

## Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Instructors Q&A

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### **Performance guarantee**

**Q1: Does a fitness center have to provide a performance guarantee?  
Under what circumstances can it be waived?**

**A1:**

1. According the Paragraph 1 of Point 18 of the Mandatory Provisions of Standard Contracts for Fitness Instructor, a fitness center shall provide guarantee for the performance of the contract for 50% of the prepaid fee.
2. However, the aforementioned paragraph does not apply to the fitness centers which collect payments on a per-class, per-month or prepaid bases and the accumulated amount is less than NT\$5,000." In the case that payments are collected on a per-class or per-month or prepaid bases according to a proviso with accumulated amount under 5,000, the fitness center is not required to provide performance guarantee.
3. In particular, if the fitness center works with a private financing provider to allow its consumer make payment on monthly basis, it still has to provide a performance guarantee. As it's the consumer that pays the payment on monthly basis, while the fitness center receives the fee in full from the financing provider (after the financing provider deducts the service fee), and the financing provider collects the payment from the consumer on a monthly basis, since the fitness center has already received the fee in full, it should provide the performance guarantee to safeguard rights and interests of the consumer.

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**Q2: A fitness center is not required to provide performance guarantee  
for monthly payment. How is this calculated?**

**A2:**

1. For example, the consumer buys 24 coaching classes (NTD1,500 per class) from the fitness center for a period of 3 months, if the fitness center collects the payment on a monthly basis, that is, 8 classes per month, the fitness center does not need to provide a performance guarantee.
2. For example, the consumer buys 50 classes (NTD 2,000 per class) for 5 months, if the fitness center collects the payment on a monthly basis, that is, 10 classes per month, the fitness center does not need to provide a performance guarantee, either.

※Reminder: As the consumer's unawareness of the limit for the coaching period often leads to consumption dispute, **the fitness center is advised to**

**make sure that it clearly specifies the start and end of the contract period as well as the effect of contract expiration in the contract and asks the consumer to put his/her signature by such clause in the contract** in order to reduce consumer disputes in the future.

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**Q3: Is there a limit to the number of classes for monthly payment?**

**A3:**

1. In general, most consumers go to coaching classes two or three times a week. Therefore, it is advised that when a fitness center sells coaching classes it charges on monthly basis the maximum number of classes per month should not exceed 8-12 classes.
  2. If the fitness center oversells coaching classes, the consumer can unconditionally terminate the contract in accordance with the first subparagraph, the first paragraph, article 10 of Mandatory Provisions of Standard Contracts for Fitness Instructors.
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**Q4: How can performance guarantee be provided?**

**A4:**

1. A fitness center can open a special trust account in a delivery bank (that is, the trust business) for management of performance guarantee in accordance with the Trust Law.
  2. A financial institutions can provide a performance guarantee of 50% of the class fee. The guarantee period can be negotiated when the contract is signed, but it shall not be shorter than the contract period.
  3. A financial institution or an electronic payment institution can provide custody service for payment funds, which are deposited into a special payment custody accounts opened by the the financial institution or into a special deposit account opened by the electronic payment institution with a financial institution for specified use of the funds.
- (1) A financial institution concurrently operating credit card or debit card business can open a special account for paymnet custody purpose. When a consumer makes a payment with a credit card or debit card, 50% of the fund prepaid by the consumer is deposited into the pre-paid special account. In other words, the fund is kept by a bank concurrely operating credit card or debit card business. During the custody period, if declared bankruptcy, business registration revocation, business closing or any other matter of the bank leads to its failure to fulfill its obligations to deliver goods or provide services to the consumer, the financial institution shall return the prepayment upon the request by the consumer.
  - (2) Electronic payment institutions specializing in or concurrently operating the aforementioned business
    1. O' Pay (O'Pay Electronic Payment Co., Ltd.)

