
General Terms of Use

1. Scope and access

- (a) These General Terms of Use (hereinafter "TOU") govern access to and use of the mobile application Migros Fitness App (hereinafter "App") of Genossenschaft Migros Zürich, Pfingstweidstrasse 101, 8005 Zurich, Switzerland (hereinafter "Migros"). By downloading and/or accessing the App and/or using the App, you agree to accept and comply with the TOU as amended from time to time. Migros is entitled to change the TOU at any time and without prior notice. The TOU in their most current form can be accessed under My Profile/App Information/About or at https://www.migros-fitness.ch/mfa_nb.
- (b) Personal data ("Data") is processed in accordance with the Migros privacy policy, available at https://www.migros-fitness.ch/mfa_dse ("Privacy Policy"). By accessing and/or using the App, you confirm that you have read and understood the Privacy Policy and the processing of your Data described therein.

2. Purpose

In particular, the App allows you to view the locations of Migros group fitness facilities in Switzerland, set personal fitness goals, consult, schedule or book group classes, record workouts, view workout history, participate in challenges, connect compatible third-party services/devices, view workout plans created for you by your trainer, consult contract information and balance of membership account, benefit from deals and access the web shop.

3. Conditions of use

- (a) Access to and use of the App is free of charge. Only natural persons who are at least 14 years of age and who reside in Switzerland or have a valid membership in a Migros group fitness facility in Switzerland that offers the App to its members (hereinafter each individually an "Affiliated Fitness/Training Club") are entitled to download the App, access the App and/or use the App.
- (b) The relationship between you and Migros with respect to the App is personal and cannot be transferred by you to any third party.

4. No substitute for medical advice/no assurances

- (a) Any information, recommendations, suggestions or proposals contained in the App are for your

general benefit only and do not constitute medical advice. In particular, the App and its services and functionalities do not constitute a medical offer or medical product within the meaning of the Swiss Therapeutic Products Act.

- (b) Likewise, the App and its services and functionalities are not intended to diagnose, treat, cure, prevent or avoid any disease. The App and its services and functionalities are not intended to consider particular circumstances that may affect your state of health. Any information provided by the App is not a substitute for professional medical treatment.

5. Scope of services

- (a) The scope of the functionalities available to users differs depending on whether or not users have a registration or, if they have a registration, whether they are also a member of an Affiliated Fitness/Training Club. The scope of services may also differ depending on the Affiliated Fitness/Training Club.
- (b) For membership in, as well as for contracts concluded via the web shop with an Affiliated Fitness/Training Club, the provisions of the respective Affiliated Fitness/Training Club applicable to such membership or contracts shall apply irrespective of the TOU. Migros is not a party to the legal relationship between you and the Affiliated Fitness/Training Clubs and assumes no obligations or warranty in this regard. The legal relationship between you and the Affiliated Fitness/Training Clubs is exclusively a matter between you and the Affiliated Fitness/Training Clubs.
- (c) Without prejudice to lit (a) above, Migros is entitled to make changes to the App at any time and without prior notice, in particular to expand the scope of services and functionalities of the App at its own discretion, to change them, to make them available only to some of the users, to interrupt them, to restrict them or to discontinue them in whole or in part. You have no right to a continuation or maintenance of the services or functionalities of the App.
- (d) To access and use the App, you must be using the most current technologies, including, but not limited to, the most current version of your mobile device's operating system. If you are using older technologies or technologies that are not in general use, you may not be able to access the App or you may have limited or no use of the App.
- (e) Migros is entitled to involve third parties in Switzerland and abroad for the provision of services or to transfer the provision of services entirely to such involved third parties.

6. User account

- (a) Registration for the App takes place via the Migros Account. Opening and using the Migros Account is free of charge. By opening the Migros Account, users accept the terms of use of the Migros Account, available at https://login.migros.ch/legal/TERMS_OF_USE.
- (b) The access information to your user account may not be disclosed to or used by third parties. You are solely responsible for maintaining the confidentiality of the access information to your user account, in particular your password, and for all activities on your user account. Any liability for loss or damage resulting from unauthorized access to your user account or unauthorized use of the access information to your user account is excluded. You agree to notify Migros immediately of any unauthorized use of the access information to your user account or of the user account.

