

# STANDARD TERMS AND CONDITIONS OF BUSINESS (UK).

## 1. THE CONTRACT

1.1 In these Terms and Conditions ("Conditions"), Escape Fitness Limited or one of its group of companies, is the Supplier and you are the Customer.

1.2 Upon receipt of a written Quotation, accompanied by these Conditions, (and where design and/or installation is requested; a Programme of Works), the Customer may offer to purchase the Goods and/or Services by signing, dating and returning these Conditions to the Supplier, or submitting a purchase order. The Supplier will accept the offer by sending to the Customer an Order Confirmation at which time a binding contract will exist between the parties and the Customer may not amend or cancel the Order without the Supplier's written consent.

1.3 The Customer acknowledges that it has not relied on any statement, promise or representation made, or given by or on behalf of, the Supplier which is not set out in these Conditions. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Goods or Services contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade custom, practice or course of dealing. Where the Customer re-sells the Goods, it is the Customer's responsibility to ensure the ultimate purchaser is fully acquainted with, and accepts these Conditions. No variation of these Conditions shall be effective unless expressly agreed in writing by the Supplier's authorised signatory.

1.4 These Conditions apply to the supply of both Goods and Services except where application to one or the other is specified.

1.5 The Supplier reserves the right to change these Conditions at any time. The amended Conditions will take effect on the 30th day following the date upon which the amended Conditions are sent to the Customer. The placing of further Orders shall signify the Customer's acceptance to be bound by the latest Conditions.

## 2. PAYMENT

2.1 The price of the Goods and Services shall be the price set out in the Estimate or Quotation (the latter of which shall be valid for 30 days) or the price stated in any effective Supply Agreement. Prices are quoted net of VAT. VAT is payable by the Customer at the prevailing rate as indicated upon the Estimate, Quotation or Pro-Forma Invoice. Prices are subject to change on not less than 30 days notice.

2.2 Payment for the Goods and Services shall be made in full at the time the Order is placed to the Supplier's bank account detailed in the Quotation. For Customers who have a credit account with a sufficient credit limit, Goods shall be paid for in accordance with their credit account terms. Time for payment shall be of the essence of the Contract. VAT Invoices are issued when the Goods are dispatched.

2.3 Interest is payable to the Supplier on overdue amounts at the rate of 4% per annum above Barclay's Bank base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount.

2.4 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

## 3. GOODS AND SERVICES

Orders are accepted for Goods and Services by the Supplier strictly subject to availability and to these Conditions.

## 4. CUSTOMISED, BESPOKE AND SPECIAL ORDER GOODS

4.1 In respect of any Order for customised, bespoke or special order Goods (flooring, frames, the FunXtion Experience Station, racks etc), the Customer may not amend or cancel an Order once accepted (including positioning of equipment where installation is involved). It is imperative that all Customer requirements are fully and accurately conveyed to the Supplier prior to acceptance of the Order. The Supplier accepts no liability for costs, expenses, damages and losses (including any direct, indirect or consequential losses) suffered or incurred by the Customer or any sub-contractor, agent or third party employed by the Customer arising out of any delay in delivery or installation of the Goods where such delay is caused by inaccuracies of whatever nature in the Customer's Order. To avoid such inaccuracies, the Supplier recommends a site survey of the installation premises. Surveys cost £150 + VAT for flooring and £199 + VAT for Equipment and the liability to pay the Survey Fee arises on submission of the relevant Request Form. The site Survey Fee will be waived when the Customer places an Order for installation and the Escape in-house installation team carry out the Survey. Where Customers do not proceed with the installation for whatever reason, the site Survey Fee shall be invoiced and payable in accordance with clause 2.2 above.

4.2 All designs created in respect of any installation are subject to clause 11 below so that the Customer may not use such designs or any designs that the Supplier believes breach the Supplier's Intellectual Property Rights unless a separate contract for the purchase of a licence to use the designs is negotiated and entered into. This clause 4.2 shall survive termination of the Contract howsoever determined.

4.3 To the extent that any element or component of the Goods (e.g. line markings, bench upholstery) are to be manufactured in accordance with colour and/or design specifications supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of that component. This clause 4.3 shall survive termination of the Contract howsoever determined.

4.4 The Supplier reserves the right to amend the Specification of the Goods if required so to do by the manufacturer or any applicable statutory or regulatory body.

4.5 Where Contracts involve installation and the Customer's installation area does not comply strictly with the Working Conditions Specification ("Specification") detailed in the Programme of Works, the installation shall be delayed until such time as the Customer is compliant with the Specification and the Customer shall be liable to the Supplier for all costs and expenses incurred by the delay. Without prejudice to the generality of this clause; time when appointed contractors are unable to perform the Contract ("Downtime") shall be payable to the Supplier at the rate of £176.00 per man per day (based on an 8 hour day) plus full reimbursement of all travel, accommodation and other expenses properly incurred in anticipation of performance of the Contract and which cannot otherwise be recouped from the relevant provider by the Supplier (Wasted Costs).

## 5. CARRIAGE

Carriage is payable by the Customer in respect of each Order based on the value of the Order. Carriage charges are unaffected by the number of instalments in which the Goods are delivered.

