

## GYM MARINE LIMITED

### TERMS AND CONDITIONS

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

#### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

**Deliverables:** the deliverables set out in the Quote or otherwise agreed in writing and that are produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** has the meaning given to it in clause 16.

**Goods:** the goods (or any part of them) set out in the Quote.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier (including, without limitation, in the Quote) (if any).

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for

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passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Quote:** the Supplier's quotation for the supply of Goods and/or Services provided in writing by the Supplier to the Customer.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Quote and the Service Specification (which shall include, if applicable, installation of the Goods at the Site).

**Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer (including, without limitation, in the Quote) (if any).

**Site:** the location at which the Services are to be provided by the Supplier to the Customer as specified in the Quote or as otherwise agreed in writing between the Supplier and the Customer.

**Supplier:** Gym Marine Limited registered in England and Wales with company number 09212367.

**Supplier Materials:** has the meaning given in clause 8.1(j).

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

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## 2. Basis of contract

- 2.1 The Quote constitutes an offer by the Supplier to the Customer for the sale of the Goods and/or Services (as specified in the Quote) in accordance with these Conditions.
- 2.2 The Quote shall be deemed to be accepted when:
- (a) the Customer issues written acceptance of the Quote; or
  - (b) the Customer otherwise accepts or approves (or indicates its acceptance or approval of) the Quote in writing or orally or by its conduct,
- whichever is earlier, at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, website(s) or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force. In particular, any technical or other information contained in the Supplier's advertising, sales and technical literature is provided for general guidance only and forms no part of the Contract.
- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Customer acknowledged and agrees that the Supplier's officers, employees, contractors, sub-contractors, agents and other representatives are not authorised to make any warranties, guarantees, representations or similar concerning the Goods and/or Services unless confirmed by a director of the Supplier in writing.
- 2.8 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any purported variation to the Goods, the Services, the Goods Specification, the Service Specification or the Contract (or any part(s) thereof) generally by the Customer. The Customer acknowledges and agrees that the Customer is not entitled to vary the Goods, the Services, the Goods Specification, the

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Service Specification or the Contract (or any part(s) thereof) without the prior written consent of the Supplier and subject always to:

- (a) the indemnity set out in this clause 2.8; and
- (b) the Supplier reserving the right to revise the price of the Goods and/or Services under the Contract to reflect the requested variation.

2.9 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier (or any of its agents, representatives, contractors or sub-contractors) arising out of or in connection with:

- (a) any purported variation or change to the date(s), time(s) and/or other timescale(s) (requested by the Customer) on which the Services are agreed to be provided by the Supplier (or its agents, representatives, contractors or sub-contractors); and/or
- (b) any variation or change of the Site (or variation or change to the geographical location of the Site to that originally anticipated at the time of the Quote or other written agreement of the Site).

### **3. Goods**

3.1 The Goods are described in the Goods Specification. All specifications contained in the Goods Specification are approximate only and are subject to normal margins of tolerance for the materials and construction in question. The Supplier will use its reasonable endeavours to supply the Goods in accordance with the Goods Specification.

3.2 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement or as a result of changes in technical knowledge, production techniques, government or other regulations, health and safety regulations or practices or any other reasonable cause, and the Supplier shall notify the Customer in any such event. Further, the Supplier reserves the right to amend the Goods Specification if the amendment will not materially affect the nature or quality of the Goods, and the Supplier shall notify the Customer in any such event.

3.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Goods specified to the Customer but any such dates shall be estimates only and time shall not be of the essence for the performance.

### **4. Delivery of Goods**

4.1 As agreed between the Supplier and the Customer in writing:

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- (a) the Supplier shall deliver or procure the delivery of the Goods to the location set out in the Quote or such other location as the parties may agree in writing (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready; or
  - (b) the Customer shall collect the Goods from such location as set out in the Quote or such other location as the parties may agree in writing (**Delivery Location**) within five Business Days of the Supplier notifying the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the completion of unloading or loading (as the case may be) of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the 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 a Force Majeure Event or 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.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Customer fails to take or accept (as the case may be) delivery of the Goods within five Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted (as the case may be) delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

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4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Warranties

5.1 The Supplier will use its reasonable endeavours to procure the assignment of any warranty or guarantee or similar provided by the manufacturer of the Goods or the supplier of the Services to the Supplier onto the Customer or, where possible, use its reasonable endeavours to procure that any such warranty or guarantee or similar is issued in the name of the Customer.

5.2 Except for any Supplier Warranty as referred to in clause 5.3, all warranties, guarantees, representations or similar, whether express or implied by statute, common law, or otherwise (including but not limited to fitness for purpose) are hereby excluded to the fullest extent permitted by law.