7. User content

- (a) Migros may allow you to submit content (e.g. profile photo, training data) created by you (hereinafter "**User Content**") to your user account.
- (b) Migros is not obligated to save, secure or archive User Content or to provide you with access to it. You are responsible for securing your User Content yourself.
- (c) Migros is in particular entitled, but not obligated, to review your User Content at any time and to remove it without prior notice, especially if Migros believes that the User Content violates these TOU.
- (d) You are solely responsible for the User Content transmitted to your user account. You represent and warrant that you have all rights to the User Content submitted to your user account to the extent necessary to grant the Migros group companies the license to the User Content set forth below.
- (e) In their relationship with Migros, users retain sole rights to the User Content they transmit. However, you grant Migros group companies a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, reproduce, modify, publish, publicly perform and distribute the User Content submitted to your user account. You agree to fully indemnify and hold harmless the Migros group companies and any third parties engaged by them in the event that the Migros group companies or any third parties engaged by them are sued by any third party for use of the User Content submitted to your user account under this license.

8. Connection with other user accounts

- (a) Migros may enable you to make your user account, including User Content, accessible and/or

commentable for other users with user accounts. Migros is not a party to any legal relationship between you and other users and does not assume any obligations or warranties in this regard. Any legal relationship between you and other users is exclusively a matter between you and the other users. Any legal relationship between you and other users does not release you from compliance with the TOU.

- (b) Migros may enable you to link your user account with compatible third-party services/devices. In addition, certain Affiliated Fitness/Training Clubs in Switzerland offer their members the option of linking the user account with an EGYM user account in order to use further functionalities in the App. For more information on the EGYM user account, please refer to the EGYM terms of use, available at https://legal.egym.com/terms/egym/en_DE.html, resp. the EGYM Privacy Policy, available at https://legal.egym.com/pp/egym/en_DE.html. You are solely responsible for the transmission of your User Content and Data. Migros assumes no responsibility for EGYM or respective third-party providers and their handling of your User Content and Data. Migros is not a party to the legal relationship between you and EGYM or the respective third-party provider and does not assume any obligations or warranties in this regard. The legal relationship between you and EGYM or the respective third-party provider is exclusively between you and EGYM or the respective third-party provider.

9. Duties/restrictions of use

- (a) You agree to autonomously review and verify the services and functionalities of the App as well as any information, recommendations, suggestions or proposals contained in the App whether they pose a particular risk to you due to specific general or current health impairments (e.g. pre-existing musculoskeletal conditions, cardiovascular risks, acute colds or other illnesses), and to refrain from it if this involves a risk to your health. You are solely responsible for obtaining prior medical advice or consultation.
- (b) You agree to use the App and its services and functionalities only in a manner and for purposes that do not violate these TOU or applicable law.
- (c) In particular, you agree to refrain from the following:
 - (i) Transmit or publish any unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, harassing, hateful, racially, ethnically or otherwise objectionable User Content;
 - (ii) Transmit or publish User Content that infringes the rights of third parties (e.g., trademark, patent, copyright, or personal rights), including, but not limited to, information about the health, well-being, or

- similar information of third parties without their express consent;
 - (iii) Transmit or publish User Content that you are not authorized to transmit or publish;
 - (iv) Transmit or publish User Content that is intended to interfere with, damage, limit, or render inoperable the functionality of any software, hardware, or telecommunications equipment;
 - (v) Interfere with or disrupt the App or servers or networks connected to the App;
 - (vi) Appearing under false identity or misrepresentation of affiliation with a person or organization;
 - (vii) Submit any untrue, inaccurate, no longer current or incomplete information in connection with registration or otherwise;
 - (viii) Stalking or harassing other users;
 - (ix) Commercial use of the App without the prior express written consent of Migros; and
 - (x) Reproduce, copy, imitate, modify, create a derivative work based on, explore the technical operation of, decompile, analyze, sell, distribute, transfer, license, lease, lend, rent, or trade the App.
- (d) You are solely responsible for all activities on your user account and for all User Content that is transmitted to or published on your user account. You agree to fully indemnify Migros and any third parties engaged by Migros in the event that Migros or any third parties engaged by Migros are sued by third parties for violations of the TOU committed by you or from your user account. Migros reserves the right to disclose Data to the relevant authorities in the event of (suspected) criminal offences within the scope of the statutory provisions or as otherwise required or permitted by law.

10. Termination

- (a) Migros is entitled at any time, without prior notice and without giving reasons, to block or delete your user account or to deny you further use of the App.
- (b) You are entitled to delete the App and/or your user account at any time and without prior notice. The termination of the Migros Account is governed by the terms of use of the Migros Account.

