

# Terms of Service

Date of last revision: 5 March 2018

## ***Introduction***

FIZZUP IS AN ONLINE SERVICE PROVIDED BY THE COMPANY FYSIKI SAS, THAT OFFERS FITNESS TRAINING CONTENT. THE USE OF FIZZUP IMPLIES FULL ACCEPTANCE OF ALL THE TERMS OF SERVICE CONTAINED HEREIN: THE USER DECLARES HAVING READ, UNDERSTOOD AND FULLY AND UNCONDITIONALLY ACCEPTED THESE TERMS OF SERVICE IN FORCE ON THE DATE OF THEIR REGISTRATION WITH FIZZUP.

## ***ARTICLE 1 - Definitions***

Each of the expressions hereunder shall have the following meaning within these Terms of Service:

- **Solution(s)** refers to the infrastructures developed, including the data of different types, and notably the texts, sounds, fixed or moving images, videos and databases intended to be consulted and accessible on the website, and smartphone and tablet applications called FIZZUP.
- **Fysiki** refers to the company Fysiki SAS, the publisher of the Solutions.
- **Content** refers to all the written texts, images or messages of any type exchanged on the Solutions.
- **Server** refers to all the material used for implementing the features necessary for the publication, maintenance and implementation of the online Solutions.
- **User(s)** and/or **You** refers to the person(s) registered for the solution.
- **Subscription** refers to a paid-for subscription for advanced features for a set duration.
- **Data of a personal nature** and/or **personal data, processing** have the same meanings as in the amended French data protection law (*Loi Informatique et Libertés*) no. 78-17 of 6 January 1978.

## ***ARTICLE 2 - Purpose***

The purpose of these Terms of Service is to set out the conditions under which the User may access and use the Solutions. No exemption from these Terms of Service will be allowed without the prior express agreement of Fysiki. These Terms of Service constitute the entire agreement between Fysiki and the User and supersede any previous written or oral agreement relating to the purpose of these Terms of Service.

## ***ARTICLE 3 - Conditions of registration***

During their registration, the User undertakes to read through these Terms of Service. They also undertake to provide accurate and genuine information for the implementation of the features offered. The User notably undertakes not to create any false identity likely to mislead, including any third party, nor to usurp the identity of any other natural person.

Should a User provide inaccurate or false information likely to mislead, or usurp the identity of another User, Fysiki may immediately and without notice or compensation, suspend the User's account and prevent them from having access to the features, either temporarily or permanently. Fysiki shall not be held liable for the accuracy or inaccuracy of the data provided by the User. In the event of any modification the User undertakes to immediately update the information provided when they registered online.

Fysiki does not possess the technical resources enabling it to verify the identity of people who register as members and shall therefore not be held liable should a User try to usurp the identity of another. Should the User believe that someone is trying to make wrongful use of their identity or account, they should immediately inform Fysiki at the following email address [support@fizzup.com](mailto:support@fizzup.com). Should any User make wrongful use of their login details or profile photo, Fysiki reserves the right to close the User's account without prior notice.

Minors may register for the Solutions providing they have obtained prior authorization to do so from their parents or, if appropriate, their legal guardian. Fysiki reserves the right, when necessary, to request written proof thereof at any time and to make any necessary checks and subsequently to close any member account for which written proof has not been received within the given timeframe. Fysiki will immediately delete any member account and related content when asked to do so in writing by the member's parents or legal guardian.

#### ***ARTICLE 4 - Login information***

When registering, the User is required to give their gender, a pseudonym, their email address and choose a password. The User is responsible for ensuring these details are correctly entered and Fysiki may not be held liable for any incorrect information given.

This login information is intended to reserve access to the Solutions to the User and ensure the secure use and confidentiality of any information exchanged, and this information is both personal and confidential. The User is entirely responsible for keeping their member account confidential and undertakes to do everything necessary to ensure that this login information is not divulged in any form whatsoever, notably by not writing it down on paper or noting it on any electronic support that might easily be read by a third party. The User assumes sole liability for any consequences that might arise from the use of such information by any third party.

