

TERMS AND CONDITIONS OF USE AND DISCLAIMER - SPAR MY HOME GYM

1. INTRODUCTION

1.1. NOTE: IMPORTANT PROVISIONS PERTAINING TO DISCLAIMERS OF OUR LEGAL LIABILITY AND INDEMNITY BY YOU

1.1.1. These Terms and Conditions contain provisions which limit Our exposure to legal liability and even make You responsible for a variety of acts. Some of these provisions do have the effect of limiting your rights in law and conferring obligations on You by virtue of your agreement to these Terms and Conditions. (See especially the highlighted sections below headed “DISCLAIMERS AND LIMITATION OF LIABILITY” and “INDEMNITY”, which have been typed in bold capital letters towards the end of these Terms and Conditions.)

1.1.2. It is therefore important that You familiarise yourself with these provisions before You Access My Home Gym and that You do not Access My Home Gym if You do not agree to abide by these provisions.

1.2. You should carefully read these Terms and Conditions of Use before using the SPAR My Home Gym. If you do not agree with these Terms and Conditions of Use You have the option of clicking the “I do not agree” tab contained on this page and you can immediately exit My Home Gym. By using My Home Gym you accept and agree to be bound by these Terms and Conditions (which may be amended from time to time thereafter). If you accept these Terms and Conditions (by clicking the acceptance tab), a legally binding agreement between You and Us will result.

2. DEFINITIONS

2.1. The following expressions shall bear the meanings assigned to them below and related expressions shall bear corresponding meanings –

2.1.1. “Access” when used in the context of -

2.1.1.1. My Home Gym, means to visit, use, load in a web browser, mobile phone or similar software application or device or otherwise engage with My Home Gym;

2.1.1.2. Content, means to copy, download, view, modify, adapt, load in a web browser, mobile phone, software application or device or to otherwise engage with and/or manipulate such Content;

2.1.2. “Content” means all information including data files, written text, computer software,

music, audio files or other sounds, photographs, videos or other images, on exercises, workouts, movements and progressions and related advice which You may have Access to as part of, or through your use of, My Home Gym;

2.1.3. “My Home Gym” means the websites housing the Content (including all its discrete web pages) hosted for the time being at the registered domains: [www.spar.co.za and <https://www.youtube.com/user/SPARtubeSA>]

2.1.4. “Intellectual Property” means, collectively, the patents, copyrights (and moral rights), Trademarks, designs, models, brands, names, trade names, graphics, icons, hyperlinks, know-how, trade secrets and any other type of intellectual property (whether registered or unregistered including applications for and rights to obtain or use same) which We own, license, use and/or hold (whether or not currently) in the Content and My Home Gym;

2.1.5. “Trademarks” means those trademarks We own or are licensed to use and any designs, logos, style names, tag lines and slogans which We own or are licensed to use;

2.1.6. “You” means Users of My Home Gym, and “Your” and “Yourself” have corresponding meanings;

2.1.7. “Us”, “We” and “SPAR” means The Spar Group Limited , a company with limited liability incorporated in accordance with the company laws of the Republic of South Africa (registration number(1967/001572/06), and “Our” has the corresponding meaning;

2.1.8. “User/s” means, in the context of My Home Gym or the Content, any person who Accesses My Home Gym or Content within the meaning of the term “Access” above.

3. ACCESS TO CONTENT

3.1.1. If You believe that information or Content posted to the My Home Gym infringes on any person’s rights in any way, You should notify Us immediately.

3.1.2. Unless otherwise stated on My Home Gym there will be no formal maintenance or technical support for the Content and My Home Gym, and SPAR shall not be obligated to provide maintenance, technical support or updates to You.

