

These are the Terms and Conditions on which Nicole Marie Walker ABN 84 525 890 369 trading as Ascent Nutrition will carry out work for you. By ticking "I have read and understood the Terms and Conditions" on our Consent Form, you are deemed to have accepted these Terms and Conditions.

1. DEFINITIONS & INTERPRETATION

1.1 Definitions

In this document, except to the extent that the context otherwise requires, the following terms shall have the following meanings:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- (b) **Client** means the person listed in the Consent Form, and incorporates their name, email address, phone number and physical address.
- (c) **Confidential Information** of a party means any information regarding that party's circumstances, health information, relationships, business or affairs which is:
 - (i) By its nature confidential;
 - (ii) Designated as confidential by that party at the time of disclosure; or
 - (iii) Which the other party knows or ought to have known is confidential.

Confidential information does not include information, documents or materials that are common property, are required to be disclosed by law or are available in the public domain in Australia otherwise than by a breach of this Agreement.
- (d) **Fees** means the Fees payable to Ascent Nutrition in accordance with the fee schedule contained in the Consent Form, or as otherwise provided to the Client at the time of booking or varied by written agreement and includes any booking fees.
- (e) **Services** means the provision of clinical or sport dietitian services, including advice, assistance with insulin pumps, consultation and education, via in-person consultations, telehealth, or group seminars, or any part thereof.
- (f) **Tax Invoice** includes any document or records treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

2. PROVISION OF SERVICES

- 2.1 Ascent Nutrition will provide the Services to the Client on dates and times to be mutually agreed between the parties, via in-person, telephone, or video calling services.
- 2.2 Ascent Nutrition warrants that it is fully qualified to provide the Services and will at all times conform to the professional standards of practice as prescribed by Dietitians Australia or any other relevant body.
- 2.3 The Services may be altered and varied at any time by written agreement between the parties.

3. FEES

- 3.1 Fees are variable depending on the Services required by the Client. A general Fee schedule is provided to the Client on the Consent Form, and Ascent Nutrition will confirm the applicable Fees to the Client.
- 3.2 Fees are payable:
 - (a) For in-person appointments, immediately after each appointment.
 - (b) For telehealth appointments, within two days of Ascent Nutrition providing the Client with a Tax Invoice.
- 3.3 Ascent Nutrition reserves the right to refuse to provide the Services to the Client if their Fees are outstanding.
- 3.4 If Ascent Nutrition allows the Client to make payment after the Services have been provided, and the Client does not pay the outstanding Fees by the agreed date, the Client must pay interest on those outstanding Fees at a rate of 10% per annum, calculated daily.
- 3.5 Unless otherwise stated, the Fees are exclusive of GST.

4. RESCHEDULING, CANCELLATION AND NO-SHOW POLICY

- 4.1 24 hours' notice must be given if the Client wishes to cancel or reschedule a booking with Ascent Nutrition.
- 4.2 If the Client chooses to cancel or reschedule their appointment prior to 24 hours' before the booking time, Ascent Nutrition will assist the client in rebooking their appointment at no further cost to the Client.
- 4.3 If 24 hours' notice cannot be given, Ascent Nutrition reserves the right to charge full Fees to the Client.
- 4.4 The Client will be considered a no-show if they are not present at the agreed venue within 15 minutes

of the booking time. Ascent Nutrition will charge full Fees for any no-show appointments.

- 4.5 If Ascent Nutrition becomes incapable of providing the Services through illness or otherwise, Ascent Nutrition may reschedule or cancel a booking by notice in writing to the Client, effective immediately.

5. CLIENT OBLIGATIONS

- 5.1 The Client must immediately inform Ascent Nutrition if the Client is suffering from, experiences, or becomes aware of the presence of, any disease, illness, injury, disorder or physical or medical condition that may limit or prevent the Client from participating in the Services.
- 5.2 The Client must keep Ascent Nutrition promptly informed of the following:
- (a) If the Client is pregnant, trying to become pregnant, postpartum, or breastfeeding;
 - (b) Any medication taken by the Client; or
 - (c) Any changes in the Client's health, whether or not the Client deems it relevant, including any item listed in clause 5.1 of these Terms.
- 5.3 The Client must follow all reasonable directions and instructions of Ascent Nutrition relating to the Client's health and safety, including precautions taken from COVID-19.
- 5.4 Whilst Ascent Nutrition can assist with general guidance and advice, the Client is responsible for all discussion, liaison, and costs associated with:
- (a) The Client's general practitioner;
 - (b) Medicare;
 - (c) Department of Veterans' Affairs; or
 - (d) National Disability Insurance Scheme.
- 5.5 If the Client has private health insurance, it is responsible for liaising directly with its private health fund to determine its eligibility for private health benefits in respect of the Services.

6. MINORS

- 6.1 Ascent Nutrition may at its discretion choose to provide Services to persons under the age of 18 years ("Minor"), subject to the following conditions:
- (a) A parent or guardian must sign the Consent Form on behalf of the Minor; and
 - (b) The Minor's accompanying parent or guardian agrees to be bound by these Terms and Conditions as if they were the one receiving the Services.

- 6.2 A parent or guardian must attend all appointments with the Minor.

- 6.3 Ascent Nutrition reserves the right to refuse any person on the basis of their age if, in its sole discretion, Ascent Nutrition deems it inappropriate to provide the Services to the person.