The User should immediately alert Fysiki at the email address [support@fizzup.com](mailto:support@fizzup.com) in the event of any unauthorised use of their account or any usurpation of their identity.

#### ***ARTICLE 5 - Use of the Solutions***

##### **(a) Code of good conduct:**

The User undertakes not to:

- use the Solutions under any conditions liable to damage, overload or alter them
- extract or gather information relating to other Users
- usurp the identity of anyone else
- encourage illegal, threatening or obscene activities
- upload viruses or other malicious code to the Solutions
- intimidate or harass other Users in any way or form
- suggest or recommend any fitness training content to the community other than that offered by the Solutions.

FYSIKI RESERVES THE RIGHT TO TAKE ANY APPROPRIATE ACTION, INCLUDING LEGAL PROCEEDINGS AND/OR CLOSING THE USER'S ACCOUNT.

##### **(b) Illegal content:**

Illegal content is understood to be any element that:

- is prejudicial to the public order or accepted principles of morality (condoning crimes against humanity, incitement of racial hatred, child pornography, etc.)
- is damaging to any person (defamation, insults, slander etc.), their privacy and personal portrayal
- infringes third-party intellectual property rights (including brands, stills from clips, television programs, short, medium and feature-length films, whether animated or not, commercials that You have not personally produced or for which You have not received authorization from third parties or collecting societies holding the copyright to these works)
- may be considered to be in competition with the exercise and workout programs offered by Fysiki.

Should You notice any illegal content, You may immediately report it to Fysiki, using the email address [support@fizzup.com](mailto:support@fizzup.com). Fysiki undertakes to act promptly to remove the illegal content or to render access to it impossible, immediately upon receiving notification.

**(c) Uploading photographs:**

The User acknowledges ownership of all the photographic content that they upload to the Solutions. Failing this the User is presumed to hold all the required rights to any content that they may publish. They undertake to comply with the intellectual property rights of any third party and guarantee that each person featured in the images has given their agreement for the use and publication of their image.

**(d) Invitation:**

The User can invite one or more people to register for the Solutions. The User will, under their own exclusive responsibility, freely provide Fysiki with the contact details of the people to be invited. Fysiki will email invitations to the people invited, in the name of and on behalf of the User. Fysiki would remind the User that they undertake to have obtained the prior express consent of the people they wish to invite for their data to be used by Fysiki. Fysiki will not use the contact details of those invited without the agreement of the User who has put forward their names.

***ARTICLE 6 - Medical warning***

IT IS THE USER'S RESPONSIBILITY TO TAKE ALL NECESSARY PRECAUTIONS TO ENSURE THEY ARE IN GOOD HEALTH AND PHYSICALLY CAPABLE OF FOLLOWING THE EXERCISE AND WORKOUT PROGRAMS OFFERED BY THE SOLUTIONS. THEY MUST, THEREFORE, CONSULT A DOCTOR OR HEALTHCARE PROFESSIONAL BEFORE FOLLOWING THE EXERCISE AND WORKOUT PROGRAMS OFFERED BY THE SOLUTIONS.

**The User therefore declares that they have no medical contraindication with regard to practicing any physical activity, in particular as concerns:**

**(a) A family history of:**

- myocardial infarction (heart attack)
- cardiovascular accident (stroke)
- sudden death (before 60 years for women, before 50 years for men).

**(b) Their state of health and physical condition:**

- if they smoke (or stopped under two years ago)
- if they are an ex-smoker (if they stopped more than two years ago)
- if they have high blood pressure

- if they have a high level of cholesterol
- if they have diabetes
- if they are taking any medication for the heart and arteries
- if they feel, when making any physical effort either in an everyday task or when doing sport:
  - pain in the chest
  - palpitations
  - a feeling of discomfort or dizziness
  - any shortness of breath during everyday physical activity.

