

SURGE MEMBERSHIP TERMS & CONDITIONS 2020



1. INTRODUCTION

- 1.1 These membership terms and conditions (“Membership Terms”) set out the agreement between Surge Fitness Limited, trading as Surge (“we”, “us” or “our”), and any person signed up to receive the Services performed by us (“you”, “your” or “Member”).
- 1.2 By signing up for a Membership, you agree to be bound by these Membership Terms, the General Terms and our Privacy Policy (“Membership Agreement”) for the Membership Period. If you do not agree to be bound by the Membership Agreement, you should not proceed in signing up for a Membership with us. If there is a conflict between the Membership Terms and the General Terms, the Membership Terms will prevail.
- 1.3 While all of these terms are important, you should pay particular attention to:
 - 1.3.1 how your Membership will automatically renew unless terminated in accordance with Clauses 18 or 19;
 - 1.3.2 the conditions relevant to your Membership as set out in Clauses 7 and 8;
 - 1.3.3 how we will charge you for the Membership Fees and any increases in your Membership Fees as set out in Clauses 10 and 12;
 - 1.3.4 how you can Pause your contract as set out in Clause 11;
 - 1.3.5 our liability to you and your liability to us as set out in Clauses 15 and 16; and
 - 1.3.6 your right to cancel the Membership Agreement within fourteen (14) days from the day after you sign up for a Membership in accordance with Clause 17.

2. DEFINITIONS

- 2.1 The following words and phrases have the meanings as shown below:

Cancellation Period	has the meaning given in Clause 17.1;
EMS Training Session Cancellation Notice Period	is as set out in your Membership Confirmation Email, and is the period of notice you are required to provide to us if you want to cancel an EMS Training Session pursuant to Clause 8.2;
Event Outside of our Control	has the meaning given in Clause 18.1.6;
General Terms	means the Surge General Terms and Conditions available here https://www.surge.co.uk/general-terms-conditions , and as updated from time to time;
Initial Membership Period	means the minimum duration of your Membership, and as set out in your Membership Confirmation Email;
Member	has the meaning given in Clause 1.1;
Membership	means your right to receive the Services at a Surge Studio in consideration for payment of the Membership Fees, in accordance with the Membership Agreement;

Membership Agreement	has the meaning given in Clause 1.2;
Membership Confirmation Email	means the email sent by us to you to confirm your Membership and sets out some of the key terms and conditions that apply to your Membership;
Membership Fees	are as set out in your Membership Confirmation Email and/or Price List and are the fees payable by you for the Services. In the event of a conflict between the Membership Fees in your Membership Confirmation Email and the Membership Fees in the Price List, the Membership Fees in your Membership Confirmation Email will prevail;
Membership Start Date	is as set out in your Membership Confirmation Email, and is the date we accept your online Membership application;
Membership Period	means the Initial Membership Period and any and all Renewal Membership Period(s) (as applicable);
Membership Terms	has the meaning given in Clause 1.1;
Notice Period	means the amount of notice that must be given by you to terminate this Membership Agreement pursuant to Clause 19.2, and as set out in your Membership Confirmation Email;
Price List	means a list of prices for the Services and any related services offered by us as displayed on our Website, and as updated from time to time;
Renewal Membership Period	means the duration that your Membership will automatically renew in accordance with Clause 5, and as set out in your Membership Confirmation Email;
Services	means the services provided by us to you at the Surge Studio, as more particularly described in Clause 6;
Surge Credit Extension Term	is as set out in your Membership Confirmation Email, and is the period of time during which you may use your remaining Surge Credits pursuant to Clause 4.2, and commences on the day after your Membership Period ends;
Surge Credit	means a credit that may be redeemed for an EMS Training Session and is displayed on your online account which is accessed via http://www.surge.co.uk/ ;
Surge Credit Threshold	means the minimum number of Surge Credits available on your account that will trigger the Membership Agreement to automatically renew for the Renewal Membership Period, as set out in your Membership Confirmation Email;
Pause or Paused	means a temporary pause of your Membership, whereby we stop charging you Membership Fees and your right to use the Services ceases until such time as we restart your Membership;
We and our	have the meaning given in Clause 1.1; and
You and your	have the meaning given in Clause 1.1.

