



## **1. TERMS AND CONDITIONS SWIMGYM POOLS**

Date: March 28, 2019

### **Artikel 1      Definitions**

*Additions:* the service(s) in addition to the Facilities which can be purchased by the Participant for an additional fee.

*Facility:* made available for the performance of an activity.

*Participant:* any person that has entered into a Participant Agreement with SwimGym including persons attending a trial session.

*Participant Agreement:* the agreement between SwimGym and a Participant based on which the Facilities and Additions are made available by SwimGym to the Participant.

*Personal data:* all data related to the Participant provided by the Participant to SwimGym.

*SwimGym:* the private limited liability company under the laws of the Netherlands SwimGym B.V., established in Amsterdam with its offices in (1091 GL) Amsterdam at the Wibautstraat nr. 131B. Chamber of Commerce registration number: 67958311.

*SwimGym pass:* the entrance pass to enter SwimGym.

*Website:* the SwimGym websites [www.swimgym.nl](http://www.swimgym.nl) and [www.swimgym.com](http://www.swimgym.com).

*Written:* both analogue and digital, or any other data carrier.

### **Article 2      Applicability**

2.1      These Terms and Conditions apply to the establishment and implementation of all agreements regarding the use of the Facilities and Additions concluded between SwimGym and the Participant.

### **Article 3 Participant Agreement**

3.1 A Participant Agreement is entered into when:

- i) the Participant has provided all the required information and has (electronically) signed for approval; or
- ii) the Participant makes use of the Facilities and/or Additions.

The Participant Agreement is strictly personal.

3.2 Unless otherwise agreed upon, a Participant Agreement is entered into for an undetermined time and can be terminated in accordance with article 10 of these Terms and Conditions.

3.3 If the Participant Agreement is entered into by subscribing to a membership on the Website, then the Participant shall have a period of fourteen days to withdraw from that agreement without a statement of reason and extra costs.

3.4 The Participant withdrawing in accordance with article 3.3 has the right to the refund of all payments made to SwimGym unless the Participant has already made use of the Facilities and/or Additions.

3.5 The Participant Agreement and these Terms and Conditions together form the complete representation of the rights and obligations of SwimGym and the Participant and replace all earlier written and/or verbal announcements, agreements and all other correspondence.

3.6 Rights and obligations under the Participant Agreement and these Terms and Conditions cannot be transferred in whole or in part.

3.7 If the Participant enters into a new or additional Participant Agreement, then these Terms and Conditions apply without reservation unless explicitly otherwise agreed upon in writing.

3.8 A person younger than 18 years old cannot enter into a Participant Agreement.

3.10 By using the Facilities and/or Additions the Participant declares to meet at least the requirements of the Dutch swimming certificate level A as laid down in the Bepalingen, Richtlijnen en Examenprogramma's Zwem-ABC voor Licentiehouders from the Nationaal Platform Zwembaden.

### **Article 4 Membership**

4.1 Membership starts on the first day of the first term and continues until the Participant Agreement ends in the agreed manner.

4.2 The Participant Agreement indicates the type of membership for which an agreement has been entered into.

#### **Article 5 Payment**

5.1 Payments to SwimGym are made in accordance to the Participant Agreement. When the terms of the Participant Agreement do not sufficiently regulate the payment procedure, the costs have to be paid to SwimGym before the Participant uses the Facilities and/or Additions that are the subject of the Participant Agreement. When the Participant Agreement concerns a Facility and/or Addition for which the costs are due periodically, the payments are made by direct debit to SwimGym during the first week of the month in which the Participant is entitled to make use of the Facilities and/or Additions.

5.2 Save for when article 3.4 is applicable, payments made by a Participant in accordance with a Participant Agreement shall not be refunded.

5.3 Payments made by the Participant will not be refunded when the Facilities and/or Additions cannot fully be used as a consequence of force majeure.

#### **Article 6 SwimGym pass**

6.1 The SwimGym pass is property of SwimGym and can be used only by the Participant and for the duration of the membership.

