

General terms and conditions of UnScared

Article 1 – Definitions

Agreement:	the agreement between UnScared and the Client regarding the provision of a Service;
Client:	the (legal) person with whom UnScared has entered into an Agreement;
Consumer:	the Client who is a natural person and who is not acting in the exercise of a profession or business;
Service:	a service provided by UnScared focussed on physical, educational and/or social activity;
Staff:	an employee, freelancer or other professional contracted by UnScared and appointed by UnScared to perform the Agreement;
UnScared:	UnScared v.o.f., with address at Vaartsestraat 35, 3511 TA Utrecht, the Netherlands and registered with the Trade Register of the Chamber of Commerce under number: 61632201.

Article 2 – Applicability

1. These general terms and conditions are applicable to all legal relationships between UnScared and the Client to which UnScared has declared these general conditions applicable.
2. These general terms and conditions are also applicable to all Agreements for the implementation of which third parties must be engaged.
3. Any deviations to these general terms and conditions are only valid if they have explicitly been agreed upon between UnScared and the Client in writing or in electronic form.
4. The applicability of any purchasing conditions or other conditions of the Client is explicitly rejected.
5. If one or more provisions in these general terms and conditions are invalid or is/are annulled, the remaining provisions of these general terms and conditions will remain fully applicable. UnScared and the Client will then consult each other in order to agree new provisions to replace the invalid or annulled provisions, taking into account as much as possible the purpose and purport of the original provision.

Article 3 – Offer

1. UnScared issues the offer for its Services on its website (www.unscared.fitness) or directly to the Client in writing or in electronic form.
2. An offer is valid for a period indicated by UnScared. When no term for acceptance has been set, the offer will remain valid for a maximum period of two (2) weeks from its date. When no acceptance takes place within the specified term, the offer will lapse.

Article 4 – Agreement

1. An Agreement will be formed at the moment the offer is accepted by the Client and this acceptance has been received by UnScared. UnScared will confirm receipt of the acceptance as soon as possible. Verbal acceptance by the Client only commits UnScared after the Client has confirmed acceptance to UnScared in writing or in electronic form.

2. If the acceptance differs from the offer, even with respect to minor items, this shall not bind UnScared. The Agreement will then not be formed in accordance with this deviating acceptance, unless UnScared indicates otherwise.
3. An Agreement is strictly personal and the rights and obligations contained therein nor the Agreement itself can be transferred by the Client, unless UnScared has explicitly agreed to such transfer in writing or in electronic form.

Article 5 - Reflection period for Consumers

1. A Consumer has the right to cancel the Agreement free of charges during a reflection period of fourteen (14) calendar days. This reflection period will commence on the day following the day on which the Agreement has been formed.
2. In case a Consumer, on his own request, makes use of the Services of UnScared during this reflection period and he subsequently invokes his revocation right, the Consumer will owe UnScared proportional compensation for the period in which he has made use of the Services.
3. The Consumer may notify UnScared of the use of his right of cancellation by:
 - returning the completed withdrawal form specified in Appendix 1 to info@unscared.fitness within the reflection period; or
 - sending an email containing the information specified in the withdrawal form to info@unscared.fitness within the reflection period.

Article 6 – Duration of the Agreement

The Agreement between UnScared and a Client is entered into for an indefinite period of time, unless explicitly agreed otherwise in writing or in electronic form.

Article 7 - Performance of the Agreement by UnScared

1. UnScared will carry out the Agreement or have it carried out to the best of its ability and understanding and in accordance with the requirements of good workmanship. However, UnScared cannot guarantee to achieve any intended result.
2. UnScared has the right to allow certain activities regarding the performance of the Agreement to be carried out by third parties.
3. The Agreement is exclusively performed by UnScared and not by or on behalf of one or more member(s) of the Staff, irrespective of whether the Client explicitly or tacitly awarded the contract to or requested one or more member(s) of the Staff for its performance. The applicability of articles 7:404 and 7:407 paragraph 2 of the Dutch Civil Code is therefore explicitly excluded and this exclusion is also stipulated for all natural persons and legal entities, also third parties, engaged by UnScared in the performance of the Agreement.