- 2.2 The following words and phrases are defined in the General Terms: Credit or Debit Card, Contraindications, EMS Training Device, EMS Training Session, Opening Hours, Privacy Policy, Surge Studio, Surge Studio Rules, Surge Trainer, Surge Training Gear, and Website.

3. PRESALES FOR NEW SURGE STUDIOS

- 3.1 We may offer Memberships via our Website in anticipation of opening a new Surge Studio.
- 3.2 If you sign up to one of our Memberships in connection with a new Surge Studio, you will receive a Membership Confirmation Email from us stating your Membership Start Date, which will be delayed until the opening of the new Surge Studio. We will notify you as soon as we are able to confirm the date the new Surge Studio will open.

4. MEMBERSHIP PERIOD

- 4.1 The Membership Agreement applies from your Membership Start Date and shall continue for the Initial Membership Period, unless terminated earlier in accordance with Clause 18.
- 4.2 If your Membership is Paused in accordance with these Membership Terms, the Initial Membership Period or Renewal Membership Period (as applicable) will be extended by the period of time for which your Membership was Paused.

5. MEMBERSHIP RENEWAL

- 5.1 Following the end of the Initial Membership Period, the Membership Agreement will automatically renew for the Renewal Membership Period (unless your Membership Confirmation Email states that your Membership Agreement will not automatically renew), and will continue to renew on each anniversary of the start of the first Renewal Membership Period, unless or until terminated by you or us in accordance with Clauses 18 or 19.
- 5.2 The Membership Agreement will automatically renew for the Renewal Membership Period if the number of Surge Credits remaining on your account falls below the Surge Credit Threshold.

6. MEMBERSHIP SERVICES

- 6.1 In consideration of you paying the Membership Fees, you will receive from us:
- 6.1.1 a membership card;
 - 6.1.2 Surge Credits in accordance with Clause 13;
 - 6.1.3 Surge Training Gear for use during your EMS Training Sessions, subject to Clause 5 of the General Terms; and
 - 6.1.4 access to and use of the training facilities at a Surge Studio during the Opening Hours, which includes access to exercise equipment, and if present, showers and lockers.
- 6.2 You acknowledge that time shall not be of the essence for our performance of the Services under the Membership Agreement, and we shall perform the Services within a reasonable time.

7. MEMBERSHIP CONDITIONS

- 7.1 You must present your membership card each time you visit a Surge Studio, and you acknowledge that failure to do so will prevent you from attending an EMS Training Session.

- 7.2 You acknowledge that your membership card contains information about your training levels that is essential for your use of the Surge Training Gear, and that without this information, our Surge Trainers will be unable to program your EMS Training Device and as a result, you will be unable to participate in the EMS Training Session.
- 7.3 If you are unable to present your membership card prior to an EMS Training Session for any reason, we will cancel your place in the EMS Training Session and you will be entitled to re-book the next available EMS Training Session subject to Clause 7.4.
- 7.4 If your card is lost, stolen or damaged, you must notify us in accordance with Clause 9.6 and must wait until you have received a replacement membership card and renewed the settings of your training levels with one of our Surge Trainers before re-booking your next EMS Training Session. We will charge you a membership card replacement fee pursuant to Clause 9.6 below.
- 7.5 Your Membership is non-transferrable and is for your own personal use only. We consider this a major breach of the Membership Agreement, and we may terminate the Membership Agreement pursuant to Clause 18.1 if you breach this term.
- 7.6 You agree that the Services are for your personal and non-commercial use only. As a condition of using the Services, you agree not to use the Services for any commercial or non-personal purpose.

