



# Terms of Use

Thank you for using our Services. Our "Services" include our website, our app, and the coaching services you connect to through our website or app. Please do read these Terms of Use ("Terms") carefully.

By using our Services, you agree to these Terms and our Privacy Notice. If you do not agree to these, do not download or use our Services (if you've already downloaded our app, you will need to delete this immediately).

## 1. WHO WE ARE AND WHAT THIS AGREEMENT DOES

We are Kelly Rose Marks, a company registered in United Kingdom. Our company registration number is 6473734534.

These Terms govern your access to and use of our Services. These Terms set out:

- your legal rights and responsibilities;
- your legal rights and responsibilities; and
- certain key information required by law.

## 2. HOW TO CONTACT US

**Contacting us.** We are here to help. If you wish to contact us for any reason please email us at [kellymarksx@gmail.com](mailto:kellymarksx@gmail.com).

**How we will communicate with you.** If we have to contact you we will do so by email, by SMS or by pre-paid post, using the contact details you have provided to us.

By signing up to our website or coaching services, you acknowledge that we (or our representative) may contact you to tell you more about our services.



### **3. HOW YOU MAY USE OUR SERVICES**

In return for your agreeing to comply with these Terms you may:

- download a copy of our website and app onto your personal device and use the Services for your personal purposes only.
- if you download our app, receive and use any free app updates with “patches” and corrections of errors as we may provide to you.
- order coaching services from us, which we may agree to provide to you on the terms set out below.

You must be at least 18 years old or have parental consent to accept these Terms and download or use our Services. If you are under 18 and have parental consent, we recommend that your parents participate in your coaching session and that they advise you on your use of our Services.

If you are under 18 years of age and have not obtained your parents' consent to participate in a coaching session with us, we cannot accept you as a client.

### **4. USE OF OUR SERVICES ARE AT YOUR OWN RISK (WE ARE NOT PROVIDING MEDICAL ADVICE)**

We do not offer medical or professional advice which you should rely on. Before starting any exercise or diet program, you should consult your GP or healthcare professional to determine that this is right for you. If you experience faintness, dizziness, shortness of breath or pain while exercising, stop immediately and seek medical advice. Exercise carries certain risk of injury, and you are undertaking these activities at your own risk. Our Services are not a substitute for medical advice or treatment. Our Services are provided for general information and entertainment purposes only.

**Please take note of the below list of non-exhaustive risks and requirements when using our Services:**

- Allergies and intolerances that may influence our preparation of nutrition plans must always be communicated in the questionnaire.
- Injuries, illnesses and diseases that may influence our preparation of workout plans must always be communicated in the questionnaire.
- Always make sure that you have enough space when performing any activities



- Make sure that nothing around you can cause harm or movement impairment.
- If you choose to use any fitness equipment, doing so is at your own risk.
- Restriction on kcal intake can in some cases lead to anxiety, eating disorders, depression, fatigue and other related mental and physical health issues.
- Always consult a dietician and/or doctor before beginning any fitness or health program in general.

## 5. ORDERING COACHING SERVICES

Our acceptance of your order will take place when we email you to accept it, at which point our contract for coaching services will come into existence between you and us.

If we are unable to accept your order, we will inform you of this and will not charge you for the coaching services. This might be because of unexpected limits on our resources which we could not reasonably plan for, because a credit reference we have obtained for you does not meet our minimum requirements, or because we have identified an error in the price or description of the services.

## 6. PAYMENT TERMS

If you agree to receive our paid-for Services (including our coaching services), you will be signed up for payment through a third party service. We use SPULK, a payment system delivered by Stripe Payments UK, Ltd. SPULK is approved by the U.K. Financial Conduct Authority (reference number: 900461) and is commonly used around the world.

With automatic signup, your card details will be encrypted during transmission through Secure Sockets Layer (SSL) encryption. This encryption ensures a high level of security regarding unauthorized access to your information.

Your payment terms will depend on the precise services that are agreed between you and us. These payment terms will be set out in your order confirmation.



## **7. WHOSE DEVICES CAN I USE THE APP ON?**

You can only download, install and use the App on a device that you own or have permission to use for these purposes. You will be responsible for complying with these Terms and for any use that is made of this App on another device, whether or not you own the device and/or if such use is with your knowledge or consent.

## **8. IF YOU DOWNLOAD OUR APP, THE APPSTORE'S TERMS ALSO APPLY**

The ways in which you can use our app may be subject to the Apple App Store or Google Play Store (each, an **App Store**) rules and policies, and the App Store's rules and policies will apply instead of these Terms where there are differences between the two.

## **9. COMPATIBLE DEVICE**

The app should only be downloaded to and installed on a compatible device. Please read the App Store listing for the app before downloading to ensure that your device is compatible.

## **10. UPDATES AND CHANGES TO THE SERVICES**

From time to time we may update and change the Services (including our app and website) to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Please ensure you accept all updates in respect of the Services, including our app.

If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue using our Services (including our app) or the functionality may be reduced.



## **11. YOUR ACCOUNT**

You must keep any login details such as username, password and security questions confidential and not disclose them to any other person. If you have any reason to believe that they have been compromised, you must promptly reset them in using our 'Forgotten Password' feature.