**(c) Physical pathologies:**

- problems with any joints, tendons or ligaments, with the shoulders, neck, wrists, elbows, hips, knees or ankles
- any foot problems
- any back problems, such as sciatica or slipped disc, or other
- any other pathology that could be considered to be a contraindication to carrying out a sporting activity.

SHOULD FYSIKI SO REQUEST, THE USER UNDERTAKES TO PROVIDE A MEDICAL CERTIFICATE LESS THAN THREE MONTHS OLD, SHOWING THAT THERE IS NO CONTRAINDICATION TO CARRYING OUT A SPORTING ACTIVITY. FYSIKI MAY UNDER NO CIRCUMSTANCES BE HELD LIABLE FOR ANY DIRECT OR INDIRECT HARM OR INJURY ARISING FROM THE USE OF ITS Solutions, OR WHEN THE USER HAS CAUSED THE CLAIMED HARM OR INJURY DUE TO A FAILURE TO COMPLY CORRECTLY WITH THESE TERMS OF SERVICE.

***ARTICLE 7 - Parental authority***

The parents or legal guardian of a minor acknowledge that they understand that the nature or the form of certain information, through the use of the Solutions by the latter, may prove to be inappropriate for consultation by a minor. They are therefore invited to supervise the way in which the minor uses the Solutions.

The parents or legal guardian are informed that they can, at any time, indicate their refusal for the processing of the minor’s personal data and the publication of their image, by sending an email to the following address [support@fizzup.com](mailto:support@fizzup.com).

***ARTICLE 8 – Advanced features and services, payment and invoicing***

THE USER MUST HAVE TAKEN OUT A SUBSCRIPTION IN ORDER TO HAVE ACCESS TO THE ADVANCED FEATURES. THE TOTALITY OF THE OTHER FEATURES CAN BE ACCESSED FREE OF CHARGE BY THE USER.

**(a) Content of the advanced features:**

The Solutions offers advanced features that are accessible via a paid subscription entitled “FizzUp PRO”. The features included in the “FizzUp PRO” subscription are:

- Advanced goals
- “Single Workouts” that include the “Focus” programs and “Challenges”
- “Stretching” circuits
- A personalized fitness training program (with the Add-ons)

- Access to all the fitness training content
- Access to FizzUp Nutrition

Subscriptions have a price and length, which you can access by going to <http://app.fizzup.com/subscribe>. Offers from partners have their own specific URL , pricing conditions and length.

Please note that all subscriptions consisting of 3 months or more are billed in a single payment and not per month.

**(b) Renewal:**

The Subscription will be renewed on its due date, under the same conditions of duration and price as the original Subscription, unless a notification requesting cancellation has been sent by the customer prior to the expiry date of the current Subscription, as specified in article 9 “Cancellation”. In the specific case where the User paid a special promotional price when they originally took out a Subscription, the Subscription will be renewed at the end of its term at the price corresponding to the original, undiscounted price of the subscription purchased. In accordance with article L 136-1 of the French Consumer Law (*Code de la Consommation*), Fysiki will inform the customer by email when ordering that they may cancel their Subscription free of charge. Fysiki will display the end date for the Subscription and a link for the cancellation of the said Subscription on the account details page of the customer’s personal account at the address <http://app.fizzup.com/account/details>.

**(c) Order:**

The procedure for ordering consists of 3 steps:

- The choice of the Subscription
- The provision of bank details in order for the electronic payment of the order to be carried out
- The validation of the order after verification by clicking on the button “CONFIRM ORDER”.

All prices are indicated in the User’s country of residence, all taxes included and take into account the rate of VAT applicable on the day on which the order is confirmed. The parties agree that any modification to the rate of VAT may also modify the price of the Subscriptions. Fysiki reserves the right to change the terms of payment and invoicing without such changes modifying the conditions in force on the day of the Subscription was taken out.

