days in advance through email.

**9. CANCELLATION POLICIES/PROCEDURES:** Process and enrollment fees are non-refundable unless specifically stated otherwise below. To cancel all agreements below, a cancellation form provided by EDFT must be signed and dated by you and delivered to EDFT, which states that you, the buyer, are canceling this agreement. Any unpaid balance must be paid before your membership is cancelled.

If a contract for membership and services requires payment of (see below), inclusive, including enrollment, processing fees or initial membership fees, you shall have the right to cancel within (see below) days after the contract is executed, excluding weekends and holidays.

- a. \$1,500-\$2,000 – 20 days to cancel
- b. \$2,001-\$2,500 – 30 days to cancel
- c. \$2,501 or more- 45 days to cancel

*Above cancellations are subject to a proration of enrollment and processing fees*

**Early Termination Fee:** If you cancel your agreement early you will be required to pay the remaining balance of the contract.

**10. FREEZE MEMBERSHIP:** Your entire membership can be temporarily frozen for a fee for a minimum of one month. Frozen memberships are considered inactive and you may not use the EDFT facilities during the freeze period. A 10 day notice must be given to EDFT by completing and signing the appropriate EDFT form, in order to freeze your membership. You must be in good standing and current on your monthly dues. At the end of the designated freeze period, the membership will become fully active and you will be responsible for making your normal monthly payments per your original agreed upon method of payment.

**11. CANCELLATION TERMS:** You, the buyer, may cancel this agreement at any time prior to midnight of the fifth business day of EDFT after the date of this agreement, excluding weekends and holidays. To cancel this agreement a cancellation form provided by EDFT must be signed and dated by you and delivered to EDFT, which states that you, the buyer, are canceling this agreement. For agreements of \$1,500 or more, please refer to Section 9 Cancellation Policies and Procedures.