6.2 SwimGym can at all times ask for identification to verify that the SwimGym pass belongs to the Participant.

6.3 The SwimGym pass provides access to the agreed number of training sessions for the duration of the Participant Agreement.

6.4 If the Participant loses the SwimGym pass, it gets stolen or damaged otherwise than by normal use, a new SwimGym pass can be requested at the reception. The SwimGym pass will be blocked. The replacement contribution is EUR 5. The new pass will be activated when this fee has been paid. In the meantime, the payment obligation will remain in effect.

#### **Article 7 Training schedules**

7.1 To make use of the Facilities and/or Additions, the Participant must make a reservation in advance.

7.2 If, despite a reservation, the Participant intends not to use the Facilities and/or Additions, the Participant must cancel the reservation. The Participant can cancel a reservation up to eight hours in

advance. In case of an individual activity or trial lesson, the reservation must be cancelled at least 24 hours in advance.

7.3 If no timely cancellation has taken place, the activity which is not followed will be considered as followed.

7.4 If no cancellation has taken place more than twice, SwimGym will impose from the third time on a fine of EUR 7.50 every time the Participant does not cancel the reservation. SwimGym also has the right to change or suspend the Participant Agreement.

7.5 SwimGym has the right to change the group and training schedules.

## **Article 8 Lockers**

8.1 Taking personal property to SwimGym is at the Participants own risk. Use of lockers is at the Participants own risk. SwimGym accepts no liability for loss or theft of property.

8.2 If the Participant loses or damages a key for a locker, the costs of replacing or repairing the key will be borne by the Participant.

8.3 The Participant is liable for the costs of repairing a locker that has been damaged as a result of negligence or deliberate recklessness.

8.4 Lockers may be used for the period in which the Participant is present at the SwimGym location.

8.5 SwimGym has the right to remove the contents of a locker when this locker is in use after closing time. SwimGym stores the contents of a locker for fourteen days.

8.6 Lost property must be immediately handed off to a SwimGym employee.

8.7 There may be costs associated with the use of a locker.

## **Article 9 Risk and liability**

9.1 Using the Facilities and/or Additions, participating in a training program and/or activities of any kind, including but not limited to swimming, at any location, including but not limited to the Facilities, is at the risk of the Participant.

9.2 If the Participant is being trained, and/or participates in activities of any kind, including but not limited to swimming, by a SwimGym employee at any location, including but not limited to the Facilities, the Participant is obligated to alert the employee about physical conditions the trainer should reasonably be aware of, such as injury or illness before, during and after the training.

9.3 Neither SwimGym nor its employees accept liability for material or immaterial damage or (sport related) injury caused to a Participant and/or third parties.

9.4 Neither SwimGym nor its employees accept liability for any damage to or loss or theft of property of a Participant or a third party.

9.5 The Participant is liable for damage or injury caused to SwimGym employees, the Facilities or property of SwimGym as a result of fault, misconduct or intent on the part of the Participant.

9.6 These limitations to liability also extend to SwimGym employees and any other entities assisting SwimGym in executing the Participant Agreement.

#### **Article 10 Termination of the Participant Agreement**

10.1 When a Participant Agreement has been concluded for an undetermined time, the Participant Agreement may be terminated with due observance of a reasonable period of no less than one calendar month. The agreement must be terminated on the website or the SwimGym app. The Participant automatically receives a confirmation of receipt. A Participant who has not received a confirmation of receipt must immediately contact SwimGym to unambiguously confirm the termination.

10.2 If a Participant Agreement has been concluded for a definite period of time and the Participant does not terminate the Participant Agreement in time, the Participant Agreement will continue after the agreed period for an undetermined period. The Participant may terminate the Participant Agreement in accordance with Article 10.1.

10.3 In the event of a long-term illness, injury or pregnancy of the Participant, the payment obligation may be temporarily suspended or the Participant Agreement may be terminated after the Participant has submitted a doctor's statement to SwimGym. The suspension has a minimum duration of two months and a maximum duration of six months.