Article 8 – Time and location

1. The performance of the Agreement takes place at a time and location indicated by UnScared, unless it has been agreed otherwise.
2. UnScared has the right to carry out the performance of the Agreement through the internet by providing Clients with access to an online service through which performance of the Agreement shall take place.

3. It is the responsibility of the Client that UnScared or any third party engaged by UnScared can start performance of the Agreement in time. If performance of the Agreement cannot commence at the agreed time because of any acts or omissions of the Client, or in the event of a late cancellation by the Client, the Client can be refused access to any classes, sessions, courses or events in which performance of the Agreement takes place. Any resulting additional costs will be charged to the Client.

Article 9 - Obligations of UnScared

1. UnScared subjects its premises, facilities and equipment to required and regular maintenance.
2. UnScared makes sure that its Staff has and maintains sufficient knowledge to carry out the performance of the Agreement.
3. UnScared makes sure that there are codes of conduct in place relating to safety, hygiene and behaviour and that sufficient first-aid material is available on its premises.

Article 10 - Obligations of the Client

1. The Client follows the codes of conduct issued by UnScared.
2. The Client is obligated to inform UnScared about a medical contraindication, injury or other physical and/or mental condition which would make participation in any of the Services difficult, unsafe or impossible.
3. The Client must follow the instructions of UnScared and its Staff. The Client is not permitted to make use of equipment or facilities which the Client is unfamiliar with unless the Client has requested UnScared or its Staff to give an explanation.
4. The Client is not permitted to make use of the equipment and facilities if he is under the influence of alcohol, drugs, medication and/or of substances which are indicated as doping.
5. The Client is not permitted to smoke in the premises made available by UnScared.
6. The Client is obliged to inform UnScared immediately of any facts and circumstances which might be relevant in connection with the performance of the Agreement and of changes to a post address, e-mail address, bank account number and phone number.

Article 11 – Prices and price changes

1. All prices used by UnScared are including VAT, as well as any costs to be incurred in connection with the Agreement and administrative costs, unless otherwise indicated.
2. UnScared is entitled to adjust its prices at any time and will announce any possible price increases at least four (4) weeks in advance.
3. In the event of a price increase, a Consumer will have the right to terminate the Agreement within four (4) weeks after notification of such price increase by UnScared by sending an email to info@unscared.fitness. However, the option to terminate is not applicable to price adjustments on the basis of the price index as published by the statistics institute CBS for household consumption, nor to price adjustments which result directly from legislation, such as a VAT increase. Any fees owed by a Consumer after invoking its right to terminate the Agreement will be recalculated to reflect the actual period of the Agreement. Any fees paid in advance with regard to the period after rescission will be refunded by UnScared.

Article 12 – Payment and payment term

1. Fees due for a Service are collected monthly in advance via direct debit or prior to registration for the relevant Service, unless agreed otherwise in writing or in electronic form. Invoices will also be made available by UnScared.
2. In the event of late payment, failed payment or a reversal of payment, the Client will be notified by UnScared in writing or in electronic form and will be offered the opportunity to still settle the outstanding amount before the end of the current calendar month. If payment has not been received before the end of the current calendar month, the Client will fall into default by operation of law without any further notice of default being required.
3. If the Client has fallen into default, UnScared will be entitled to charge statutory interest and extrajudicial costs and everything that the Client owes to UnScared on any account whatsoever will become immediately due and payable. In addition, UnScared is then also entitled to immediately suspend further performance of the Agreement towards the Client until all outstanding amounts have been settled.

Article 13 – Changes to the Agreement by UnScared

UnScared can apply intermediate changes to the Services, the facilities, class schedules, opening hours and the applicable codes of conduct. UnScared will duly announce such changes at least two (2) weeks in advance, unless such changes can reasonably not be announced that long in advance.

