

Website Terms of Use

Welcome to the website of Strike Out Stroke Incorporated (ABN 93 645 183 559) ("we", "us" or the "Association"), a registered health promotion charity.

This website is located on the web via the domain <http://www.strikeoutstoke.org.au> and includes all of the files located in that domain ("this site").

Agreement to these Website Terms of Use

By accessing this site, you agree to be bound by these terms of use ("Website Terms of Use"). These Website Terms of Use constitute a binding agreement between you and the Company and govern your use of this site.

Privacy Policy

As part of these Website Terms of Use, your use of this site is also subject to our Privacy Policy (located at <http://www.strikeoutstoke.org.au/about/privacy-policy/>), which is incorporated by reference into these Website Terms of Use.

Legal capacity to transact

If you are under 18 years of age, you cannot place orders through this site. By using this site you represent and warrant to the Association that you are over the age of 18 years. Should the Association suffer any damage or other losses as a result of a transaction entered into by a minor, we reserve the right to seek compensation for such losses from his/her parents or guardians.

Restrictions on use

Prohibited conduct

Your use of this site is subject to the rules set out in Schedule 1 below.

Violations of these Website Terms of Use

Without limiting any other remedies available to the Association at law or in equity, the Association reserves the right to, without notice:

- temporarily or indefinitely suspend, or terminate, your access to this site or refuse to provide products or services to you if:

- you breach any provision of these Website Terms of Use;

- the Association is unable to verify or authenticate any information that you provide to us; or

- the Association believes that your actions may cause damage and/or legal liability to the Association, any of its customers or suppliers or any other person; and

- remove or block access to any information and/or materials (in whole or in part) that the Association, at its sole and absolute discretion, regards in any way to be objectionable or in violation of any applicable law, any person's intellectual property rights or these Website Terms of Use.

Indemnity

You indemnify and hold harmless the Association and its officers, employees, agents, consultants, licensors, partners and affiliates from and against any losses, liabilities, costs, expenses or damages (including actual, special, indirect and consequential losses or damages of every kind and nature, including all legal fees on a solicitor-client basis) suffered or incurred by any of them due to, arising out of, or in any way related to (directly or indirectly):

- any material or information that you submit, post, transmit or otherwise make available through this site;
- your use of, or connection to, this site; or
- your negligence or misconduct, breach of these Website Terms of Use or violation of any law or the rights of any person.

Registration and account security

Requirement for registration

The Association reserves the right to make any parts of this site accessible only to users who have registered.

Username and password

Upon registration with this site, you will be issued with a username and password to access your account. You are responsible for maintaining the security of your password for this site. The Association will not be liable for any loss or damage arising from or in connection with your failure to comply with this security obligation. You agree that the Association will be entitled to assume that any person using this site with your username and password is you or your authorised representative.

You must notify the Association immediately of any known or suspected unauthorised use of any password or any other breach of security.

User information

In order to register an account with this site, you must agree to these Website Terms of Use and provide the Association with:

- a valid email address;
- accurate billing and contact information (including your street address and the name and telephone number of your authorised billing contact and administrator); and
- any other information that may be required by the Association during the registration process.

You must promptly update this information to maintain its accuracy at all times.

You represent and warrant to the Association that all information provided to the Association by you, including the information provided by you through our account registration module or entered into your account profile, is true and not misleading and does not violate any applicable law or regulation or any person's intellectual property or other rights.

Multiple accounts and automated account opening

One person may not maintain more than one account with this site. Accounts registered by "bots" or other

automated methods are not permitted.

Approval of registrations

The Association reserves the right to accept or reject any application for registration of an account with this site at its discretion.

Orders

Order constitutes offer

By placing an order through this site, you make an irrevocable offer to us to purchase the products/services that you have selected pursuant to these Website Terms of Use. Information contained in this site constitutes an invitation to treat only. No information in this site constitutes an offer by us to supply any products/services to you – however, the Association will endeavour to supply your selected products/services to you.

We will not commence processing any order made through this site unless and until:

- payment for the order has been received by us in full; and
- the order has passed our internal validation procedures, which are undertaken in order to verify the bona fides of each order for the purpose of preventing credit card and other fraud.

We reserve the right at our discretion to:

- at any time prior to your order being accepted in accordance with these Website Terms of Use, cancel all or part of your order; and
- at any time:
 - refuse to provide products or services to you;
 - terminate your access to this site; and/or
 - remove or edit any content on this site.