10.4 SwimGym has the right to terminate the Participant Agreement with or without immediate effect, if:

- the Participant violates these Terms and Conditions or the SwimGym house rules; or

- a third party uses the Facilities and/or Additions by posing as a Participant, for example by using a SwimGym pass, and the Participant is aware or should be aware of this.

10.5 When SwimGym receives a complaint about improper behavior or when the Participant behaves improperly, SwimGym has the right to suspend the Participant and start an investigation. SwimGym may terminate the membership on the basis of this investigation.

10.6 When a membership is terminated for a reason stated in Article 10.4 or 10.5, SwimGym reserves the right to use (part of) the received payment(s) for costs incurred by SwimGym. SwimGym will not process membership requests from the former Participant and the former Participant will be denied access to SwimGym.

10.7 If a Participant Agreement for a definite period of time is terminated before the end of the agreed membership period for a reason stated in Article 10.4 or 10.5, the former Participant will continue to owe the subscription fee until the agreed membership period has ended.

10.8 If SwimGym terminates its business, interim termination by SwimGym is possible, with due observance of a notice period of one calendar month. In that case the payment obligation for the remaining duration of the membership expires.

## **Article 11 Changes**

11.1. SwimGym can annually change the membership rates agreed on in the Participant Agreement. Adjustments of rates due to government measures can be implemented immediately irrespective of the amount.

11.2. If SwimGym intends to increase membership rates, it informs the Participant one month in advance. SwimGym will make this announcement to the Participant by means of a (digital) letter, via the site or by means of a statement on the information boards at SwimGym. The Participant is offered the opportunity to terminate the Participant Agreement with due observance of a reasonable period of no less than one calendar month.

11.3. SwimGym can amend these Terms and Conditions at all times, as long as those changes do not disproportionately affect the rights of Participants.

11.4. Different opening times and schedules may apply, for example but not exclusively during calamities or holidays or due to maintenance. The (changed) opening times and schedules can be found on the website and the SwimGym app.

## **Article 12      Complaints**

12.1      A complaint is submitted to a host or hostess. If the Participant is not satisfied with his or her reaction, the Participant contacts the duty manager. If this does not lead to a solution, the Participants steps to the general manager of SwimGym.

## **Article 13      Personal data and privacy policy**

13.1.      The Participant provides Personal data to SwimGym.

13.2.      SwimGym processes the personal data provided by the Participant and stores the personal data while using the SwimGym Online Coaching Program.

13.3.      By agreeing to these Terms and Conditions, the Participant gives SwimGym permission to process the personal data provided. SwimGym processes personal data in accordance with the General Data Protection Regulation (Algemene Verordening Gegevensbescherming). SwimGym destroys all personal data provided by the Participant upon receiving a written request to do so after termination of the membership.

13.4.      By agreeing to these Terms and Conditions, the Participant gives SwimGym permission to send offers and special promotions by e-mail or other means unless the Participant indicates otherwise.

13.5      For processing personal data, SwimGym can engage with service providers (processors) who process personal data exclusively on behalf of SwimGym. A processor agreement is concluded with the service provider. This agreement meets the requirements set by the General Data Protection Regulation (AVG). An example of a processor is an IT service provider who offers support in keeping SwimGym systems safe and stable. The data is processed in compliance with the terms and conditions of that third party. SwimGym accepts no liability.

## **Article 14      Dispute settlement**

14.1      If any of the provisions of these Terms and Conditions are found to be unenforceable or void, the remainder shall be enforced as fully as possible.

14.2      The legal relationship between the Participant and SwimGym is governed by Dutch law.

14.3      Disputes arising in connection to that legal relationship between the Participant and SwimGym will be settled exclusively by the competent court in Amsterdam.

**Article 15      Incorporation clause**

15.1      The Terms and Conditions of Yellow Lane B.V., known as SwimGym.com, are an integral part of these Terms and Conditions. These Terms and Conditions can be found on [www.SwimGym.com](http://www.SwimGym.com).