2. GAMA PAY (GAMA PAY Co., Ltd)
3. ezPay (ezPay Co., Ltd.)
4. PChome InterPay ( PChome InterPay Inc. )
5. JKO Payment ( Jkopay Co. Ltd.)
6. LINE Pay Money ( iPASS Corporation )
7. EasyPay EasyCard Corporation )
8. icash Pay (Icash Corporation Co)
9. Happy Go Pay ( Yuan Hsin Digital Payment Co., Ltd. )

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**Q5: Is a fitness center required to provide a performance guarantee for the membership fee and other fees paid?**

A5: No, because they are one-time fees.

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**Q6: If the coaching class fee is charged by the number of classes, is it not subject to the monthly limit of NTD 5,000?**

A6: As long as the coaching class fee is collected on a per-class or per-month basis, the fitness center is not required to provide performance guarantee and it is not subject to the monthly limit of NTD 5,000.

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**Q7: Can the consumer make a single payment for the stored-value card sold by the fitness center to members only.**

A7: Yes. When the value stored is under NTD 5,000 each time, the fitness center is not required to provide performance guarantee.

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**Q8: Can performance guarantee be waived for a fitness center only when the monthly coaching class fee is under NTD 5,000?**

A8: Performance guarantee can be waived for a fitness center collecting payments on a per-class or per-month or prepaid bases with accumulated amount under NT\$5,000 (mainly for arrangement like pre-paid cards). The statement that “performance guarantee can be waived for a fitness center when the monthly coaching class fee is under NTD 5,000” is not true.

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**Q9: If the consumer has bought 8 classes, agreed with the fitness center to take at least two classes a week, and signed a one-month contract for 8 classes, is such case considered per-month payment or one-time payment, for which the fitness center is required to provide performance guarantee?**

A9: Performance guarantee is not required if the consumer uses up 8 classes in one month.

※A fitness center should clearly let the consumer know that coaching classes cannot be refunded after one month, and it should not let the

consumer sign a multi-month contract for 8 classes each month, which is equivalent to “contract bundle.”

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**Q10: If a consumer needs more than 12 classes per month due to their personal needs, can a fitness center provide them as the consumer wishes?**

A10: The fitness center shall remind the consumer that if there are more than 20 classes per month, it can provide the service under the request of the consumer. If the consumer regrets this decision before he/she takes 20 classes, the consumer still has the right to terminate the contract under the condition that the consumer has attended over 5 classes in average per week according to the first subparagraph, first paragraph of point 10, Mandatory and Provisions of Standard Contracts for Fitness Instructors and the fitness center shall not charge any handling fee, default penalty or any fee in any other reason.

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#### **Obligation of notification**

**Q11: Under what condition should a fitness center notify the consumer?**

A11: When there is any change in the coaching class time, the consumer should be notified within the agreed period according to the method agreed by both parties in the contract. If a fitness center and the consumer agree to notify the consumer one day in advance by text message and the fitness center fails to notify the consumer in the agreed way, the consumer may request the fitness center to make up the class or make compensation within the specified period according to the agreed method.

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**Q12: Under what circumstances should the consumer notify the fitness center?**

**A12:**

1. The consumer should first agree with a fitness center on how to make a reservation for a coaching class. If such agreement is not available, there is no need for the consumer to make an appointment.
  2. If the consumer is unable to attend the coaching class at the agreed time, he/she should notify the fitness center within the agreed period according to the method agreed by both parties in the contract.
  3. If the consumer fails to make such notification, the fitness center may notify the consumer with the agreed method to make up the missed class after the consumer pays the coach and venue fees; if the fee is not agreed in advance, the missed class will be made up free of charge.
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#### **Contract termination**

**Q13: Under what conditions can the consumer unconditionally terminate the contract and does not need to pay default penalty?**

**A13:**

1. A fitness center over-markets coaching classes, and the consumer has therefore accumulated a total of 5 coaching class per week according to the contract (including different coaches from the same fitness center).
2. The coaches designated by both parties cannot provide the service as agreed in the contract. However, the aforementioned situation does not apply if the consumer agrees to replace the coach with a new one.
3. The fitness center changes the venue of contract performance without the consent of the consumer.

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**Q14: Can a consumer who has purchased 10 fitness coaching classes before expiration of the contract period terminate the contract any time?**

**A14:** The consumer may terminate the contract any time before the expiration of the fitness coach contract, but a fitness center can charge the consumer default penalty.