- 3.1.3. SPAR may stop providing the Content, Access to My Home Gym or any part thereof, to You or to Users generally at SPAR's sole discretion.
- 3.1.4. Content may be protected by the Intellectual Property rights of others.
- 3.1.5. You are not permitted to use Content in any unauthorised manner, such as download or copy information for the benefit of another business outside of SPAR; or use data mining, robots or similar data gathering and extraction tools, unless expressly permitted to do so by SPAR.
- 3.1.6. You may not use My Home Gym or Content in a manner that may infringe Our Intellectual Property rights (for example copyright or Trademarks);

4. DISCLAIMERS AND LIMITATION OF LIABILITY

- 4.1. **MY HOME GYM OFFERS HEALTH AND FITNESS INFORMATION FOR EDUCATIONAL AND ENTERTAINMENT PURPOSES ONLY AND IS NOT TO BE INTERPRETED AS A RECOMMENDATION FOR A SPECIFIC TREATMENT PLAN, PRODUCT, OR COURSE OF ACTION.**
- 4.2. **MY HOME GYM DOES NOT PROVIDE SPECIFIC MEDICAL ADVICE, AND IS NOT ENGAGED IN PROVIDING MEDICAL SERVICES.**
- 4.3. **ANY EXERCISE PROGRAM MAY RESULT IN INJURY, INCLUDING BUT NOT LIMITED TO: AGGRAVATION OF A PRE-EXISTING CONDITION, OR ADVERSE EFFECT OF OVER-EXERTION SUCH AS MUSCLE STRAIN, ABNORMAL BLOOD PRESSURE, FAINTING, DISORDERS OF HEARTBEAT, AND IN RARE INSTANCES, HEART ATTACK.**
- 4.4. **TO REDUCE THE RISK OF INJURY, BEFORE UTILISING MY HOME GYM, CONSULT A MEDICAL PRACTITIONER FOR APPROPRIATE EXERCISE PRESCRIPTION AND SAFETY PRECAUTIONS.**
- 4.5. **YOU SHOULD NOT UTILISE MY HOME GYM IF YOUR MEDICAL PRACTITIONER ADVISES AGAINST IT.**
- 4.6. **YOU SHOULD SEEK OUT MEDICAL ADVICE, ESPECIALLY IF YOU (OR ANY**

MEMBER OF YOUR FAMILY) HAVE A HISTORY OF HIGH BLOOD PRESSURE OR HEART DISEASE, IF YOU HAVE EXPERIENCED CHEST PAIN RECENTLY OR WHEN EXERCISING, IF YOU SMOKE OR HAVE HIGH CHOLESTEROL, IF YOU ARE OBESE OR IF YOU HAVE A BONE OR JOINT PROBLEM THAT COULD BE AGGRAVATED BY A CHANGE IN PHYSICAL ACTIVITY.

- 4.7. IF YOU EXPERIENCE FAINTNESS, DIZZINESS, PAIN OR SHORTNESS OF BREATH AT ANY TIME WHILE EXERCISING YOU SHOULD STOP IMMEDIATELY.**
- 4.8. THE DOWNLOADING OR PRINTING AND USE OF DATA CONTAINED ON MY HOME GYM IS DONE AT YOUR SOLE DISCRETION. YOU SHOULD INDEPENDENTLY VERIFY THE COMPLETENESS AND RELIABILITY OF INFORMATION PROVIDED ON OR VIA MY HOME GYM. YOU MUST NOT USE ANY ILLUSTRATIONS, PHOTOGRAPHS, VIDEO OR AUDIO SEQUENCES OR ANY GRAPHICS SEPARATELY FROM ANY ACCOMPANYING TEXT OR INSTRUCTIONS.**
- 4.9. VIRUSES OR CODE WHICH MAY HAVE A HARMFUL EFFECT ON YOUR COMPUTER SYSTEM COULD BE TRANSMITTED TO YOU. YOU ARE RESPONSIBLE FOR IMPLEMENTING SUITABLE PROTECTION MECHANISMS TO PREVENT SUCH HARM FROM OCCURRING.**
- 4.10. WE HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO MONITOR ANY ACTIVITY AND CONTENT ASSOCIATED WITH MY HOME GYM AND CONTENT. WE MAY INVESTIGATE ANY REPORTED VIOLATION OF THESE TERMS AND CONDITIONS, OR COMPLAINTS AND TAKE ANY ACTION THAT WE DEEM APPROPRIATE.**
- 4.11. WE WILL USE REASONABLE ENDEAVOURS TO MAKE MY HOME GYM AVAILABLE TO YOU AND TO KEEP THE CONTENT AVAILABLE TO YOU AT ALL TIMES. HOWEVER, WE SHALL NOT BE LIABLE IN RESPECT OF ANY LOSS OR DAMAGES CAUSED BY, OR ARISING FROM, THE UNAVAILABILITY OF, ANY INTERRUPTION IN, YOUR ACCESS TO, OR USE**

OF THE SITES OR CONTENT (EITHER IN PART OR AS A WHOLE) FOR ANY REASON WHATSOEVER.