## **6. DELIVERY**

6.1 Delivery lead times vary according to the Goods Ordered. If Goods will not be delivered on the "Estimated Delivery Date" detailed on the Order Confirmation, the Customer will be advised of the intended delivery date as soon thereafter as reasonably practical. Any date quoted for delivery of the Goods is approximate only and time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by events beyond its control nor the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.2 Customized, bespoke and special order Goods have varying manufacturing lead times (provided by the manufacturer as at the date of the Suppliers Order) which will be notified to the Customer as the Estimated Delivery Date. It will take up to a further 7 days for the Goods to be delivered to the Customer once the Goods are delivered to the Supplier. It is the Customers responsibility to ensure any planned installation date takes account of these times. A firm delivery date will be notified to the Customer once the Goods are under the care and control of the Supplier.

6.3 Delivery of the Goods shall be completed once the Goods arrive at the exterior access point of the delivery address. The Customers' signature recorded on the Delivery Note (or similar device operated by the carrier) shall be conclusive evidence of the quantities dispatched and delivered.

6.4 It is the responsibility of the Customer to ensure that appropriate arrangements are in place to:

- (a) accept delivery of the Goods on the Delivery date; and
- (b) where there are large/heavy Goods; provide adequate manpower to unload the Goods from the pallet(s) upon delivery and dispose of any transit packaging supplied; and
- (c) for Orders involving installation; arrange to store the Goods pending installation in climatic conditions that will emulate the climate of the area in which the flooring or equipment will be installed and in accordance with the storage instructions (if any) supplied upon delivery.

6.5 If the Customer fails to accept or take delivery of the Goods in accordance with clause 6.4(a) above, then, save where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under this Contract, delivery of the Goods shall be deemed to have been completed at 9.00 am on the day after the Delivery Date notified by the Supplier. The Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance) incurred in this respect. A Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources.

## **7. INSTALLATION**

7.1 The Supplier shall install the flooring or equipment in accordance with the Contract.

7.2 Where installation is delayed under clause 4.5 above; the Supplier may at its own discretion;

- (a) perform or assist the Customer to perform the work required to make the Customer installation area compliant with the Specification and the Customer shall be liable only for the additional costs associated with such works at the Wasted Costs rates specified in clause 4.5 above; or
- (b) delay the installation in accordance with clause 4.5 above and claim the Wasted Costs thereof; or
- (c) cancel the installation and refund to the Customer the sum equivalent to 50% of the cost of installation (as per the Quotation), provided always that the Suppliers' Wasted Costs are first paid in full (at the rates quoted in clause 4.5 above). In the event that deduction of the Wasted Costs leaves less than 50% of the cost of installation, then the Supplier shall repay the balancing sum only.

7.3 In the event that the Customer changes a confirmed installation date less than 48 hours before the planned start time, the Customer shall be liable for the Suppliers Wasted Costs as detailed in clause 4.5 above.

## **8. TITLE AND RISK**

8.1 The risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds). Until title passes, the Customer shall hold the Goods on a fiduciary basis as the Supplier's bailee, store the Goods separately from all other Goods held by the Customer and maintain the Goods in new condition and keep them insured against all risks for their full retail price on the Supplier's behalf from completion of delivery.

8.3 In the event that the Customer proves unable, for whatever reason, to pay in full for the Goods, the Customer hereby irrevocably authorises the Supplier or its agents to enter the Customers' premises or the premises where the Goods are stored and take possession of the Goods supplied. If any Goods which become subject to this clause 8.3 are sold or hired out by the Customer to any third party before payment is made to the Supplier, then all monies received from such third party transactions are the property of, and will be claimed by the Supplier in satisfaction of and to the extent only of the unpaid Invoices.

## **9. CANCELLATIONS, AMENDMENTS AND RETURNS**

9.1 Once an Order is placed by the Customer, the Supplier will issue an Order Confirmation. Orders may only be amended or cancelled if;

- (a) the Customer formally notifies the Supplier in writing by email to [aftersales@escapefitness.com](mailto:aftersales@escapefitness.com) or Customer Services Department, Escape Fitness Limited, Units 11-14 Tresham Road, Orton Southgate, Peterborough, Cambridgeshire, PE2 6SG; and
- (b) the notification is received within 14 days of the date of the Order Confirmation; and
- (c) no Goods have been dispatched.

A fee of 10% of the Order value (net of VAT) will be charged to cover administration costs in such cases. The Supplier reserves the right to reduce the above fee, in its sole discretion, when the amendment sought by the Customer is "de minimis" or there are other exceptional circumstances justifying the same.

9.2 Where Goods have been dispatched, the Customer may return some or all of the Goods within 14 days after delivery (as recorded by the Carrier) provided that the Customer follows the procedure notified by the Customer Service Department who may be contacted (free in UK on 0800 458 5558 or) on 00 441733 313535 or in writing at [aftersales@escapefitness.com](mailto:aftersales@escapefitness.com) or Customer Services Department, Escape Fitness Limited, Units 11-14 Tresham Road, Orton Southgate, Peterborough, Cambridgeshire, PE2 6SG . The Goods must be returned to the Supplier at the Customers cost and in a new and unused condition with all original labels and packaging intact. A fee of 20% of the returned Goods value (net of VAT) will be charged to cover administration and stock handling costs. Goods may not be returned unless a returns reference number has been issued by the Suppliers Customer Service Department.