5.3 Any express warranty in respect of the Goods and/or Services that is given by the Supplier to the Customer (in the Supplier's absolute and sole discretion) (**Supplier Warranty**) shall either be in writing or contained in the Contract (including, without limitation, clause 7.4 below) and shall be always subject to the remaining provisions of this clause 5.

5.4 Subject to clause 5.5, the Supplier shall, at its option, repair or replace the defective Goods or Services, or refund the price of the defective Goods or Services in full if:

- (a) the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods or Services do not comply with the Supplier Warranty;
- (b) the Supplier is given a reasonable opportunity of examining such Goods or Services; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods or evidence of the defective Services to the Supplier's place of business at the Customer's cost.

5.5 The Supplier shall not be liable for the Goods' or Services' failure to comply with the Supplier Warranty if:

- (a) the Customer makes any further use of such Goods or Services after giving a notice in accordance with clause 5.4;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or Services or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification or Service Specification supplied by the Customer;

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- (d) the Customer alters or repairs such Goods or Services without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods or Services differ from the Goods Specification or the Service Specification (as the case may be) as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.6 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' or Services failure to comply with a Supplier Warranty.

5.7 The terms of these Conditions shall apply to any repaired or replacement Goods or Services supplied by the Supplier.

## 6. Title and risk

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

6.2 Title to the Goods shall not pass to the Customer until the earlier of the Supplier receives payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(c) to clause 14.1(e); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.1(c) to clause 14.1(e), then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

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## **7. Supply of Services**

- 7.1 The Services are described in the Service Specification and shall be provided at the Site. All specifications contained in the Service Specification are approximate only and are subject to normal margins of tolerance. The Supplier will use its reasonable endeavours to supply the Services at the Site in accordance with the Service Specification.
- 7.2 The Supplier reserves the right to amend the Service Specification if required by any applicable statutory or regulatory requirement or as a result of changes in technical knowledge, production techniques, government or other regulations, health and safety regulations or practices or any other reasonable cause, and the Supplier shall notify the Customer in any such event. Further, the Supplier reserves the right to amend the Service Specification if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified to the Customer but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

## **8. Customer's obligations and warranties**

- 8.1 The Customer shall:
- (a) ensure that the terms of the Quote and any information it provides in the Service Specification and/or the Goods Specification (as applicable) are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services and/or the Goods (as applicable);
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's or any relevant third party's premises, office accommodation, locations and other facilities as reasonably required by the Supplier to provide the Services and/or in connection with the Goods (as applicable) (including delivery and/or installation of the Goods (as applicable));
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services and/or in connection with the Goods (as applicable) (including delivery and/or installation of the Goods (as applicable)), and ensure that such information is complete and accurate in all material respects;

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- (e) save to the extent that such forms part of the Services, prepare the Customer's premises for the supply of the Services and/or in connection with the Goods (as applicable) (including delivery and/or installation of the Goods (as applicable));
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and/or the Goods before the date on which the Goods are to be delivered and/or installed (as applicable);
- (g) obtain and maintain, at its own cost, such import licences and other consents in relation to the Goods and/or Services (as applicable) as are required from time to time and, if required by the Supplier, the Customer shall make those licences and consents available to the Supplier immediately on request;
- (h) comply with all applicable laws, including health and safety laws;
- (i) comply with all reasonable requirements and instructions of the Supplier (and provide all necessary information, materials and/or documentation requested by the Supplier) in connection with the import and/or export of the Goods and/or Services including, without limitation, doing all such acts and things, and signing all such documents, reasonably required by the Supplier in connection with the import and/or export of the Goods and/or Services (including, without limitation, end user undertakings, export paperwork and customs declarations);
- (j) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (k) comply with any additional obligations as set out in the Service Specification and/or the Goods Specification (as applicable).

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, including, without limitation, those contained in clause 8.1 above (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and

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(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with the Customer's failure to comply with clause 8.1(i) above. This clause 8.3 shall survive termination of the Contract.

8.4 The Customer shall comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements) and not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom. Failure to comply with clause 8.4 shall be a material breach of the Contract.

8.5 The Customer shall not engage in any activity, practice or conduct which would constitute either:

(a) a UK tax evasion facilitation offence under section 45(1) of the *Criminal Finances Act*; or

(b) a foreign tax evasion facilitation offence under section 46(1) of the *Criminal Finances Act 2017*.

Failure to comply with clause 8.5 shall be a material breach of the Contract.

8.6 The Customer hereby warrants to the Supplier that:

(a) the person(s) accepting the Quote have the requisite authority to do so;

(b) the Contract forms a binding commitment between the Supplier and the Customer and, in particular, is binding on the Customer in accordance with its terms; and

(c) any information provided to Supplier by the Customer or its officers, employees, contractors, sub-contractors, agents or representatives (or on their respective behalfs), in connection with the Contract was true, complete and not misleading.