Acceptance of orders

Acceptance of each order will take place if and when the Association:

- in the case of physical items, sends the requested items to you, at the time at which the items are despatched by the Association, and title to, and risk in, the items will pass from the Association to you at that time;
- in the case of digital items, either:
 - sends the requested items to you, at the time at which the items are sent by the Association; or
 - notifies you in writing that the requested items are available for download by you, at the time at which such notification is sent by the Association, and title to, and risk in, the items will pass from the Association to you at that time; or
- in the case of services, either:
 - provides the services to you, at the time at which the Association commences

providing the services; or

- notifies you in writing that your order has been accepted, at the time at which such notification is sent by the Association.

Prices

The Company reserves the right to change the prices for products/services displayed in this site at any time before you place an order.

Shipping costs

Shipping costs, if applicable, will depend upon the location for delivery and the items purchased and are shown separately during checkout.

GST

Unless otherwise expressly stated, all amounts payable through your use of this site are expressed to be inclusive of GST. For these purposes, the term "GST" has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Payment methods

Payment for orders placed through this site may be made by credit card (Visa or MasterCard only) processed online using a secure third party payment gateway.

Third party payment gateways

The Association may use one or more third party payment gateways to facilitate secure online payment transactions. Payments made through such payment gateways are subject to the terms and conditions and privacy policy of the relevant third party providers. Unless you expressly consent otherwise, we do not see or have access to any personal information that you may provide to such third party payment gateway providers, other than information that is required in order to process your order and deliver your purchased items to you (eg, your name, email address and billing/postal address).

Credit and debit card payments

Only VISA and MasterCard are accepted. Please note that we may be unable to accept credit cards issued by banks outside of Australia in some cases. Additional transaction fees may apply if paying by credit card, in which case the additional charges will be specified at checkout.

Refunds and other remedies

Except as expressly provided otherwise in these Website Terms of Use, all amounts paid through this site are non-refundable. Further information on the steps that the Association will take to remedy any breach of any non-excludable condition or warranty/guarantee is provided under the heading "Remedies limited" in these Website Terms of Use below. For more information about obtaining refunds from third party suppliers, see the paragraphs headed "Refunds from suppliers" in these Website Terms of Use below.

Security

While our third party payment gateway and website hosting providers employ secure technology for transactions with our customers, we will not be responsible for any damages, including consequential losses (whether direct or indirect), that may be suffered by a customer whose credit or debit card or bank account information is used in a fraudulent or unauthorised manner by any person other than the

Association.

The Association may request further information from you, such as a copy of your credit card and/or other identification documentation, as part of our internal validation procedures. These procedures help protect bank and credit card account holders from online fraud. Until your order has passed our internal fraud prevention checks, your order will remain on pending status. If further information is requested and you do not provide the requested information within such time as the Association considers appropriate at its discretion, your order will be cancelled and, if your payment has been received, it will be refunded back to you.

Dealings with third parties

Content supplied by third parties

This site may include an online portal that allows third parties to advertise goods and/or services for sale to our users through this site and to upload information and other content directly to this site for our users to access. We do not act as agent for any such third parties and we take no responsibility, and assume no liability, for:

- any such content that is, or may reasonably be considered to be, abusive, harassing, harmful, obscene, indecent, inflammatory, violent, profane, racially, ethnically or otherwise objectionable, libellous, defamatory, deceptive, pornographic, sexually explicit, unlawful or plagiarised;
- any of the information supplied by such third parties (including opinions, ideas, suggestions, comments, observations, text, photographs, videos, data, music, sounds, chat messages, files or any other material); and/or
- any loss or damage that results from any dealings that you may have with such third parties.

Third party goods/services and websites

We do not recommend or endorse any third party goods or services that are listed, advertised or referred to in this site or the content of any third party websites. We are not responsible for the content of linked third party websites, websites framed within this site or third party advertisements and we do not make any representations, or provide any guarantees or warranties, regarding their content or accuracy. These links may unintentionally connect with websites containing information that some users may find inappropriate or offensive. Your use of any third party websites is at your own risk and subject to their respective terms and conditions of use.