4.12. ALTHOUGH WE TAKE STEPS TO VERIFY INFORMATION PRESENTED ON OR THROUGH MY HOME GYM, WE DO NOT REPRESENT OR ENDORSE THE ACCURACY OR RELIABILITY OF ANY ADVICE, OPINION, STATEMENT, OR OTHER INFORMATION CONTAINED IN, DISPLAYED ON, LINKED TO OR DISTRIBUTED THROUGH MY HOME GYM. YOU ACKNOWLEDGE THAT ANY RELIANCE UPON ANY SUCH OPINION, ADVICE, STATEMENT OR INFORMATION SHALL BE AT YOUR SOLE RISK. WE RESERVE THE RIGHT, IN OUR SOLE DISCRETION, TO CORRECT ANY ERRORS OR OMISSIONS ON THE SITES WITHOUT NOTICE TO YOU.

4.13. WE SHALL NOT BE LIABLE IN RESPECT OF ANY INJURY, LOSS OR DAMAGES YOU MAY SUFFER PURSUANT TO YOUR USE OF MY HOME GYM OR FROM YOUR INABILITY TO ACCESS MY HOME GYM.

5. INDEMNITY

5.1. ACCESS TO MY HOME GYM IS PROVIDED TO YOU FREE OF CHARGE. USE OF THE CONTENT CONTAINED IN MY HOME GYM IS FOR YOUR BENEFIT AND ANY MODIFICATION TO CONTENT BY YOURSELF, TOGETHER WITH USE OF SUCH MODIFIED CONTENT, OR ANY FAULTY USE OF CONTENT, OR IGNORING THE CONTENT IN THE USE OF MY HOME GYM, IS AT YOUR OWN RISK.

5.2. BY ACCESSING MY HOME GYM AND ACCEPTING THESE TERMS AND CONDITIONS, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD SPAR HARMLESS FROM AND AGAINST ANY AND ALL COSTS, LIABILITIES, LOSSES AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES) RESULTING FROM ANY CLAIM, SUIT, ACTION OR PROCEEDING BROUGHT BY YOURSELF OR ANY THIRD PARTY AGAINST SPAR, AND ARISING OUT OF YOUR USE OF MY HOME GYM, OR THE CONTENT, SAVE TO THE EXTENT THAT SUCH LIABILITY OR LOSS IS DIRECTLY AS A RESULT OF A WILFUL DEFAULT OR THE GROSS NEGLIGENCE OF SPAR.

6. INTELLECTUAL PROPERTY RIGHTS

Unless otherwise stated, SPAR owns the Intellectual Property rights in the My Home Gym and the Content, and You may not do anything which is calculated or likely to infringe or undermine such Intellectual Property rights.

7. ENTIRE AGREEMENT

This agreement shall constitute the entire agreement between SPAR and the User with respect to My Home Gym and Content and no representation, statement or inducement, whether oral or written, not contained herein shall bind either of us.

8. SEVERABILITY

Should any part of these Terms and Conditions of Use be declared invalid or unenforceable by a court of competent jurisdiction, this shall not affect the validity of any remaining portion and such remaining portion shall remain in full force and effect as if the invalid portion of the Terms and Conditions of Use had been eliminated.

9. LAW AND JURISDICTION

The law governing this agreement shall be the law of the Republic of South Africa.

10. SETTLEMENT OF DISPUTES

Any disputes between SPAR, and a User shall be settled in Durban, South Africa, by way of private arbitration in terms of the Rules for the Conduct of Arbitrations, Edition 6, as published by the Association of Arbitrators (Southern Africa). The arbitrator shall be appointed by the president for the time being of the Association.

11. GENERAL

11.1. No indulgence, extension of time, waiver or relaxation of any of the provisions or terms of these Terms and Conditions which We may show, grant or allow You shall operate as an estoppel against Us in respect of Our rights under these Terms and Conditions nor shall it constitute a waiver by Us of any of our rights and We shall not thereby be prejudiced or stopped from exercising any of Our rights against You which may have arisen in the past or which might arise in the future.