The payment is carried out directly by bank card when the order is placed, Fysiki will confirm receipt of the order, immediately by email. Any order where there has been a problem with the payment will not be processed. The totality of the order process is carried out on a secure page using the HTTPS protocol.

In accordance with article 1369-5 of the French Civil Code relating to the conclusion of a contract in electronic form, the client can view the details of their order and the total price, before confirming this and thus expressing their acceptance. The contract will be concluded, in application of the provisions of the French Civil Code, as soon as the client has clicked to confirm the order after having been given an opportunity to correct it. The language proposed for the conclusion of the contract is the English language. Electronic contracts and texts are conserved in accordance with the conditions laid down in article 1316-1 of the French Civil Code.

**(d) Failure to pay:**

In the event of a failure to pay when a Subscription is renewed, Fysiki will try again to obtain payment on the following day and days, and this until they are able to obtain the payment due, to recover the amount unpaid, and this for the duration of the contract.

**(e) Technical assistance:**

Technical assistance will be made available to the User by Fysiki, any request for assistance is to be made directly to Fysiki at the following address [support@fizzup.com](mailto:support@fizzup.com), or directly via the contact form available within the Solutions themselves.

**(f) Law and right of withdrawal:**

As an exception to the terms of article L. 121-21 of the French Consumer Law (*Code de la Consommation*), the 14 day period during which the right of withdrawal may be exercised is not applicable. The right of withdrawal does not apply to digital content supply contracts that are not provided on physical devices whose service began after the consumer's prior express consent and express renunciation of their right of withdrawal in accordance with article L. 121-28, paragraph 13 of the French Consumer Law (*Code de la Consommation*).

**(g) The specific case of purchases made via the mobile and tablet applications:**

The User may also take out a Subscription via the mobile and tablet applications. On the mobile and tablet applications, Fysiki specifically informs the User that the purchase is carried out via the Apple App Store for iOS applications or the Google Play for Android applications. The User recognizes having read and accepted the terms and conditions of the Apple App Store or Google Play at the moment of payment. The processing and invoicing of such payments is subject to the methods, conditions and privacy policy of the Apple App Store or Google Play. Fysiki may not be held responsible for any possible errors that may occur during the the Apple App Store or Google Play payment process.

**(h) Hosting:**

The hosting for the Solutions is ensured by the company Amazon Web Services, Inc. P.O. Box 81226 Seattle, WA 98108-1226 USA, acting on behalf of Fysiki.

## **ARTICLE 9 - Cancellation**

The User may cancel the renewal of their Subscription at any time, via the section "Settings" accessible at the address <http://app.fizzup.com/account>. The User must click on the link "Manage Account," and validate the three steps required to confirm the cancellation by clicking on the links "Manage Subscription," "Cancel Subscription," and "Are you sure you want to unsubscribe?" to confirm their request to cancel. This request for cancellation must be carried out by the User before the expiry date of their Subscription, without which the Subscription will be renewed automatically. Fysiki reminds the User that such cancellation does not include any refund of any period of the Subscription remaining outstanding. In the event of any breach of their contractual obligations by either of the parties, the Subscription may be cancelled as of right by the other party after the sending of an electronic message that has remained without effect for a period of one month. The message will indicate the breach or breaches observed. Under such conditions, the User agrees not to use the login and password enabling access to the Solutions during the entire period of reversibility.

In the specific case where the User has taken out a Subscription using the mobile or tablet application via the services of the Apple App Store or Google Play, Fysiki reminds the User that the cancellation of their Subscription is to be carried out through the services of the Apple App Store for iOS applications or Google Play for Android applications. Fysiki may not be held responsible for any error that may occur during the Apple App Store or Google Play cancellation procedure.

## **ARTICLE 10 - Privacy**

Fysiki undertakes to protect the privacy of its Users, in line with the currently applicable rules and regulations and its Policy for the protection of personal data. The User acknowledges that they have given their express agreement for the collection and processing of their personal data through the creation of an account. The processing carried out is declared to the CNIL (the French commission for data protection) under the number **1531103**.