User acknowledgements

You acknowledge that the Association does not:

- check the truth or currency of any of the material or information that third parties provide or make available through this site;
- control, endorse, approve or warrant to you the merchantability or fitness for any particular purpose of any of the goods or services of any third parties referred to in this site or whose identities become known to you through this site, including suppliers of content that is published or made available in or through this site;
- offer professional advice on the quality or suitability of any goods, services or information supplied by any such third parties; or

- endorse or recommend any third party supplier or any third party goods or services, including where details of the relevant supplier are provided by the Association to you or otherwise become known to you through this site.

Role of the Association

The relevant supplier, and not the Association, is:

- the supplier of the goods and/or services that you offer to purchase; and
- solely responsible for supplying you with those goods and/or services and for those goods/services themselves.

We do not act as agent for the supplier and we make no representation or warranty, and provide no guarantee, that the supplier will provide you with the goods and/or services that you offer to purchase through this site, or that those goods/services will meet your expectations. You should satisfy yourself through your own enquiries as to the quality or suitability of any supplier listed on this site and any goods or services supplied, offered or recommended by or on behalf of a supplier.

Supplier's terms and conditions

Acceptance of an order creates a contract between you and the relevant supplier in respect of the provision of the goods and/or services that are the subject of that order. The Association is not a party to that contract. That contract will be subject to relevant supplier's own terms and conditions of supply. You will be responsible for investigating and reviewing the supplier's terms and conditions of supply – including its policies on refunds, returns, cancellations and rescheduling, as applicable – prior to placing any order through this site.

Refunds from suppliers

As between you and the Association, all amounts paid through this site are non-refundable. If, pursuant to the terms and conditions of the contract that is formed between you and any supplier upon the acceptance of any offer that you make through this site, you are entitled to any refund, the relevant supplier is solely responsible for providing you with that refund. The Association does not guarantee the provision of that refund to you and you must take action against the supplier directly, and not against the Association, in order to enforce your entitlement to that refund.

Disputes between users and suppliers

You are solely responsible for your interactions with suppliers listed on this site and the Association is not a party to any transactions between you and such suppliers. We reserve the right, but have no obligation, to monitor and take action regarding any disputes between users and suppliers.

If you believe that any supplier from which you have purchased any goods or services through this site has failed to provide those goods or services to you, or that those goods or services did not meet your expectations, please contact us to let us know so that we may take disciplinary action against that supplier if we consider it appropriate at our discretion to do so. The Association will not, however, act on your behalf, or on behalf of any supplier, in respect of any dispute between you and a supplier.

Intellectual property

Copyright

In these Website Terms of Use, the term "Proprietary Content" means:

- this site;

- all of its content (including all of the text, graphics, designs, software, data, sound and video files and other information contained in this site, and the selection and arrangement thereof); and

- all software, systems and other information owned or used by the Association in connection with the products and services offered through this site (whether hosted on the same server as this site or otherwise).

All Proprietary Content is the property of the Association or its licensors (as applicable) and is protected by Australian and international copyright laws. You must not reproduce, transmit, republish or prepare derivative works from any of the Proprietary Content, except as expressly authorised by these Usage Terms or with the prior written consent of the Association or other copyright owner (as applicable).

You may download and print out content from this site only for your own personal and non-commercial use and provided that you do not remove or modify any copyright, trademark or other proprietary notices.

Trademarks

The Association's logo and the phrases "Together we can Strike Out Stroke", "Strike Out Stroke Schools Program", and "B.E. F.A.S.T." are trademarks of the Association. The look and feel of this site (including all button icons, scripts, custom graphics and headers) are the trademarks, service marks and/or trade dress of the Association. These trademarks, service marks and trade dress may not be used, copied or imitated, in whole or in part, without the prior written consent of the Association.

User Content

In these Website Terms of Use, the term "User Content" means any and all content that is submitted, posted or otherwise added to this site by any user, such as comments, forum posts, chat room messages, reviews, ratings and feedback.

This site contains some features that enable you and other users to upload User Content. The Association reserves the right to display, refuse to display, remove and/or amend all or any part of any User Content at its absolute discretion. In respect of any User Content that you upload, you:

- represent and warranty to the Association that your sharing of that User Content does not infringe any copyright or other legal right of any other person; and
- grant to the Association a worldwide, non-exclusive, royalty-free, perpetual, irrevocable, sub-licensable and transferable license to use, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform and otherwise exploit all or any part of that User Content in any way at the Association's absolute discretion.

