



Terms & Conditions – Supply only

1. INTERPRETATION

- (a) **The definitions and rules of interpretation in this condition apply in these conditions.** The "Balance" shall be the amount of the Total Price less any monies paid at the time of completing the Order Confirmation, which remains outstanding under condition 5.1. "Company": Fresh-Air Fitness. Buyer: the person, firm, company or other who purchases the Equipment from the Company, "Contract": any contract between the Company and the Buyer for the sale and purchase of the Equipment, namely the Order Confirmation together with these conditions. "Delivery Address": the place where delivery of the Equipment is to take place as specified by the Buyer in the Order Confirmation. "Equipment": any goods or articles agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them). "Pro Forma Invoice" payment demand issued on receipt of confirmation of order of the Equipment from the buyer. "Order Confirmation" the written acknowledgement of order issued by the Company to the Buyer, signed by the Buyer. "Quotation": any tender, or estimate as appropriate issued by the Company. "Total Price" shall include all additional costs as set out in condition 4.2 and shall be clearly set out in the Order Confirmation.
- (b) A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it. Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to the other gender. Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

- (a) Subject to any variation under condition 2(c) and (d) the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any other document). The Contract shall constitute the whole agreement between the Company and the Buyer and supersedes any previous agreement (written or oral). The Buyer acknowledges that they have not relied on any previous information and that their only remedy in respect of the Contract will be for breach of contract. Nothing in this condition shall exclude or limit the Company's liability for fraud or fraudulent misrepresentation.
- (b) No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- (c) These conditions apply to all the Company's sales and any variation to these conditions or to the representations about the Equipment shall have no effect unless expressly notified to the Buyer as per this clause 2(c). The Company may need to make changes to these conditions for the following reasons: to reflect a change in industry code of practice, to reflect costs beyond their control, to make the conditions clearer or to reflect changes in systems or procedures or for any other valid reason that applies. In such a case, the Company will notify the Buyer of the change in writing.

3. CONTRACT

- (a) Each order or acceptance of a Quotation for Equipment by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Equipment subject to these conditions.
- (b) No order placed by the Buyer shall be deemed to be accepted by the Company until the Company receives a completed and signed Order Confirmation back from the Buyer or (if earlier) the Company delivers the Equipment to the Buyer.
- (c) The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- (d) The Company reserves the right to cancel any Quotation without notice at any time prior to acceptance and any Quotation shall be deemed to be withdrawn if not accepted by the Buyer within 90 days of being given to the Buyer.

4. PRICE

- 4.1 The price set out in the Quotation may be varied by the Company to take account of any increase in the prices or costs which may occur at any time before the Contract is entered into. Any variation by the Buyer in design, quantities, delivery arrangements, specifications or instructions will give rise to adjustment of the price to take account of any increase in prices or costs incurred by the Company.

- 4.2 The price for the Equipment as set out in the Order Confirmation shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage, installation and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Equipment. Additionally, the Buyer shall be responsible for the cost to the Company of carrying out any special test, examination or inspection requested by the Buyer.

5. PAYMENT

- 5.1 Subject to condition 5.4, payment of order value is due in advance in pounds sterling on receipt of the Company's Pro Forma Invoice issued at the time of completing the Order Confirmation.
- 5.2 The Company reserves the right to request a non-refundable deposit or payment of the Total Price at the time of completing the Order Confirmation. Any monies paid at the time of completing the Order Confirmation shall be applied against the Total Price when it becomes due under condition 5.1 or 5.4 and shall be non-refundable if there is a breach or termination resulting from the actions of any person other than the Company.
- 5.3 No payment shall be deemed to have been received until the Company has received cleared funds.
- 5.4 The Balance shall become due immediately on termination of the Contract by the Buyer or in the event of cancellation of the order as set out in the Order Confirmation, despite any other provision.
- 5.5 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 5.6 If the Buyer fails to pay the Company the sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

6. DELIVERY

- (a) Unless otherwise agreed in writing by the Company, the Delivery Address shall be the premises of the Buyer.
- (b) Any dates specified by the Company for delivery of the Equipment are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. In no circumstances shall the Company be liable to compensate the Buyer for non-delivery or late delivery of the Equipment and any such circumstance shall not render the Company in breach of Contract and shall not entitle the Buyer to rescind the Contract.
- (c) Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges in relation to delivery of the Equipment (even if caused by the Company's negligence).
- (d) The Buyer shall provide at the Delivery Address and at its expense adequate and appropriate equipment and manual labour for unloading the Equipment. The Buyer shall ensure that the Company has free access to the Delivery Address and that the Delivery Address is in a suitable condition for the Equipment to be delivered.

7. FAILURE TO TAKE DELIVERY

- If for any reason the Buyer fails to accept delivery of any of the Equipment when they are ready for delivery, or the Company is unable to deliver the Equipment on time because the Buyer has not provided appropriate instructions, documents, licences, authorisations or access:
- (a) risk in the Equipment shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Equipment shall be deemed to have been delivered; and
- (c) the Company may store the Equipment until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) as well as additional delivery costs and costs incurred in any abortive visits. If after giving the Buyer reasonable notice that the Equipment is ready to be delivered, the Company may treat the Contract as repudiated and recover from the Buyer by way of damages any loss or expense which the Company may have suffered or incurred as a result of the Buyer's default.
- (d) The Equipment may be invoiced to the Buyer in accordance with the payment terms specified in paragraph 5.



8. EXAMINATION OF THE EQUIPMENT

- (a) The quantity and quality of any consignment of Equipment as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity and quality received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary. The Buyer shall inspect the Equipment immediately upon delivery.
- (b) The Company shall not be liable for any non-delivery or damaged Equipment (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 10 days of the date when the Equipment would in the ordinary course of events have been received or within 10 days from date of delivery. Any liability of the Company for non-delivery of the Equipment shall be limited to replacing the Equipment within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Equipment.