7. LIMITATION OF LIABILITY AND WARRANTY

- 7.1 Ascent Nutrition makes no warranties or guarantees regarding the likelihood of success of, or the performance of, any part of the Services in alleviating symptoms or increasing performance.
- 7.2 The Client acknowledges that all advice given as part of the Services is not medical advice and is provided as a suggestion. Ascent Nutrition strongly encourages the Client to discuss any lifestyle changes and recommendations with their general practitioner prior to their implementation.
- 7.3 Ascent Nutrition does not provide any prescriptions and no advice given by Ascent Nutrition should be treated as such. The Client acknowledges that they are solely responsible for any medical or lifestyle changes they choose to implement after or during the Services.
- 7.4 Ascent Nutrition makes no warranty for the quality, accuracy, timeliness, completeness or reliability of the advice, education, recommendations or content provided by Ascent Nutrition.
- 7.5 To the fullest extent permissible by law, Ascent Nutrition is not liable (whether in contract or tort) for:
- (a) Faults or defects in any services or goods provided by third parties in connection with the Services; or
 - (b) Any indirect, special or consequential loss (including loss or profits, loss of revenue, replacement costs, goodwill or any similar damages) however arising, whether or not Ascent Nutrition knew of the possibility of such loss and whether or not such loss was foreseeable.

- 7.6 To the fullest extent permitted by law, the liability of Ascent Nutrition for a breach of a non-excludable condition is limited to the supplying of the Services again or payment of the cost of having the Services supplied again.

8. WARRANTY DISCLAIMER

- 8.1 Nothing in this Agreement excludes, restricts or modifies any right or remedy, or any guarantee, warranty or other term or condition implied or imposed by legislation which cannot be lawfully excluded or limited. Such legislation includes the Australian Consumer Law which contains guarantees that protect the purchasers of goods

and services in certain circumstances, each a non-excludable provision.

- 8.2 Subject to Ascent Nutrition's obligations under the non-excludable provisions, and to the fullest extent permissible by law, Ascent Nutrition expressly disclaims all warranties and representations of any kind with respect to the Services whether express, implied, statutory, or arising out of the course of performance, course of dealing or usage of trade including any warranties or merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title or non-infringement.

9. INDEMNITY

- 9.1 The Client indemnifies and holds harmless Ascent Nutrition in respect of all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal fees on a full indemnity basis), in connection with any of the following:
- (a) Any breach of these Terms and Conditions;
 - (b) Any negligence acts or omission of the Client; and
 - (c) The Client's use of the Services, including any third-party claims made in connection with or arising out of the Client's use of the Services, other than use in accordance with these Terms and Conditions.

10. CONFIDENTIALITY

- 10.1 Each party agrees to keep confidential, and not to use or disclose except as permitted by this Agreement, any Confidential Information of the other party. The parties agree not to disclose the terms of this Agreement. This obligation of confidence extends to Confidential Information obtained by a party before this Agreement was entered into by the parties.
- 10.2 Each party must take all steps and do all such things as may be necessary, prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.
- 10.3 Each party shall refrain from making negative comments about the other party whether online or in person.

11. PRIVACY POLICY

- 11.1 "Personal Information" (as that term is defined in the *Privacy Act 1988* (Cth)) will only be used by Ascent Nutrition in accordance with the provision of its Privacy Policy.
- 11.2 Ascent Nutrition's Privacy Policy can be obtained via their website, <https://www.ascentnutrition.org/>.

12. DISPUTE RESOLUTION

- 12.1 The parties agree to attempt in good faith to resolve any dispute regarding this Agreement through negotiation with the assistance of an agreed mediator.
- 12.2 If the dispute or difference is not resolved to the satisfaction of the parties within 30 days, either party may request the matter to be heard by an arbitrator.
- 12.3 Arbitration shall be effected:
- (a) By an arbitrator agreed upon in writing by the parties; or
 - (b) In the absence of such agreement, by an arbitrator appointed in accordance with the provisions of the law relating to arbitration in force in the State of Queensland; or
 - (c) By an arbitrator appointed by the National President for the time being of the institute of Arbitrators Australia.
- 12.4 Ascent Nutrition may pause the provision of the Services to conduct whatever investigations deemed appropriate and, within 30 days of the given written notice, seek to resolve the dispute.

13. GENERAL

- 13.1 Any notice provided under this Agreement must be in writing, address to the other party's contact persons as notified by the other party.
- 13.2 This Agreement does not create a relationship of employment, agency or partnership between parties.
- 13.3 Ascent Nutrition may subcontract its obligations under this Agreement.
- 13.4 The failure of a party at any time to insist on performance by the other party of an obligation under this Agreement is not a waiver of any of its rights.
- 13.5 If part or all of the provisions of this Agreement are illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions.
- 13.6 Ascent Nutrition may vary the terms contained in this Agreement from time to time by posting the variations on its website or by providing the Client with a copy of the varied terms. Any variation to these terms will apply to the Services that commence after the date that Ascent Nutrition publishes the varied terms. The Client's engagement of Services after that date signifies acceptance of the varied terms.

- 13.7 This Agreement is governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the Courts of Queensland.
- 13.8 This Agreement constitutes the entire agreement of the parties as to the subject matter and supersedes and cancels all prior arrangements, understandings and negotiations in connection with it. Any statement made in negotiations for this Agreement which is not set out in this Agreement does not form part of the agreement between the parties.
- 13.9 Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.