Article 14 – Changes to the Agreement by the Client

1. UnScared will allow a Client to make the following changes to the Services requested in its current Agreement, provided that UnScared has appointed any of these Services as eligible to changes by a Client:
 - Upgrading or downgrading the number of times a Client can make use of the Services; and -
Pausing the Services.
2. Upgrading or downgrading the number of times a Client can make use of the Services can be arranged through the software supplied by UnScared or by sending an email to info@unscared.fitness and is only possible against the applicable rates at that time. Current rights to any discounts may lapse. Any such changes will take effect as of the start of the next calendar month, unless indicated otherwise. Clients are entitled to a maximum number of one (1) upgrade or one (1) downgrade per month.
3. Pausing the Services can be requested by sending an email to info@unscared.fitness and will only be approved by UnScared if the following conditions have been met, unless indicated otherwise by UnScared:
 - the request is received by UnScared at least one (1) calendar month before the requested starting date of the pause;
 - the requested starting date of the pause is the first day of a calendar month;
 - the requested ending date of the pause is the last day of a calendar month; and
 - the requested pause has a minimum duration of one (1) calendar month and does not last longer than six (6) calendar months.
4. UnScared will communicate its approval or rejection of the requested pause of the Services to the Client.

5. A pause of the Services will take effect on the approved starting date and will automatically end on the approved ending date. After the pause has lapsed, the Services of the Client which were active before the pause will become active again, unless agreed otherwise between the Client and UnScared in writing or in electronic form.
6. An approved pause of the Services can be prolonged once with an additional term of three (3) calendar months and can be requested after the currently active pause has become active. An approved pause can also be shortened so that the Services will become active again at an earlier date than the approved ending date of the currently active pause. Any such change needs to be requested by sending an email to info@unscared.fitness.

Article 15 – Termination of the Agreement

1. Both UnScared and the Client have the right to terminate the Agreement in writing or in electronic form with due observance of a notice period of one (1) calendar month, which notice period commences on the first day of the calendar month following the current calendar month.
2. In the event of a cancellation, UnScared has the right to recalculate the fees for the past period on the basis of the effective period of use.
3. UnScared may cancel the Agreement prematurely and with immediate effect if:
 - the Client violates one or more provisions of these general terms and conditions or of the applicable codes of conduct; or
 - the Consumer has shown unacceptable, rude or aggressive behaviour towards UnScared, its Staff and/or other Clients of UnScared.
4. In case of a termination by UnScared as referred to in paragraph 3 UnScared does not refund any remaining fee. This is independent of the obligation the Client may have to compensate for damages attributable to the Client.

Article 16 – Indemnities

The Client indemnifies UnScared against any claims by third parties - including shareholders, directors, supervisory directors and personnel of the Client, as well as affiliated legal entities, companies and others involved in the organisation of the Client - who suffer any damages in connection with the performance of the Agreement.

Article 17 – Liability of UnScared

1. Clients make use of the Services, facilities and equipment provided by UnScared at their own risk.
2. If UnScared would be liable, this liability will be limited to what has been provided for in this article.
3. If the Client demonstrates that he suffered damages by an act or omission by UnScared which would have been avoided had UnScared acted with due care and with expertise, UnScared will be liable for the damage up to a maximum of the amount which will be paid out under the general liability insurance taken out by UnScared. If no payment is made under the insurance referred to, any liability of UnScared is limited to the invoice amounts charged under the Agreement, whereby liability is further limited to the invoice amounts charged over the last six (6) months when an Agreement has been in force for more than six (6) months.

4. The term damage exclusively means damage to persons, damage to property and direct financial losses. UnScared will never be liable for indirect loss including consequential loss, lost profits, missed savings and loss caused by operational delays.
5. The limitations of the liability for damage included in these terms and conditions will not apply if the damage is due to intent or gross negligence of UnScared or its Staff.
6. The liability limitations laid down in this article are also stipulated for the persons or third parties engaged by UnScared who can therefore directly invoke these liability limitations.