The Users are required to comply with the aforementioned French data protection law (*Loi Informatique et Libertés*) and any breaches thereof are considered as a criminal offence. Users must notably undertake not to collect or misuse any personal data to which they may have access, or more generally to do anything that might affect the privacy or reputation of any person.

The User has the right to oppose, access and correct any data relating to them. They may require any data relating to them that is inaccurate, incomplete, ambiguous or out of date to be corrected, supplemented, clarified, updated or removed. The User may exercise these rights by sending an email to Fysiki at the address [support@fizzup.com](mailto:support@fizzup.com). Fysiki reminds Users that they may also, when they have legitimate grounds, oppose the processing of this data.

Fysiki undertakes to implement all appropriate security and confidentiality measures to protect personal data against any accidental or unlawful destruction, accidental loss, alteration, disclosure or any unauthorised access and against any illegal form of processing. It will ensure a level of security commensurate with the risks relating to the processing and to the nature of the data to be protected, and as appropriate given the technological level and the cost of implementation. Any breach of confidentiality with regard to personal data will immediately be reported to the User by Fysiki.

The User has sole responsibility for the quality, lawfulness and relevance of the personal data provided to Fysiki. They undertake to have fulfilled all the obligations incumbent upon them and to have informed the natural persons concerned by such data of the use to which the said data is put.

To that end, they hold Fysiki harmless against:

- any complaint or claim made by any natural person whose personal data has been processed
- any damage that may arise from claims made against it by a third party for a breach of this guarantee and this when first requested to do so.

These Terms of Service include the Privacy Policy which is available at [http://app.fizzup.com/privacy\\_policy.pdf](http://app.fizzup.com/privacy_policy.pdf).

## **ARTICLE 11 - Intellectual property**

All the elements that comprise the Solutions, brands, logos, illustrations, graphics, graphic charts, icons, texts, training and nutritional content, applications, scripts, features and functionalities, and any selection

or combination thereof available via the Solutions, are the exclusive property of Fysiki and are protected under the applicable intellectual and industrial property rights.

Fysiki provides the User with a right to use all the above-mentioned elements, that together make up the Solutions, for non-commercial purposes but confers no assignment of any related rights. The User therefore undertakes not to use these elements for any purpose other than that for which they are intended, in other words a normal use of the Solutions that precludes copying, reproducing, modifying, distributing, displaying and selling in any form and by any means, either wholly or partially, for any commercial or non-commercial use, any element of or relating to the Solutions without the prior written authorization of Fysiki.

The User undertakes not to copy, reproduce, modify, distribute, display or sell by any means or in any form, wholly or partially, any element of or relating to the Solutions, for any purpose, whether commercial or non-commercial, without the prior written authorization of Fysiki. In the event of any contravention, Fysiki shall be entitled to close and immediately delete the User's account without justification or refund, with or without grounds, without notice and take any appropriate action, including legal proceedings.

All the elements of or relating to the Solutions, including their documentation, remain the full and exclusive property of Fysiki. Fysiki grants the User a personal, non-exclusive, non-assignable and non-transferable right to use the Solutions. The User is expressly forbidden from using any elements of or relating to the Solutions in any way that is contrary to these Terms of Service, notably including:

- any reproduction of the Solutions, in any form and on any media, notably including by modification, combination or inclusion in other software and/or the modification of its supporting documentation
- any translation, adaptation or arrangement of the Solutions
- making the Solutions available, either partially or wholly and by any means
- any modification of or intervention on the Solutions either partially or wholly and by any means; including in order to correct any errors liable to affect the functioning of the Solutions, given that Fysiki has the exclusive right to correct any such errors
- any disclosure, commercialization or use of the Solutions for the benefit of any third party, or any training of any third party in the use of all or part of the Solutions.