9. RISK/TITLE

- 9.1 The Equipment is at the risk of the Buyer from the time of delivery or deemed delivery as per paragraph 6 and 7.
- 9.2 Legal and beneficial ownership of the Equipment shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Equipment; or
- (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 9.3 Until legal and beneficial ownership of the Equipment has passed to the Buyer, the Buyer shall:
- (a) hold the Equipment on a fiduciary basis as the Company's bailee;
- (b) store the Equipment (at no cost to the Company) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
- (d) maintain the Equipment in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. The Company's interest shall be noted on the insurance. On request the Buyer shall produce the policy of insurance to the Company.
- 9.4 The Buyer may resell the Equipment before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company and the Buyer shall account to the Company accordingly; and
- (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

10. DESCRIPTION

- (a) The quantity and description of the Equipment shall be as set out in the Company's Quotation or acknowledgement of order.
- (b) All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract and this is not a sale by sample. It is further acknowledged by the Buyer that such prior information has not been relied upon by the Buyer in entering into this Contract.

11. INDUSTRIAL PROPERTY RIGHTS

- (a) All drawings, specifications or other technical data provided by the Company in connection with the Contract and all other material of similar nature supplied for any purpose whatsoever shall remain the property of the Company and shall be treated as confidential by the Buyer.
- (b) All patents, copyright and any other intellectual property rights in any drawings, specifications, technical data, models, or other property used by the Company in connection with the Contract and any such rights in the design of the Equipment provided by the Company, shall be and shall remain the sole property of the Company.

12. COMPANY'S WARRANTY

- 12.1 Where any of the Equipment supplied by the Company to the Buyer is found by the Buyer within 1 year from delivery or such other time as previously agreed by the Company, to be defective in material or workmanship, the Buyer shall notify the Company of such defect within 10 days of discovery of such defect or failure and the

Company shall in so far as is possible, provide a replacement part free of charge or provide replacement Equipment free of charge if the Company shall deem it necessary to do so. In no circumstances whatsoever shall the liability of the Company in connection with any such replacement exceed the cost of the Equipment thereof. The cost and responsibility for fitting replacement part/s or re-installing the damaged Equipment shall rest with the Buyer. The following defects are included within the 1 year warranty from date of delivery: failure of any bearings, clamps or plastic or rubber parts. The following defects will be covered by a 5 year warranty from date of delivery: major structural faults or failure of steel posts, bolts, bars, welds, or structural steel components.

- 12.2 The following defects are specifically excluded from the warranty: defects which do not affect the material and safe performance of the Equipment including scratches, dents, colour fading, weathering, instructional labels, powder coating or normal wear and tear.
- 12.3 The Company accepts no responsibility in any circumstances for any direct, indirect or consequential loss or damage, howsoever arising, which the Buyer may sustain in connection with Equipment supplied under the Contract.
- 12.4 The Company shall not be liable for a breach of the warranty in condition 12.1 unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 10 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Equipment and the Buyer (if asked to do so by the Company) either; returns such Equipment to the Company's place of business at the Company's cost for the examination to take place there or permits the Company's representative full access to examine and assess the Equipment in question.
- (c) The Buyer has adhered strictly to the terms of payment under condition 5.

13. LIMITATION OF LIABILITY

- 13.1 Any defective part or Equipment replaced shall belong to the Company and be returned to the Company. Any repaired or replaced Equipment or part shall be guaranteed on the same terms for the unexpired portion of the warranty.
- 13.2 The Company shall not be liable for a breach of the warranty in condition 12.1 if the defect is as a result of:
- (a) misuse of the Equipment, vandalism or any negligence or accident on the part of any person other than the Company; or
- (b) the Buyer makes any further use of such Equipment after giving notice of the defect to the Company; or
- (c) because the Equipment has been altered or tampered with or the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment; or
- (d) unauthorised modification, alteration or repair of any of the Equipment
- (e) loss or theft of the Equipment or any part of them
- (f) damage from any other cause other than negligence of the Company or the personnel of the Company.
- 13.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 13.4 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.
- 13.5 Subject to condition 13.3 and 13.4 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Total Price.

14. ASSIGNMENT

- 14.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 14.2 The Buyer shall not be entitled to assign the Contract or any part of



it without the prior written consent of the Company.

15. FORCE MAJEURE

- (a) If performance of the Contract shall be delayed by any circumstances or conditions beyond the control of the Company including (but without prejudice to the generality of the foregoing) any war, industrial dispute, strike, lock out, riot, malicious damage, fire, storm, flood, act of God, accident, non-availability or shortage of material or labour, failure by any sub-contractor or supplier to perform, failure of production equipment, any statute, rule, byelaw, order, regulation or requisition made or issued by any government department, local or other duly constituted authority, then the Company shall have the right to suspend further performance of the Contract until such time as the cause of the delay shall no longer be present.
- (b) If performance of the Contract by the Company shall be prevented by any such circumstances or conditions beyond the control of the Company, then the Company shall have the right to be discharged from further performance of and liability under the Contract. If the Company exercises such right, the Buyer shall thereupon pay all sums due in terms of the Contract less a reasonable allowance for such part of the Contract as has not then been performed by the Company.

16. GENERAL

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 16.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 16.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17. COMMUNICATIONS

- 17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email using the tracking options to record a delivery receipt to any email address specified for this purpose by the party to receive the notice to the other party (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company, or (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 17.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of

the day of posting); or

- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day; or
- (d) If sent by email, at the time it was sent.
- 17.3 Communications addressed to the Company shall be marked for the attention of Mr Paul Martin.