## **10. DAMAGES AND DELIVERY DISCREPANCIES**

10.1 When signing for a delivery, the Customer is accepting that the correct number of parcels has been delivered and the Goods have not been damaged in transit. All deliveries must therefore be checked as soon as received and BEFORE the Delivery Note is signed as any discrepancy in the consignment MUST be notified to Escape immediately, and within 48 hours at the latest. Please note the time of delivery as recorded on the Delivery Note. If the order is incorrect or damaged, the Customer should either refuse the consignment or record the discrepancy or damage on the Delivery Note. It is the Customers responsibility to ensure that the actions above are followed BEFORE SIGNING as mistakes cannot be rectified once the Goods have been signed for.

10.2 If damage or a discrepancy is identified, the Customer should telephone Escape's Customer Services Department with full details of the Goods Ordered and the damage or discrepancy identified. At its sole discretion, the Supplier will either replace or repair the Goods. Reports of damage or discrepancy will not be entertained after the expiration of 48 hours from the time of delivery as recorded on the Delivery Note or similar device operated by the carrier. The Customer should only return Goods following the procedures outlined by the Supplier at the time of the report.

## **11. INTELLECTUAL PROPERTY RIGHTS**

The Customer acknowledges that all intellectual property rights in the Goods and/or Services (e.g. product design, flooring design, gym design), whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world including all patents, rights to inventions, utility models or prototypes, copyright and related rights, trademarks, service marks, trade, business and domain names, belong to and are the sole property of Supplier. The Customer agrees that it shall not use the same unless a licence to use them has been granted within a contract for the provision of Goods and/or Services to be supplied by the Supplier.

## **12 PRODUCT DESCRIPTIONS**

Whilst the Supplier endeavours to ensure that the product images, descriptions, weights and measurements which appear in any Supplier literature are fair and accurate; the colour, packaging and product specification may vary according to manufacturing changes, tolerances and availability. N.B. All weight indications are KG dominant and conversions to Lb's are therefore approximate. The Supplier accepts no responsibility for any error or omission to the Customer or at all. The Supplier reserves the right to discontinue or change the specification and/or the design of a product without prior notice.

## **13 WARRANTIES AND LIMITATION OF LIABILITY**

13.1 Nothing in these Conditions excludes or limits liability for;

- (a) death or personal injury caused by the negligence of the Supplier, or
- (b) fraudulent misrepresentation or any other liability that the Supplier may not otherwise exclude or limit under applicable law.

13.2 The Supplier warrants that the Goods supplied to the Customer under this Contract shall be free from defects in materials and workmanship and comply with all applicable statutory and regulatory requirements for not less than the period of the manufacturer's warranty period.

13.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 13.2 if:

- (a) the Customer makes any further use of such Goods after notifying the Supplier of a defect; or
- (b) the defect has arisen as a result of the Customer's failure to follow the Supplier's oral or written instructions as to the storage or care of the Goods or (if there are none) good trade practice; or
- (c) the defect has arisen as a result of the Supplier following any drawing, design or specification supplied by the Customer; or
- (d) the Customer alters or repairs the Goods without the prior written consent of the Supplier; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or the use of the Goods for a purpose other than the purpose declared or in abnormal use conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

13.4 Except as provided in this clause 13; the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 13.2 or otherwise.

13.5 Subject to clause 13.1 above, the Supplier shall not be liable, in contract or tort, (including, without limitation, negligence), for pre-contract or other representations (other than fraudulent misrepresentations) or otherwise arising out of or in connection with the Conditions for any economic losses (including without limitation loss of profit, revenue, contracts, business or anticipated savings); loss of goodwill or reputation or special or indirect losses suffered or incurred by the Customer arising out of or in connection with the provision of the Goods and Services supplied in respect of this Contract.

13.7 Notwithstanding the above and subject to clause 13.1, the Suppliers aggregate liability (whether in contract, tort or otherwise) for loss or damage shall in any event be limited to a sum equal to the amount paid or payable by the Customer for the Goods in respect of one incident or series of incidents attributable to one cause.

## **14. GENERAL**

14.1 These Conditions, including the documents referred to herein, supersede all prior representations, understandings, agreements and contracts between the Customer and the Supplier relating to the supply of Goods and Services and sets forth the entire agreement and understanding between the Customer and the Supplier.

14.2 Nothing in this Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

14.3 A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.4 The Customer may not assign or sub-contract any of the rights or obligations imposed by this Contract unless agreed to in writing by the Supplier.

14.5 The Supplier reserves the right to transfer, assign, novate or sub-contract the benefit of the whole or part of any of its rights or obligations under these Conditions or any related contract to any third party.

14.6 No delay or failure by the Supplier to exercise any powers, rights or remedies under this Contract will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or any further exercise of them. To take effect any waiver must be in writing and signed by an authorised signatory of the Supplier.

14.7 This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.