FYSIKI WOULD LIKE REMIND THE USER THAT THE TOTALITY OF THE ELEMENTS OF THE AFOREMENTIONED Solutions IS PROTECTED BY COPYRIGHT AND HAS BEEN SPECIFICALLY REGISTERED WITH AND IS PROTECTED BY THE INPI (THE FRENCH NATIONAL INDUSTRIAL PROPERTY INSTITUTE) AND OTHER COMPETENT ORGANIZATIONS. ANY BREACH OF THESE RIGHTS WILL ENTITLE FYSIKI TO BEGIN COPYRIGHT INFRINGEMENT PROCEEDINGS BEFORE THE CIVIL OR ADMINISTRATIVE COURTS TO SEEK DAMAGES, OR THE CRIMINAL COURTS, WHICH MAY RESULT IN CRIMINAL PENALTIES. INFRINGEMENT OF COPYRIGHT IS PUNISHABLE BY A FINE OF €300,000 AND A THREE-YEAR PRISON SENTENCE. ADDITIONAL PENALTIES, INCLUDING THE CLOSURE OF ANY ESTABLISHMENT, CONFISCATION AND PUBLICATION OF THE COURT RULING, MAY ALSO BE APPLIED.

## ***ARTICLE 12 – Liability***

The User holds Fysiki harmless against any proceedings that might be taken against it and any claim made against it arising from a use of the Solutions under conditions that are non-compliant with these Terms of Service. Furthermore, the User bears sole responsibility for the use of their login information (email and password) by any third party, for any actions or declarations made through their member account and



holds Fysiki harmless against any liability resulting therefrom. This guarantee covers any moneys that Fysiki may be obligated to pay for any reason, such as any legal and court fees.

Fysiki will do its utmost to maintain non-stop access to its Solutions, but may not be held responsible for any operating failure or lack of access to the Solutions, due to external reasons, notably including the network or the connection to the network. Fysiki may decide to interrupt access to its Solutions in order to perform updates or maintenance. Fysiki will take all adequate measures to ensure that the User is given the best possible warning of the interruption. It may not be held liable for any consequences arising from these interruptions for the User or for any third party.

## ***ARTICLE 13 - General provisions***

### **(a) Intuitu personae:**

These Terms of Service may not be the subject of any modification, transfer, addition or assignment in any form whatever.

### **(b) Severability:**

The Parties formally agree that any tolerance or waiver by either of the Parties concerning the application of all or part of the commitments provided herein, irrespective of the frequency or duration thereof, cannot be considered as creating any modification to these Terms of Service, nor create any right of any sort. Should any one of these provisions be declared null, such nullity shall not result in the nullity of the other provisions nor affect the overall validity of these Terms of Service. The Parties undertake to do their utmost to amend the nullified clause to bring it into line, whilst maintaining the balance and purpose of these Terms of Service.

### **(c) Force Majeure:**

The obligations stipulated in these Terms of Service will be suspended in the event of Force Majeure. Fysiki may not be held responsible for any delay or failure in the execution of the services. If the Force Majeure event continues for a period greater than forty days, either of the Parties may cancel the current Subscription with immediate effect, without compensation.

### **(d) Amendment of the Terms of Service:**

Fysiki reserves the right to amend these Terms of Service. In this event, the User will be informed of any such amendment as and when the new Terms of Service are posted online.

## ***ARTICLE 14 - Applicable law and settlement of disputes***

These Terms of Service are subject to French law.

If any provision of these Terms of Service is held to be invalid or declared as such through the application of a law or regulation or following a ruling by a competent court, the remaining provisions will retain their full force and scope.

Should any dispute arise in connection with the interpretation or the performance of these Terms of Service, the Parties will make every effort to reach an amicable conclusion and will agree to go through arbitration before undertaking legal proceedings.

These Terms of Service were written in the French language. Should they be translated into one or more other languages, only the French text shall prevail in the event of any dispute.

These Terms of Service comprise 14 articles and 9 pages.