Copyright claims

If you believe that our site contains any material that infringes upon any copyright that you hold or control, or that users are directed through a link on this site to a third party website that you believe is infringing upon any copyright that you hold or control, you may send a notification of such alleged infringement to us in writing. Such notification should identify the works that are allegedly being infringed upon and the allegedly infringing material and give particulars of the alleged infringement. In response to such a notification, we will give a written notice of a claim of copyright infringement to the provider of the allegedly infringing material. If the provider of that material does not respond to us in writing denying the alleged infringement within 14 days after receipt of that notice, we will remove or block the allegedly infringing material as soon as is reasonably practicable. If the provider of that material responds to us in writing denying the alleged infringement, we will, as soon as is reasonably practicable,

send a copy of that response to the original notifying party. If the original notifying party does not, within a further 14 days, file an action seeking a court order against the provider of the allegedly infringing material, we may restore any removed or blocked material at our discretion. If the original notifying party files such a legal action, we will remove or block the allegedly infringing material pending resolution of that legal action.

Disclaimer of warranties

TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE ASSOCIATION AND ITS OFFICERS, EMPLOYEES, AGENTS, CONSULTANTS, LICENSORS, PARTNERS AND AFFILIATES EXPRESSLY DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES (WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) IN RELATION TO THIS SITE AND ANY PRODUCTS AND/OR SERVICES PURCHASED OR OBTAINED THROUGH THIS SITE, INCLUDING ANY IMPLIED WARRANTY/GUARANTEE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT.

This site is provided strictly on an "as is" basis. To the maximum extent permitted by law, the Association and its officers, employees, agents, consultants, licensors, partners and affiliates make no representation, warranty or guarantee as to the reliability, timeliness, quality, suitability, truth, availability, accuracy or completeness of this site or any of its content, and in particular do not represent, warrant or guarantee that:

- the use of the this site will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data;
- this site will meet your requirements or expectations;
- anything on this site, or on any third-party website referred or linked to in this site, is reliable, accurate, complete or up-to-date;
- the quality of any products, services, information or other material purchased or obtained through this site will meet any particular requirements or expectations;
- errors or defects will be corrected; or
- this site or the servers that make it available are free of viruses or other harmful components.

Limitation of liability

Exclusion of liability

To the maximum extent permitted by law, the Association and its officers, employees, agents, consultants, licensors, partners and affiliates exclude all liability to you or any other person for any loss, cost, expense, claim or damage (whether arising in contract, negligence, tort, equity, statute or otherwise, and for any loss, whether it be consequential, indirect, incidental, special, punitive, exemplary or otherwise, including any loss of profits, loss or corruption of data or loss of goodwill) arising directly or indirectly out of, or in connection with, these Website Terms of Use or the use of this site by you or any other person.

Remedies limited

To the maximum extent permitted by law, the Association and its officers, employees, agents, consultants, licensors, partners and affiliates expressly limit their liability for breach of any non-excludable condition or warranty/guarantee implied by virtue of any legislation to the following remedies (the choice of which is to be at the Association 's sole discretion):

- in the case of goods, to any of the following:

- the replacement of the goods or the supply of equivalent goods;
- the repair of the goods;

- the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- the payment of the cost of having the goods repaired; and
- in the case of services:
 - the supply of the services again; or
 - the payment of the cost of having the services supplied again.

Release

You agree that your use of this site is at your own discretion and risk. You agree to release the Association and its officers, employees, agents, consultants, licensors, partners and affiliates from any claim, demand or cause of action that you may have against any of them arising from these Website Terms of Use or the use of this site by you or any other person. The Association may plead this release as a bar and complete defence to any claims or proceedings.

Force majeure

To the maximum extent permitted by law, and without limiting any other provision of these Website Terms of Use, the Association excludes liability for any delay in performing any of its obligations under these Website Terms of Use where such delay is caused by circumstances beyond the reasonable control of the Association, and the Association shall be entitled to a reasonable extension of time for the performance of such obligations.

General

Interpretation

In these Website Terms of Use, the following rules of interpretation apply:

- headings are for reference purposes only and in no way define, limit or describe the scope or extent of any provision in these Website Terms of Use;
- these Website Terms of Use may not be construed adversely against the Association solely because the Association prepared them;
- the singular includes the plural and vice-versa;
- a reference to a "person" includes an individual, a firm, a corporation, a body corporate, a partnership, an unincorporated body, an association, a government body or any other entity; and
- the meaning of general words is not limited by specific examples introduced by "including", "for example", "in particular" or similar expressions.