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**Q15: In the case that the consumer likes a coach very much, can the consumer cancel the contract if he/she leaves the fitness center?**

**A15:**

1. The consumer must review the contract carefully to confirm whether his class can be provided by multiple coaches or a designated coach only. If the consumer only designates a single coach and the coach leaves the fitness center, the fitness center shall not charge the consumer any default penalty for contract termination.
2. If the fitness center can provide the consumer coaching classes through multiple or non-designated coaches according to the contract, and the consumer wants to terminate the contract early, the fitness center can charge a penalty for breach of contract.

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**Q16: In the case that the consumer purchased 12 coaching classes and paid NTD 12,000 with NTD1,000 per class, both parties agreed that the consumer shall use up all the classes during the following three months, i.e., at least 4 coaching classes shall be used in a month and the consumer asks the fitness center to terminate the contract in the second month after he/she only has used 3 classes in the first month. How shall the refund be calculated?**

**A16:**

1. The refund calculation shall start from the number of remaining classes and the number of unused classes in the first month shall be excluded in the calculation. So the remaining number of classes is 8.
2. If the fitness center charges a non-fixed fee, it is equal to:  $8,000 * 20\% =$  NTD 1,600 (rounded up).
3. The amount that the fitness center should refund to the consumer is therefore  $(8 * 1,000) - 1,600 =$  NTD6,400.

※Reminder: Although the fitness center can agree with the consumer on the minimum number of coaching classes per month, as such agreement has can significantly influence the rights and interests of the consumer, **the fitness center needs to clearly specify such information in the contract, and the fitness center is advised to provide oral explanation about this** to avoid future disputes.

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**Q17: In the case that the consumer purchased 12 coaching classes and paid NTD 12,000 with NTD1,000 per class, the two parties did not agree that the consumer shall use up all the classes during the following three months and the consumer asks the fitness center to terminate the contract in the second month after he/she only used 3 classes in the first month. How shall the refund be calculated?**

**A17:** If there is no such prior agreement, the balance will be returned to the consumer according to the ratio of the number of remaining classes to the total contract price. In the case that the consumer purchased 12 coaching classes and paid NTD 12,000 with NTD1,000 per class, the two parties did not agree on the number of classes the consumer shall use per month and the consumer asks the fitness center to terminate the contract in the second month after he/she only used 3 classes, the refund will be calculated based on the remaining 9 classes. The handling fee for the termination of the contract shall be charged according to the way agreed by both parties. [The method is as follows: 1. No charge. 2. fixed amount of NTD600. 3. Unfixed amount: The fitness center can choose to calculate the fee by 20% of the refundable balance, and the upper limit is NTD9,000.

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**Q18: After the consumer's coach leaves the fitness center when the consumer's class expires, can the consumer get a refund?**

**A18:**

1. According to subparagraph 11, paragraph 1, of Mandatory Provisions of Standard Contracts for Fitness Instructors, the consumer may terminate the contract any time before the expiration of the period. If the classes are not used up after the contract period expires, the fitness

center may reject to refund the fee of remaining classes after contract period expires. Therefore, the consumer may request a refund, but a fitness center can choose to refund the consumer or refuse to do so.

2. If the class has no expiration date according to the fitness center's promotion, the fitness center should still provide remaining classes.

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**Q19: Can the consumer get a refund even if the coaching class is overdue?**

**A19 :** The fitness center is not required to refund after the due date, but it must make sure that the number of classes and months it sells is not too large for the consumer to complete. If there are more than 20 classes for the consumer to use per month, the consumer can ask to terminate the contract unconditionally.

**Q20: In the case that the consumer wants to terminate the contract early, but he/she has 10 classes left, the consumer was absent in 4 of them without a valid reason and a venue fee will be charged for making up the missed classes, how should the refund be made?**

**A20:** For absences from coaching classes without a valid reason, the fitness center is allowed not to refund the fee. The consumer can request it to make up a missed class, but has to pay the venue fee.