8. TRAINING CONDITIONS SPECIFIC TO YOUR MEMBERSHIP

- 8.1 You must not use the EMS Training Device more than once within any consecutive period of ninety-six (96) hours during the Membership Period.
- 8.2 If you need to cancel an EMS Training Session, you must notify us no later than the EMS Training Session Cancellation Notice Period before the start of the EMS Training Session, unless we inform you otherwise in writing or re-book an alternative EMS Training Session for you (at a time agreed between you and us), you will be unable to reuse your Surge Credit to book an alternative the EMS Training Session, and the Surge Credit you used to book the EMS Training Session will expire. If you have provided us with notice pursuant to the EMS Training Session Cancellation Notice Period, you are entitled to use your Surge Credit (for the EMS Training Session you were unable to attend) to re-book the next available EMS Training Session.

9. USE OF YOUR MEMBERSHIP CARD AND YOUR ONLINE ACCOUNT

- 9.1 You acknowledge that your membership card shall remain our property at all times, and the Membership Agreement does not grant you any right of ownership of your membership card.
- 9.2 You must protect your membership card and your online account (including your login name and password) from unauthorised access and/or use.
- 9.3 You must immediately notify us if you suspect or become aware of any unauthorised use of your login name or password or any other breach of our security by sending an email to us at info@surge.co.uk and giving details of the unauthorised use or other breach.
- 9.4 We reserve the right to disable your login name and password at any time, if in our reasonable opinion you have failed to comply with any of the terms of the Membership Agreement.
- 9.5 You must not lend your membership card to another individual, and if you do, we may exercise our right to suspend or terminate the Membership Agreement (including your Membership) pursuant to Clause 18.

- 9.6 If your membership card is lost, stolen or it becomes damaged, you must notify us immediately in writing. You agree that we may charge a membership card replacement fee (as set out in the Price List) to your Credit or Debit Card in the event that your membership card is lost, stolen or damaged, and you request a replacement from us.

10. MEMBERSHIP FEES AND PAYMENT TERMS

- 10.1 Subject to Clause 10.2, we will charge the Membership Fees on weekly pro-rated instalments for the Membership Period to your Credit or Debit Card. Your first payment will be charged during the first week of your Membership Period.
- 10.2 If you redeem your Surge Credits more regularly than once per week, we will charge your Credit or Debit Card for each additional Surge Credit you use in any given week, over and above the Membership allowance of one (1) Surge Credit a week covered by your Membership Fees, immediately after the additional session is billed.
- 10.3 We use a third party payment processor to process your Membership Fees. You agree that we can share your Credit or Debit Card information with such third party payment processor in accordance with our Privacy Policy.
- 10.4 You will be liable for any charges we incur if we cannot charge the Membership Fees to your Credit or Debit Card for any reason, including reasonable debt collection fees if your Membership Fees remain unpaid for a period of twenty-one (21) days or more. We will inform you if we cannot charge the Membership Fee to your Credit or Debit Card.
- 10.5 If we are unable to charge your Credit or Debit Card for two of the weekly instalments of your Membership Fees, you will be unable to participate in any EMS Training Sessions until you have paid all outstanding amounts owed to us.
- 10.6 You must notify us immediately of any changes to your Credit or Debit Card by updating your Credit or Debit Card information via your online account. If we incur any charges because of your failure to notify us of a change in accordance with this Clause 10.7, you will be liable for these charges.

11. PAUSING

- 11.1 During the Initial Membership Period or a Renewal Membership Period you are able to Pause your Membership for a number of weeks (the Pause Allowance) as determined in your Membership Confirmation Email.
- 11.2 When your Membership is Paused, no Membership Fees will be charged as per clause 10 and no EMS sessions can be attended.
- 11.3 If all weeks under your Pause Allowance are used, you will not be able to Pause your Membership until your Membership renews to a new Membership Period.
- 11.4 If you do not pause your contract and you do not train in a given week, you will lose a Surge Credit.