11. Assurances/warranty/liability

- (a) You use the App and its services and functionalities at your own risk and responsibility.

- (b) The App is provided in an "as is" condition. Migros makes no representations, warranties or guarantees of any kind in connection with the App, including but not limited to the functioning of the App, that the use of the App and its services and functionalities will result in a particular outcome, that the App and its services and functionalities will be available or error-free, or for any information, recommendations, suggestions or proposals contained in the App.
- (c) Except in the cases listed under (d) below, Migros' liability (including for acts/omissions of auxiliary persons) for any damages (direct and indirect damages, mediate and immediate damages, consequential damages, lost profits, unrealized savings, claims of third parties, etc.) is fully excluded.
- (d) Migros' exclusion of liability does not apply in the event of gross negligence or unlawful intent on the part of Migros and to the extent not otherwise permitted by law.
- (e) The App may contain links to websites or content of third parties. Migros accepts no liability for such websites or content, in particular for their availability and accuracy.

12. Intellectual property and other rights

- (a) All copyrights, patents and other intellectual property rights, claims and interests in the App and in the information contained or available in the App (including trademarks, names, logos, images, designs, texts, etc., excluding User Content) are and shall remain the exclusive property of Migros or its licensors.
- (b) Subject to your compliance with the TOU, Migros grants you a limited, non-exclusive, non-transferable, non-sublicensable license to download, install and use a copy of the App on a mobile device solely for the purposes set forth in these TOU. Any information, recommendations, suggestions or proposals contained in the App are for your personal use only. You are not authorized to use the App or its services and functionalities commercially.
- (c) If you downloaded the App from the App Store of Apple Inc. ("Apple") or use the App on an iOS device, you acknowledge that you have read, understood, and agree to the following.
 - (i) The TOU are only concluded between the users and Migros and not with Apple, and Apple is not responsible for the App and its content;
 - (ii) Apple is under no obligation to provide any maintenance or support services with respect to the App;
 - (iii) To the extent permitted by applicable law, Apple has no other warranty obligations whatsoever with respect to the

App. Apple is not responsible for handling any user or third party claims relating to the App or any user's possession and/or use of the App, including: (1) product liability claims, (2) any claims relating to non-conformity of the App with applicable legal or regulatory requirements, and (3) claims arising under consumer protection or similar laws.

- (iv) Apple shall not be responsible for the investigation, defense, settlement or discharge of any intellectual property infringement claim by any third party in the event that the App and/or the user's possession and use of the App infringes that third party's intellectual property rights. Users agree to comply with applicable third-party terms while using the App. Apple and Apple's subsidiaries are third party beneficiaries of these TOU, and user's acceptance of these TOU shall give Apple the right (and Apple will be deemed to have accepted the right) to enforce these terms against the users as a third party beneficiary thereof.
- (v) Users hereby represent and warrant that (1) users are not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) users are not listed on any U.S. Government list of prohibited or restricted parties.

13. App contributions

- (a) Migros welcomes feedback, comments, ideas and suggestions for improving the App and its services and functionalities. You can send us your contributions by email to info@migros-fitness.ch. By sending contributions to Migros, you declare that:
 - (i) Your submissions do not contain confidential or proprietary information;
 - (ii) Migros is not subject to any confidentiality obligation with regard to the contributions;

- (iii) Migros shall have the right to use or disclose (or choose not to use or disclose) the contributions for any purpose, in any manner, in any media worldwide; and
- (iv) Your contributions automatically become the property of Migros without it being obliged to pay you anything in return, in particular no compensation.

14. Violations

Please report all violations of the TOU by email to info@migros-fitness.ch.

15. Contact information

If you have any questions about the TOU or the App or its content or functionalities, please contact:

Migros Cooperative Zurich
Pfingstweidstrasse 101
8005 Zurich
Switzerland

info@migros-fitness.ch

16. Applicable law

These TOU are governed by Swiss substantive law, excluding the United Nations Convention on Contracts for the International Sale of Goods ("Vienna Sales Convention").

17. Jurisdiction

The exclusive place of jurisdiction for any claims arising out of or in connection with these TOU or the use of the App shall be Zurich, Switzerland, unless mandatory law provides for a different place of jurisdiction.

18. Final Provisions

In the event of ambiguities or contradictions between the different language versions of these TOU, the German version shall prevail.