15.2      The SwimGym House Rules are an integral part of these Terms and Conditions.

15.3      The Statement Concerning the Privacy Policy of SwimGym is an integral part of these Terms and Conditions.



## **2. HOUSE RULES SWIMGYM POOLS**

Date: March 28, 2019

### **Access**

- Before entering the dressing room, the Participant checks in with the personal SwimGym pass.
- The Participant must be present at the pool five minutes before the start of the activity.

### **Accommodation**

- Properties and clothes must be stored in the lockers.
- The use of mobile phones, photo and film equipment is not permitted in the dressing rooms.

### **Hygiene**

- The Participant takes a shower before entering the pool.
- The Participant wears a swimming cap.
- The Participant wears swimwear suitable for swimming training, which at least does not include a bikini, swim short or body covering swimwear.
- Wearing (outdoor) footwear is not permitted, with the exception of indoor flip-flops.

### **Safety**

- Entering the pool is only permitted via the stairs. Diving is not permitted.
- On the basis of the SwimGym swimming guidelines, the Participant:
  - swims counterclockwise;
  - keeps distance and allows faster swimmers to take the lead; and
  - does not hinder others.
- Instructions from SwimGym employees must be followed at all times.

### **Camera surveillance**

- Camera surveillance takes place in various rooms at the SwimGym locations. This supervision is meant, among other things, to prevent vandalism and theft of personal property and to guarantee safety.

### **Liability**

- Use of the swimming accommodation is at the Participants own risk. SwimGym accepts no liability for damage or injury caused by a Participant or third party. SwimGym accepts no liability for damage, loss or theft of property.

### **3. PRIVACY STATEMENT SWIMGYM POOLS**

Date: March 28, 2019

#### **Article 1 Contact details**

1.1 SwimGym B.V. (SwimGym) is the controller and is located in (1091 GL) Amsterdam on the Wibautstraat no. 131B. SwimGym can be reached by telephone on 020 3331016 and by e-mail via info@swimgym.nl.

#### **Article 2 Applicability**

2.1 This Privacy Statement applies to all whose personal data is processed by SwimGym, with the exception of those who work at SwimGym. This Privacy Statement does not apply to (temporary) employees and applicants.

2.2 This Privacy Statement applies to:

- participants of SwimGym;
- potential participants who have contacted SwimGym;
- visitors of the SwimGym website;
- recipients of newsletters and commercial e-mails from SwimGym; and
- all other persons who contact SwimGym or from whom SwimGym processes personal data.

#### **Article 3 Types of personal data**

3.1 The following personal data is being processed:

- Personal data provided by the Participant to SwimGym.
- Personal data generated during the Participants visit to the website and while reading electronic newsletters.
- Personal data SwimGym obtained from other sources.

3.2 Personal data provided by the Participant means:

- contact details and other personal data required for the implementation of the Participant Agreement; and
- contact details and other personal data, obtained via (web)contact forms.

3.3 Personal data obtained via or generated by the website, electronic newsletters and commercial e-mails or related technology means:

- IP-numbers;

- participants surfing behavior on the website, such as information about the first visit, the previous visit, the current visit, the pages viewed and the way the website navigates; and
- whether a newsletter or commercial e-mail is opened and which parts of it are being clicked on.

3.4 Personal data obtained from other sources means:

- personal data available on public social media platforms;
- personal data obtained from the Trade Register of the Chamber of Commerce and the Land Registry; and
- personal data available on public websites.

#### **Article 4 Use of personal data**

4.1 Personal data is used by SwimGym for different purposes:

- Executing the Participant Agreement and associated invoicing.
- Complying with legal obligations.
- Maintaining contact with the Participant. Contact details are stored and can be used for, among other things, sending newsletters, updates and information requested from SwimGym.