You must not under any circumstances allow any other person to access the platform using your login details. Not only will it affect the functionality of the Services as statistics and tracking will not be correct, but you will also be responsible for any actions taken by a person using your user account, whether or not with your knowledge or consent.

Allowing others to access the Services using your login details is a breach of these Terms and may result in your right to use the Services being suspended or us ending your right to use the Services.

## **12. YOU MAY NOT TRANSFER THE SERVICES TO SOMEONE ELSE**

We are giving you personally the right to use the Services as set out in these Terms. You may not transfer the Services to someone else, whether for money, for anything else or for free except as permitted under the terms of the App Store. If you sell any device on which our app is installed, you must remove the app from it.

## **13. CHANGES TO THESE TERMS**

We may need to change these Terms from time to time to reflect changes in law or best practice or to deal with additional features which we introduce.

We will try to give you reasonable notice of any major changes by sending you an SMS or email with details of the change or notifying you of a change when you next use the website or app (as relevant).



## 14. YOUR PRIVACY

We only use any personal information we collect through your use of our Services in the ways set out in our Privacy Notice <https://eu.lenus.io/recreate-coaching/data-policy?locale=en-GB>.

Internet transmissions are never completely private or secure. This means there is a risk that any information you send using our Services (including our website or app) may be read or intercepted by others, even if there is a special notice that a particular transmission is encrypted.

## 15. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights in the Services (including our app and website) throughout the world belong to us and our licensors. The rights in the Services are licensed (not sold) to you. You have no intellectual property rights in, or to, the Services other than the right to use them in accordance with these Terms.

These Terms grant you a personal, non-transferable and non-exclusive right to use our Services. We grant you this right for the sole purpose of receiving the Services as permitted in these Terms.

Our Services (including our app and website) are protected by copyright, trademark, and other laws. Nothing in these Terms gives you a right to use the Kelly Rose Marks name or any of the Kelly Rose Marks trademarks, logos, domain names, other distinctive brand features, and other proprietary rights (whether they belong to us or our licensors). All right, title, and interest in and to our Services (excluding content provided by you) are and will remain the exclusive property of us and our licensors.

Any feedback, comments, or suggestions you may provide regarding our Services (including our app and website) is entirely voluntary and we will be free to use such feedback, comments or suggestions as we see fit and without any obligation to you.

We will treat any content you upload via the Services as belonging to us. You must not upload any content unless you have a right to do so and such content complies with the Acceptable Use Restrictions section below.

If anyone else suggests our Services or their use in line with these Terms infringes their IP, we are responsible for investigating and defending that claim.



## 16. LICENSE RESTRICTIONS

You agree that you will:

- not sub-license or otherwise make available our Services (including the app or any workout or diet plans) to any person without prior written consent from us;
- not copy the Services (including our app and website), except as part of the normal use of the Services or where it is necessary for the purpose of back-up or operational security;
- not translate, merge, adapt, vary, alter or modify, the whole or any part of the Services (including the app and website);
- not combine or incorporate the Services in or with any other programs, except as necessary to use the Services on devices as permitted in these Terms;
- not disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Services, nor attempt to do any such things;
- comply with all applicable laws and regulations that apply to the technology used or supported by the Services.

## 17. ACCEPTABLE USE RESTRICTIONS

You may use our Services (including our app and website) only for lawful purposes. You must:

- not use the Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms;
- not act fraudulently or maliciously;
- not access, use, distribute or transmit malicious code, such as viruses, or harmful data, into the any Services (including the app or website) or any operating system;
- not infringe our intellectual property rights or those of any third party in relation to your use of the any Services;
- not transmit any material that is defamatory, discriminatory, threatening, obscene, sexually explicit, offensive or otherwise objectionable in relation to your use of any Services;
- not use the any Services in a way that could damage, overburden, impair or compromise our systems or security or interfere with other users; and
- not collect or harvest any information or data from any Services or our systems or attempt to decipher any transmissions to or from the servers running any Services.



## **18. OUR RESPONSIBILITY FOR LOSS OR DAMAGE SUFFERED BY YOU**

**We do not exclude or limit in any way our liability to you where it would be unlawful to do so.** This includes liability for death or personal injury caused by our negligence (or the negligence of our employees, agents or subcontractors), or for fraud or fraudulent misrepresentation.

**We are responsible to you for foreseeable loss and damage caused by us.** If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breaching these Terms or our failure to use reasonable skill and care. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time you accepted these Terms, both we and you knew it might happen.

**We are not liable for business losses.** The Services (including our app and website) are for domestic and private use. If you use our Services for any commercial, business or resale purpose we will have no liability to you for any indirect or consequential losses, loss of profit, loss of business, loss of anticipated savings, business interruption, or loss of business opportunity.

**Limitations to the Services.** We have not developed our Services to meet your every need. To the extent we provide any personalised exercise routines or diet plans, you recognise that you carry these out at your own risk. If you have any concerns about these Services and your health, you must consult your GP or healthcare professional.