## 9. Charges and payment

9.1 The price for Goods and the Services:

(a) shall be the price set out in the Quote or as otherwise agreed by the parties in writing or, if no price is quoted or agreed, the price set out in the Supplier's published price list as at the Commencement Date; and

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- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The Supplier reserves the right to increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery of the Goods or commencement of performance of the Services, to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:

- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, currency regulation, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the Goods, the Services, delivery date(s), the performance dates, the quantities or types of Goods ordered, or the Goods Specification or the Services Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods and/or Services or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Services.

9.3 The Supplier shall invoice the Customer for the price for the Goods and Services as stated in the Quote or as otherwise agreed in writing between the Supplier and the Customer. If no such payment terms are stipulated in the Quote or otherwise agreed in writing between the Supplier and the Customer, the Supplier shall invoice the Customer for the price for the Goods and Services at any time on or after the Commencement Date. Save for as otherwise agreed by the Supplier and the Customer in writing, or as stated in the Quote, and notwithstanding anything else contained in the Contract, the Supplier shall be under no obligation to commence manufacturing or procuring the Goods (or their delivery) or performance of the Services if and until the price for the Goods and the Services in question is received by the Supplier from the Customer in full and cleared funds to a bank account nominated in writing by the Supplier.

9.4 The Customer shall pay each invoice submitted by the Supplier:

- (a) immediately on receipt of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer or as stated in the Quote; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax, any similar sales tax or any tax that replaces such sales taxes chargeable from time to time (VAT) and all import taxes or levies of a similar nature which are imposed or charges by any competent authority or body in respect of the Goods and/or

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Services. Any such VAT, taxes or levies payable shall be paid by the Customer in addition to the Supplier on demand.

- 9.6 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.7 If HM Revenue & Customs or any other tax authority or relevant body in any jurisdiction (HMRC) notifies the Supplier, at any time, that VAT is or should have been payable under or in connection with the Contract, the Supplier will promptly issue to the Customer a valid VAT invoice in respect of the Goods and/or Services (or the relevant part(s) thereof) and within 5 Business Days of receipt of that invoice, the Customer shall pay to the Supplier the amount of VAT stated in the invoice (which shall, if applicable, be the amount of VAT determined by HMRC to be chargeable) and all interest, penalties or other charges charged by HMRC due to the late payment of such VAT.
- 9.8 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- (a) any failure by the Customer to comply with clause 9.5 to clause 9.7 (inclusive); and/or
  - (b) any value added tax, any similar sales tax or any tax that replaces such sales taxes and all import taxes or levies of a similar nature which are imposed or charges by any competent authority or body in respect of the Goods and/or Services or otherwise in connection with the Contract and for which the Customer has not already paid.
- 9.9 If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer shall increase the sum it pays to the Supplier by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.
- 9.10 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.10 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

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- 9.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.12 All bank or similar charges incurred in relation to any payment to be made in connection with the Contract shall be payable by the Customer.
- 9.13 The Supplier may make an additional charge to the Customer for any export or customs documentation (including, without limitation, end user undertakings, export paperwork and customs declarations) that the Supplier deals with in connection with the Contract. All such charges will be notified to the Customer from time to time.
- 9.14 The Supplier may apply any payments received from the Customer under the Contract or otherwise to settle any amounts due to the Supplier under the Contract or to settle any other outstanding invoices or payments due by the Customer to the Supplier (whether under the Contract or otherwise) and which may exist from time to time.

## 10. Intellectual property rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables.
- 10.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## 11. Data protection

Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 11, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.

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## 12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 13. Limitation of liability

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.**

- 13.1 The restrictions on liability in this clause 13 (including, without limitation, in clause 13.3 below) apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
  - (d) defective products under the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.2, the Supplier's total liability to the Customer in respect of all breaches of duty shall not exceed the cap.
- 13.4 In clause 13.3 the cap is all sums actually paid to and received by the Supplier from the Customer under the Contract in respect of Goods and/or Services (as applicable) actually supplied by the Supplier prior to the relevant breach having occurred.

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13.5 The types of loss listed below are wholly excluded by the parties.

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

13.6 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 12 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.7 This clause 13 shall survive termination of the Contract.

## 14. Termination

14.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default for 5 Business Days;
- (b) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 20 Business Days after receipt of notice in writing to do so;
- (c) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (d) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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- 14.2 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 20 Business Days after receipt of notice in writing to do so;
  - (b) the Supplier enters into administration or liquidation or is otherwise wound up; or
  - (c) the Supplier ceases to carry on all of its business.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(c) to clause 14.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## 15. Consequences of termination

### 15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15.2 In the event that the Customer purports to terminate the Contract (save for pursuant to clause 14.2 (a) to 14.2 (c) (inclusive) above in accordance with the terms of those clauses), the total price for the Goods and Services (as applicable) will become immediately due and payable for the Goods and Services (as applicable) notwithstanding any payment terms or credit terms agreed to the contrary between the Supplier and the Customer and the Supplier shall be able to invoice the Customer accordingly.