Notifications

The Association may provide any notification for the purposes of these Website Terms of Use by email and/or by adding the notification into your user control panel.

Costs

Except as specifically provided in these Website Terms of Use, each party must bear its own legal, accounting and other costs associated with these Website Terms of Use.

Assignment

You may not assign, transfer or sub-contract any of your rights or obligations under these Website Terms of Use without the Association's prior written consent. Your registration with this site is personal to you and may not be sold or otherwise transferred to any other person.

The Association may assign, transfer or sub-contract any of its rights or obligations under these Website Terms of Use at any time without notice to you.

No waiver

Waiver of any power or right under these Website Terms of Use must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver. Any failure by the Association to act with respect to a breach by you or others does not waive the Association's right to act with respect to that breach or any subsequent or similar breaches.

Severability

The provisions of these Website Terms of Use are severable and, if any provision of these Website Terms of Use is held to be illegal, invalid or unenforceable under present or future law, such provision may be removed and the remaining provisions shall be enforced.

Variation

The Association reserves the right to amend these Website Terms of Use and any other policy on this site at any time in its sole discretion and any such changes will, unless otherwise noted, be effective immediately. Your continued usage of this site will mean you accept those amendments. We reserve the right, without notice and at our sole discretion, to change, suspend, discontinue or impose limits on any aspect or content of this site or the products/services offered through this site.

You may only vary or amend these Website Terms of Use by written agreement with the Association.

Governing law and jurisdiction

These Website Terms of Use will be governed in all respects by the laws of Victoria. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, Australia and the courts of appeal from them.

Schedule 1 – Prohibited conduct

YOU MUST NOT:

- use any device, routine or software that interferes, or attempt to interfere, with the proper working of this site;
- engage in any action that requires, or may require, an unreasonable or excessively large load on our infrastructure;
- use this site to decipher passwords or security encryption codes, transmit any worms, viruses or Trojan horses, transfer or store illegal, threatening or obscene material or otherwise violate the security of any computer network;
- use this site to violate any applicable local, state, national or international law, to engage in any misleading or deceptive online marketing practices or for any fraudulent or malicious purposes;
- use any spider, robot or search/retrieval application or any screen scraping, data mining or similar data gathering device, process, program or means to access, retrieve or index any portion of this site;
- use this site by any automated means;
- use this site to transmit junk mail, spam or chain letters or pyramid schemes or engage in other flooding techniques or mass distribution of unsolicited email;
- access, retrieve or index any portion of this site for use in constructing or populating any database that is searchable online or for the purpose of soliciting or sharing reviews;
- interfere with the display of any advertisements appearing on or in connection with this site;
- reverse engineer, decompile, disassemble, adapt, modify, translate, frame or reformat any of the material contained on this site;
- reproduce, duplicate, copy or store any of the material appearing on this site other than for your own personal and non-commercial use;
- falsely imply that any other website is associated with this site;
- do anything that leads, or may lead, to a decrease in the value of the Association's intellectual property rights in this site;
- use or exploit any of the material appearing on this site for, or in connection with, any business or enterprise (whether for profit or otherwise), including any business or enterprise that is in competition with this site;
- release to the public any news release, advertising material, promotional material or any other form of publicity or information relating to the Association without the Association's prior written consent; or
- use this site to transmit any information or material that is, or may reasonably be considered to be:
 - abusive, threatening, harassing, harmful, obscene, indecent, lewd, inflammatory, violent, vulgar, profane, racially, ethnically or otherwise objectionable or offensive in any way;

- libellous, defamatory, pornographic, sexually explicit, unlawful or plagiarised;
- infringing upon or violating any copyright, trademark, patent or other intellectual property or proprietary right;
- in breach of any duty of confidentiality by which you are bound, whether by way of a fiduciary or contractual relationship;
- in breach of any person's privacy or publicity rights;
- a misrepresentation of facts, including the impersonation of any person or entity or a misrepresentation of an affiliation with any person or entity (including any sponsorship or endorsement);
- in violation of any applicable law, statute, ordinance or regulation, or encouraging of others to do so;
- containing any political campaigning material, advertisements or solicitations; or
- likely to bring the Association or any of its staff into disrepute.