4.2 The following data is analyzed by SwimGym:

- Interaction data: personal data obtained from contact between SwimGym and the Participant, both online and offline.
- Behavioral data: personal data processed by SwimGym with regard to the Participants behavior, both on the basis of surfing behavior on the website and reading newsletters and on the basis of contact with our employees.
- Data arising from customer satisfaction surveys. Participation in customer satisfaction surveys is on a voluntary basis. Prior to a customer satisfaction survey, the Participant receives further information about the method and the way in which SwimGym handles the information obtained.
- Data resulting from user statistics. The user statistics of the website and the Facilities enable SwimGym to indicate, among other things, the number of visitors, the duration of the visit and, with regard to the website, which parts of the website are being viewed. This concerns generic reports without information about individuals. The information obtained is used to improve the website and Facilities.
- Data arising from access control and business security. Before entering the dressing room, the Participant must check in with the personal SwimGym pass. Camera images are made. This supervision is meant, among other things, to prevent vandalism and theft of personal property and to guarantee safety. In principle, camera images are destroyed after three weeks.

## **Article 5      Legal basis**

5.1      A controller may only process personal data if this can be based on one of the limitative listed legal grounds in the General Data Protection Regulation (Algemene Verordening Gegevensbescherming (AVG)).

The four legal bases on which SwimGym relies are:

- *Permission.* If permission to process personal data has been requested by SwimGym and granted by the Participant, the Participant keeps the right to withdraw this permission.
- *Agreement or run-up to conclusion of an agreement.* If the Participant concludes or wishes to conclude a Participant Agreement with SwimGym, SwimGym will process personal data if and to the extent necessary for the implementation of the Participant Agreement;
- *Legal obligation.* Based on legal obligations, it may be necessary, among other things, to keep a copy of the Participants identification card.
- *Legitimate interest.* SwimGym may process personal data if it has a legitimate interest and does not thereby infringe the privacy of the Participant.

## **Article 6      Processors**

6.1      For processing personal data, SwimGym can engage with service providers (processors) who process personal data exclusively on behalf of SwimGym. A processor agreement is concluded with the service provider. This agreement meets the requirements set by the General Data Protection Regulation (AVG). An example of a processor is an IT service provider who offers support in keeping SwimGym systems safe and stable.

6.2      The data is processed in compliance with the terms and conditions of that third party. SwimGym accepts no liability.

## **Article 7      Sharing of personal data with third parties**

7.1      It may be necessary to share personal data of the Participant with third parties, for example because of a court decision or any other legal obligation.

7.2      Personal data can be provided to third parties in the event of a reorganization or merger of SwimGym or the sale of (a part of) the company of SwimGym.

7.3      Personal data is not shared with third parties for commercial purposes.

## **Article 8 Cookies**

8.1 Cookies are small (text)files placed by a webpage server on a computer, tablet or other electronic device (hereinafter: "computer") when you visit a webpage. When SwimGym uses cookies to collect the Participants personal data, SwimGym processes the data in accordance with this Privacy Statement.

8.2 Functional (necessary) cookies are placed via the websites of SwimGym as well as analytical cookies, cookies related to social media options and tracking cookies for offering relevant content.

8.3 The Participant can set the browser in such a way that no cookies are stored, that the Participant can allow or refuse any cookie or that all cookies are deleted when the browser is closed. Cookies are placed on every computer which the Participant uses to visit the websites. If the Participant does not wish to receive cookies, the Participant must adjust the settings on all computers which are being used by the Participant. If the Participant refuses and/or removes cookies, this also affects the strictly necessary cookies. This can place limitations on the possibilities to use the websites or parts thereof.

## **9. Questions**

9.1 A Participant may exercise his rights based on the law with regard to personal data. For example, the Participant has the right to view, correct and delete personal data. The Participant can also object to the use of data or request SwimGym to limit this use. In certain cases, the Participant may request data. SwimGym can be reached by telephone on 020 3331016 and by e-mail via [info@swimgym.nl](mailto:info@swimgym.nl).

## **10. Complaints**

10.1 In the event of complaints concerning the handling of personal data, SwimGym can be reached on 020 3331016 and by e-mail via [info@swimgym.nl](mailto:info@swimgym.nl). If a solution cannot be found, the Participant can turn to the Dutch Data Protection Authority (de Autoriteit Persoonsgegevens).

## **Article 11 Changes**

11.1 SwimGym informs Participants about major changes to regulations via the website.