15.3 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:

- (a) the termination of the Contract by the Supplier pursuant to clause 14.1(a) to 14.1(e) (inclusive) above; or

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- (b) the purported termination of the Contract by the Customer (save for pursuant to clause 14.2 (a) to 14.2 (c) (inclusive) above in accordance with the terms of those clauses).

15.4 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.5 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **16. Return and refund**

16.1 Subject to the remainder of this clause 16, the Customer may cancel the Contract and receive a refund for the Goods and/or Services which are the subject matter of the Contract (subject to this clause 16) if the Customer notifies the Supplier of such cancellation as set out in clause 16.3 within 30 days of the Commencement Date and otherwise complies with this clause 16.

16.2 The cancellation right set out in clause 16.1 does not apply in the case of:

- (a) any bespoke, made to order, made to measure, personalised or adapted Goods or other Goods where the resale of such is limited by the unique specification of the Goods in question (such to be determined by the Supplier acting reasonably and in good faith);
- (b) any sealed Goods once those Goods are unsealed; or
- (c) any Goods that are used or damaged; or
- (d) any Goods that are not returned in its original unopened packaging (with any seal or shrink-wrap intact), with all labels still attached, and otherwise in a condition enabling the Supplier to sell the Goods as new; or
- (e) any Goods which become mixed inseparably with other items; or
- (f) any Goods purchased with gift vouchers or similar.

16.3 To cancel the Contract, the Customer must:

- (a) contact the Supplier in writing including details of the Quote / Contract to help the Supplier identify the Quote/Contract being cancelled. Any written cancellation is effective from the date the Supplier actually receives the written notice; and
- (b) contact the Supplier to obtain a return authorisation number for the return in question.

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- 16.4 If Goods have been delivered to the Customer or collected by the Customer (as applicable) before the Customer decides to cancel the Contract then the Customer must return the Goods to the Supplier (with a cover note containing the return authorisation number referred to in clause 16.3(b) above) without undue delay and in any event not later than 14 days after the day on which the Customer lets the Supplier know that it wishes to cancel the Contract. Goods returned must be sent by Royal Mail Signed For delivery to Gym Marine Returns Department, Unit 5, Wirral Park, Glastonbury, BA6 9XE or such other address that the Supplier notifies to the Customer from time to time. The Customer is fully responsible for paying all postage and other costs associated with return of the Goods under this clause 16. The Supplier reserves the right to charge the Customer a restocking fee to be determined in the absolute and sole discretion of the Supplier.
- 16.5 The Supplier will give the Customer a refund for the price the Customer has paid to the Supplier in respect of any Goods properly returned by the Customer in accordance with this clause 16, less any restocking fee as mentioned in clause 16.4 above, and in respect of any Services yet to be performed by the Supplier for the Customer (but, for the avoidance of any doubt, the Customer shall not be refunded (and will remain liable for if not paid) any price paid or to be paid in respect of Services already provided in accordance with the Contract. The Supplier will not refund to the Customer any delivery charges relating to the Goods in question and/or any costs incurred by the Customer in returning the Goods to the Supplier.
- 16.6 Any refund will usually be made by the Supplier to the Customer using the same method originally used by the Customer to pay the original price and refunds will be processed as soon as possible and, in any event, within 30 days following the day the Supplier receives the returned Goods.
- 16.7 If the Customer purports to return any Goods under this clause 16 but in contravention of any of the requirements of this clause 16:
- (a) the Supplier will not refund the price or exchange the Goods in question;
  - (b) the Supplier may retain the Goods until the Customer pays to the Supplier such additional amount as the Supplier may charge for re-delivery of the incorrectly returned Goods; and
  - (c) if the Supplier does not receive payment of such additional amount within 14 days of issuing a request for payment, the Supplier may destroy or otherwise dispose of the returned Goods in our sole discretion without any liability to the Customer.
- 16.8 This clause does not affect any statutory rights the Customer may have as a consumer (including any rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 or the Consumer Rights Act 2015).

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## 17. Force majeure

The Supplier shall not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 12 months, the Customer may terminate this agreement by giving 30 days' written notice to the Supplier.

## 18. General

### 18.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

**18.2 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.2 shall not affect the validity and enforceability of the rest of the Contract.

**18.3 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**18.4 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

**18.5 Entire agreement.**

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- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**18.6 Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**18.7 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**18.8 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**18.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

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