12. INCREASES TO MEMBERSHIP FEES

- 12.1 We may increase the Membership Fees (including in accordance with increases in the retail price index) during the Membership Period provided that we give you sixty (60) days' prior written notice.
- 12.2 Any increases in Membership Fees will apply sixty (60) days' from the date of our prior written notice of such increase, unless you notify us within the sixty (60) day notice period that you refuse to accept the

increase. If you refuse to accept the increase, we may decide (in our sole discretion) to either: (i) continue your Membership without taking into account the increase in the Membership Fees and your Membership Fees will remain unchanged; or (ii) terminate the Membership Agreement (including your Membership).

13. SURGE CREDITS

- 13.1 In consideration of payment of the Membership Fees, you will receive one (1) Surge Credit per week of your Membership Period.
- 13.2 You may redeem your Surge Credits more regularly than once per week, but subject always to Clause 8.1 and 10.2.
- 13.3 You may have the opportunity to buy additional Surge Credits to book further EMS Training Sessions via your online account. If you buy additional Surge Credits, we will immediately charge your Credit or Debit Card for such Surge Credits.
- 13.4 If you do not use your Surge Credits during the Initial Membership Period or a Renewal Membership Period, you will lose your right to use the Surge Credits to book an EMS Training Session.

14. MAINTENANCE, REFURBISHMENTS AND/OR REPAIRS

- 14.1 If we close a Surge Studio pursuant to Clause 8.1 of the General Terms, you are entitled to attend an alternative Surge Studio, and you agree that this will not be considered a breach by us of the Membership Agreement.
- 14.2 If an alternative Surge Studio does not exist within a three (3) mile radius of the Surge Studio that we have closed, you may request to Suspend your Membership by providing written notice to us.

15. OUR LIABILITY

- 15.1 Our liability to you is as set out in Clause 9 of the General Terms.

16. YOUR LIABILITY

- 16.1 Your liability you us is as set out in Clause 10 of the General Terms.
- 16.2 You are responsible for everything done in respect of your online account, including all redemptions of Surge Credits and/or purchases of additional Surge Credits, and must ensure protection of your login name and password at all times.

17. RIGHT TO CANCEL

- 17.1 If you did not enter into your Membership Agreement in a Surge Studio, you may notify us in writing (at the address mentioned in your Membership Confirmation Email) of your intention to cancel your Membership Agreement, provided that you do so within fourteen (14) days from the day after you sign up for a Membership ("Cancellation Period").
- 17.2 If you exercise your right to cancel pursuant to Clause 17.1, and if you have received any part of the Services, we reserve our right to charge you for the part of the Services that we have performed during the Cancellation Period as set out in the Price List.

17.3 Subject to Clause 17.2, if you notify us of your intention to cancel your Membership pursuant to Clause 17.1, we will refund to you all amounts charged by us to your Credit or Debit Card.

18. WHEN WE CAN SUSPEND OR TERMINATE THE MEMBERSHIP AGREEMENT, INCLUDING YOUR MEMBERSHIP

18.1 We may terminate the Membership Agreement (including your Membership) immediately by written notice to you if:

18.1.1 we consider that you have used the Services in violation of the Membership Agreement, and such violation is not a minor breach;

18.1.2 we cannot charge the Membership Fees to your Credit or Debit Card, and such Membership Fees remain unpaid for a period of twenty-one (21) days;

18.1.3 your conduct at our Surge Studio is abusive, threatening, or illegal in any way towards our Surge Trainers, staff or the other Members;

18.1.4 your conduct is in breach of the Surge Studio Rules, we have reason to believe you are under the influence of alcohol or have reason to believe you have participated in sexual acts at a Surge Studio;

18.1.5 you inform us that you are, have or suffer from any Contraindications;

18.1.6 an event outside of our reasonable control occurs that affects our ability to provide the Services to you at the Surge Studio, including but not limited to, extreme severe weather landslide, storm, lightning, fire, subsidence, epidemic, outbreak of military hostilities (whether or not war is declared), expropriation by governmental authorities, act of God, governmental act, act of terrorism, earthquake, flood, embargo, riot, sabotage, strike (other than our own employees), failures of our third parties, explosion or civil commotion ("Event Outside of our Control"), and is not capable of being remedied by us within thirty (30) days of such event occurring; or

18.1.7 we have a legal or regulatory obligation imposed on us, which impacts our ability to provide the Services.