**You use the information provided through the Services at your own risk.** Although we make reasonable efforts to update the information provided by the Services, we make no representations, warranties or guarantees, whether express or implied that such information is accurate, complete or up to date. You may receive advice from third parties through the Services however we accept no liability for any advice received from third parties using the Services.

**Please back-up content and data used with the app.** We recommend that you back up any content and data used in connection with the app, to protect yourself in case of problems with the app or the Services.

**We are not responsible for delays outside our control.** If our supply of the coaching services is delayed by an event outside our control then we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. Provided we do this we will not be liable for delays caused





by the event, but if there is a risk of substantial delay you may contact us to discuss your potential rights to end the contract and receive a refund for any services you have paid for but not received.

## **19. WHAT WILL HAPPEN IF YOU DO NOT GIVE REQUIRED INFORMATION TO US**

We may need certain information from you so that we can supply our coaching services to you, for example, on your body and wellbeing, including height, weight, body statistics, workouts, mood, meals, nutrition and general wellbeing. We will contact you to ask for this information. If you do not give us this information within a reasonable time of us asking for it, or if you give us incomplete or incorrect information, we may either end the contract or make an additional charge of a reasonable sum to compensate us for any extra work that is required as a result. We will not be responsible for supplying services late or not supplying any part of them if this is caused by you not giving us the information we need within a reasonable time of us asking for it.

## **20. WE ARE NOT RESPONSIBLE FOR OTHER WEBSITES**

Our Services may contain links to other independent websites which are not provided by us. Such independent sites are not under our control, and we are not responsible for and have not checked and approved their content or their privacy policies (if any).

You will need to make your own independent judgement about whether to use any such independent sites, including whether to buy any products or services offered by them.

## **21. ENDING THIS AGREEMENT**

You may end your agreement with us at the end of your minimum commitment period with us, by providing us with 1 months' notice. If you end our agreement in this way, your termination will only be effective from the first day of the following month.

If you don't comply with these Terms (including failure to pay). We may end your rights to use the



Services at any time by contacting you if we reasonably believe that you have not complied with these Terms in a serious way. This may include if you fail to make a payment. If what you have done can be put right we will give you a reasonable opportunity to do so. If we end your right to use the Services in this way, we may retain payments you have already made to cover our costs and/or compensate us for our losses resulting from your failure to comply.

**We may end the contract if it becomes impossible or impractical to provide our Services** (or a part of the Services like the app). If we decide to suspend or stop providing any part of our Services in this way, we will let you know if we are going to do this. If you have paid for our Services in advance, you may be entitled to a proportionate refund of the money you have paid in advance and for the time you haven't been able to use our Services because we have ended the contract.

**Exercising your right to change your mind.** If you purchase our coaching services, you have 14 days to change your mind after the day we email you to confirm we accept your order.

However, once we have completed the services you cannot change your mind, even if the period is still running. If you cancel after we have started the services, you must pay us for the services provided up until the time you tell us that you have changed your mind.

**Your legal rights.** We are under a legal duty to supply services that are in conformity with this contract. Nothing in these Terms will affect your legal rights.

**If this agreement comes to an end:**

- you must stop all activities authorised by these Terms, including your use of the app and the coaching services;
- you must delete or remove the app from all devices in your possession and immediately destroy all copies of the app which you have and confirm to us that you have done this;
- we may remotely access your devices and remove the app from them and cease providing you with access to the support services.

## **22. WE MAY TRANSFER THIS AGREEMENT TO SOMEONE ELSE**

We may transfer our rights and obligations under these Terms to another organisation, for example if we are acquired by a third party. We will always tell you in writing if this happens and we will ensure that



the transfer will not affect your rights under these Terms.

## **23. YOU NEED OUR CONSENT TO TRANSFER YOUR RIGHTS TO SOMEONE ELSE**

You may only transfer your rights or your obligations under these Terms to another person if we agree in writing.

## **24. THIRD PARTY RIGHTS**

The App Store and its group of companies can enforce these Terms on our behalf to ensure you comply. Other than this, third parties do not have any rights to enforce these Terms.

## **25. IF A COURT FINDS PART OF THIS CONTRACT ILLEGAL, THE REST WILL CONTINUE IN FORCE**

Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

## **26. EVEN IF WE DELAY IN ENFORCING THIS CONTRACT, WE CAN STILL ENFORCE IT LATER**

Even if we delay in enforcing these Terms, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these Terms, or if we delay in taking steps against you in respect of your failure to comply with these Terms, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.



## **27. WHICH LAWS APPLY TO THIS CONTRACT AND WHERE YOU MAY BRING LEGAL PROCEEDINGS**

These Terms are governed by English law and you can bring legal proceedings in respect of the Services in the English courts. If you live in Scotland you can bring legal proceedings in respect of the Services in either the Scottish or the English courts. If you live in Northern Ireland you can bring legal proceedings in respect of the Services in either the Northern Irish or the English courts.

## **28. ALTERNATIVE DISPUTE RESOLUTION**

Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are not happy with how we have handled any complaint, you can submit the dispute for online resolution to the [European Commission Online Dispute Resolution](#) platform.

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