Article 18 - Liability of the Client

1. The Client is liable towards UnScared for damage resulting from an attributable shortcoming in compliance with his obligations pursuant to the Agreement.
2. The Client is also liable towards UnScared for damage which is at the expense and risk of the Client including but not limited to damage caused by intent or gross negligence of the Client.

Article 19 – Force majeure

1. UnScared is not obliged to fulfil any obligation under the Agreement if UnScared is prevented from doing so as a result of a circumstance for which UnScared is not to blame nor accountable by virtue of law, a juridical act or generally accepted principles (common opinion).
2. In addition to what it means in legislation and case law, the term “force majeure” in these general terms and conditions also includes: (civil) war and the threat of (civil) war, natural disasters, strikes, excessive absenteeism or illness of the Staff or third parties engaged by UnScared, epidemics, pandemics, fire, flooding, power outages, government measures, non-performance on the part of suppliers or third parties engaged, non-performance or force majeure on the part of suppliers as a result of which UnScared is not or no longer able to meet its obligations to the Client as well as any external causes whether or not foreseen which are beyond the control of UnScared but which cause UnScared to be unable to fulfil its obligations under the Agreement.
3. In case of force majeure, UnScared makes an effort to fulfil the Agreement in a different way. The Client will follow all instructions of UnScared for this purpose.
4. During the period that force majeure continues UnScared and the Client can suspend the obligations under the Agreement. If the period lasts for more than two (2) months, both UnScared and the Client shall be entitled to terminate the Agreement with due observance of the notice period referred to in paragraph 1 of article 15.

Article 20 – Complaints

1. Any complaints about the implementation of the Agreement must be submitted to UnScared in writing or in electronic form within four (4) weeks after the Client has identified the shortcomings.
2. The complaint must include a detailed description, possibly with means of proof, in order to enable UnScared to respond adequately.
3. The late submittal of a complaint may result in the Client losing his rights concerning.
4. UnScared will respond to the complaints submitted by the Client as soon as possible but no later than four (4) weeks from the date of receipt of the complaint. In the event a complaint requires an expected time which is longer, UnScared will respond with a confirmation of receipt and an indication of the term within which the Client may expect an answer.

Article 21 - Personal data

1. In order to execute the Agreement, UnScared collects personal data from the Client. UnScared processes personal data with due care and within the framework of the applicable legislation and regulations, such as the General Data Protection Regulation (GDPR).
2. The privacy declaration of UnScared lists which data is processed by UnScared, for which purposes it is being processed, how UnScared handles the personal data and the way in which involved persons are able to exercise their rights for the processing of their personal data. The privacy statement is listed on the website of UnScared (www.unscared.fitness).

Article 22 – Changes to the terms and conditions

1. UnScared is entitled to unilaterally change or supplement these general terms and conditions.
2. In the event any change gives UnScared the right to provide a performance which is substantially different from the promised performance under the Agreement, a Consumer has the right to terminate the Agreement. In that case, the Consumer must communicate such in writing or in electronic form with due observance of the notice period referred to in paragraph 1 of article 15.

Article 23 – Governing law and competent court

1. Dutch law shall be applicable to all agreements between UnScared and the Client.
2. All disputes between UnScared and the Client will be settled by the competent court in the district in which UnScared has his business location, unless the law prescribes otherwise.

Drawn up on October 1, 2020

Appendix 1 – Model withdrawal form

Model withdrawal form

(only complete and return this form if you want to withdraw from the Agreement)

To: UnScared v.o.f.
Vaartsestraat 35
3511 TA Utrecht
The Netherlands
E-mail: info@unscared.fitness

I/We hereby give notice that I/we withdraw from my/our* contract

- of the sale of the following goods*:
- of the provision of the following service*:

Ordered on*/received on*:

Name of consumer(s):

Address of consumer(s):

Signature of consumer(s) (only if this form is notified on paper):

Date:

* Delete as appropriate