18.2 We may terminate the Membership Agreement (including your Membership) for any other reason provided that we give you thirty (30) days' written notice by email.

18.3 We may Suspend your Membership if:

18.3.1 we are unable to charge the Membership Fees to your Credit or Debit Card in accordance with Clause 10;

18.3.2 we need to carry out maintenance, refurbishments and/or repairs of the Surge Studio or the EMS Training Devices; or

18.3.3 an Event Outside of our Control occurs that is capable of being remedied by us within thirty (30) days of such event occurring.

19. WHEN YOU CAN SUSPEND OR TERMINATE THE MEMBERSHIP AGREEMENT, INCLUDING YOUR MEMBERSHIP

19.1 You may not terminate the Membership Agreement (including your Membership) during the Initial Membership Period or any Renewal Membership Period (as applicable), unless you pay any and all outstanding Membership Fees to the end of the Membership Period in accordance with Clause 20.2.

- 19.2 You may terminate the Membership Agreement (including your Membership) by providing written notice to us in accordance with the Notice Period, prior to the end of the relevant Membership Period, such notice will not take effect until the end of the relevant Membership Period.
- 19.3 You may request that we Suspend your Membership by providing written notice to us in the event that you become pregnant, seriously ill or injured, lose your job, or move house. When you make such request, you must provide us with evidence as follows:
- 19.3.1 a medical diagnosis or document if you become pregnant, or seriously ill or injured; or
 - 19.3.2 evidence of unemployment for more than fourteen (14) days;
 - 19.3.3 proof of your new address if you move house.
- 19.4 We may choose to accept or reject your request to Suspend your Membership (at our sole discretion), if we consider that you have not provided sufficient evidence pursuant to Clause 19.3.
- 19.5 We are unlikely to accept your request to Suspend your Membership because you have moved house if:
- 19.5.1 you continue to live within a three (3) radius of your previous address; or
 - 19.5.2 you live the same or a shorter distance from your home Surge Studio (which means the Surge Studio you chose when you signed up for a Membership) as the distance from your home Surge Studio to your previous address.

20. CONSEQUENCES OF TERMINATION

- 20.1 If we terminate the Membership Agreement (including your Membership) in accordance with Clauses 18.1.5, 18.1.6, 18.1.7 or 18.2 (circumstances where you have not breached the Membership Agreement), we shall not make any further charges to your Credit or Debit Card from the expiry of our written notice to you.
- 20.2 Subject to Clause 20.1, if you or we terminate the Membership Agreement (including your Membership) during the Initial Membership Period or Renewal Membership Period, you may pay an early termination fee, which is set at eighty percent (80%) of any and all outstanding Membership Fees owed by you to us for the remainder of the relevant Membership Period, and if you pay the early termination fee, the Membership Agreement will terminate immediately, and we will make no further charges to your Credit or Debit Card.
- 20.3 Subject to Clauses 20.1 and 20.2, if you do not pay an early terminate fee within fourteen (14) days of the date the Membership Agreement terminates, you agree that we may charge your Credit or Debit Card for any and all outstanding Membership Fees owed by you to us for the remainder of the relevant Membership Period from the date the Membership Agreement terminates, in accordance with the payment terms set out in Clause 10. Clause 9 will survive termination of the Membership Agreement and we reserve all legal rights to recover any and all outstanding Membership Fees owed by you to us pursuant to this Clause 20.3.
- 20.4 Upon termination of the Membership Agreement (including your Membership) for any reason:
- 20.4.1 all rights granted to you under the Membership Agreement cease; and
 - 20.4.2 you must cease all activities authorised by the Membership Agreement.