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**Calculation of gift cost**

**Q21: When a consumer buys 10 coaching classes for a total price of NTD 12,000 (1,200 for 1 class) and the fitness center gives the consumer 2 coaching classes for free, how is the unit price of each class calculated?**

**A21:**

1. If the fitness center gives a number of classes to the consumer for free, they should be included in the contract. For example, a consumer buys 10 coaching classes for a total price of 12,000 (1,200 for 1 class), and the fitness center gives the consumer 2 coaching classes for free, the 2 coaching classes given by the fitness center as a gift should be included in the contract, and the consumer's contract should have 12 classes with a total of NTD 12,000 (1 class price 1,000 ).
2. If the consumer terminates the contract with the fitness center after using 2 coaching classes, the remaining contract value will be 10,000, and the consumer is not allowed to claim that two classes given to him/her for free are used and therefore request a refund of 12,000. When a fitness center gives a product and other service as a gift, such as waive of handling fee or membership fee, they should be

considered gifts. When the contract is terminated, the fitness center shall not ask the consumer to return the products, handling fees or the difference between the membership fees it gave away for free as gifts.

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### **Questions about membership suspension**

**Q22: Are a "household registration transcript" or a "housing lease agreement" valid proofs for job change or relocation for membership suspension?**

**A22:**

1. When the consumer does not have the housing lease agreement or other supporting information, such as the proof that the consumer owns his/residence or lives with his/her family, only then is the consumer allowed to request the fitness center to use the household registration transcript as proof.
  2. However, the fitness center should still handle this based on actual situation. If the consumer's household registration is in Taichung, he/she works in Taipei, and the contract was signed in Taipei, then it does not really help to request a copy of the consumer's household registration.
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**Q23: If a member agrees to accept deduction for membership suspension, can the deduction continue? If the consumer cannot provide a valid proof to support his/her request for membership suspension certificate, can a handling fee be charged?**

**A23:**

1. The statutory reasons listed in point 9 of Mandatory Provisions of Standard Contracts for Fitness Instructors are listed below:
  - (1) Staying abroad for more than 1 month.
  - (2) Injury, illness or physical condition unsuitable for exercising.
  - (3) Pregnancy, baby-sitting, and taking care of parent(s).
  - (4) Military service that makes it difficult to execute the contract.
  - (5) Job changes or relocation that makes it difficult to execute the contract.
  - (6) Other reasons that make it difficult to execute the contract.

During the suspension period, the consumer does not need to pay class fees, no handling fees shall be charge and the fitness center cannot continue to proceed with deduction even with the consumer's consent.

2. However, if a consumer's request for membership suspension is not based on a statutory reason and the consumer agrees that the fitness center can continue to proceed with deduction, the fitness center and charge a handling fee.
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### **Applicable Regulations**



**Q24: Do both sets of Provisions apply to fitness centers and fitness instructors?**

**A24:**

1. If a fitness center sells both memberships and coaching classes, both of Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Centers and Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Instructors shall apply.
2. If the fitness center only sells coaching classes without membership, only Mandatory and Prohibitory Provisions of Standard Contracts for Fitness Instructors shall apply.

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**Q 25: If the consumer fails to notify the fitness center that he/she is unable to attend a coaching class, can the fitness center deduct the class? Shall a missed class be made up?**

**A25:**

1. In accordance with the third paragraph of point 15 of the Provisions, if the consumer fails to notify the fitness center about (his/her absence) with the agreed method, it can make up the missed class after the consumer pays the coach and venue fees; if the fee is not agreed in advance, the missed class will be provided free of charge.
2. If the consumer is absent without a valid reason, such act is considered “delayed acceptance of performance” according to the Civil Code. The fitness center shall not be exempted from the obligation to pay the coaching class for this reason, and it shall not directly deduct the class without any reason.
3. A fitness center has to make up the missed classes for the consumer, and it can choose to charge the consumer venue fees or not.
4. The consumer can choose whether to pay the venue fee for making up the missed class. For example, if a consumer buys 10 classes and makes an appointment with a coach, but he is absent without a valid reason, the consumer still has 10 classes left, but he only needs to make up the missed one, the fitness center can charge the venue fee. If the consumer is not willing to pay the venue fee, the fitness center may just skip the class.

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