

STANDARD TERMS AND CONDITIONS OF BUSINESS (USA).

In these Terms and Conditions, Escape Fitness USA LLC is the Supplier and you are the Customer.

1. ORDERS.

- 1.1 All orders are subject to these Terms and Conditions (“Conditions”) which supersede any terms and conditions you may include with any purchase order regardless of whether Escape sign these or not. We reserve the right to change these Conditions at any time, and you are deemed to accept any changes on the 7th day after the date of any amendment, or the date an order is placed, whichever is the sooner. In the event that products are re-sold, it is your responsibility to ensure that the ultimate purchaser is made aware of and accepts the products on that basis.
- 1.2 Samples, drawings or descriptive or illustrative advertising or other materials contained in brochures or catalogues do not form part of the contract.
- 1.3 Receipt of an electronic, telephonic or other form of purchase order does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. We reserve the right, at any time after receipt of your order, to accept or decline your order for any reason, or to supply less than the quantity ordered of any item. Orders are accepted by the issue of an Order Confirmation, normally sent within 48 hours of receipt of your Order, at which time a binding contract will exist between us and the Customer may not amend or cancel the order without our written consent.

2. PRICE AND PAYMENT.

- 2.1 The price of the products shall be the price set out in the Order Confirmation. Prices are subject to change on not less than 30 days notice.
- 2.2 Payment for the products shall be made in full at the time the order is placed. Sales Tax will automatically be added to orders where liability arises unless Sales Tax Exemption and Re-sale Certificates have been filed. Please note: Sales Tax Exemption and Re-sale Certificates must be filed BEFORE orders are placed to ensure zero rating. We accept payment by company check (allow 10 days for clearance) or wire transfer in U.S. Dollars only. A penalty of \$25 will be charged for any returned payment whatever the reason.
- 2.3 Invoices are issued when the products are shipped.
- 2.4 Credit Account Customers shall pay for products in accordance with their credit account terms and time for payment shall be of the essence of the Contract. Interest is payable on overdue accounts at the rate of 1.5% per month (or such lower rate as may be the maximum permitted by law), accruing on a daily basis from the due date until the date of actual payment of the overdue amount.
- 2.5 Credit Account Customers shall pay all amounts due in full, without any deduction or withholding except as required by law and they shall not be entitled to assert any credit, set-off or counter-claim to justify withholding payment of any such amount in whole or in part. We reserve the right to revoke any credit extended in the event that you fail to pay in accordance with your credit account terms save where a good faith dispute (as determined by us) concerning sums due exists. When credit is revoked, products shall be paid for in advance of shipment.

3. PRODUCTS AND SERVICES.

- 3.1 Most products are available to ship immediately, however, some products may have lead times. Orders are accepted for products strictly subject to availability and to these Conditions.
- 3.2 Where orders contain multiple products, we will make every effort to ship all products contained in the order at the same time. Products that are unavailable at the time of shipping shall be shipped as they become available unless you advise us to the contrary in writing. You will be charged only for products actually contained in the shipment. You will pay only a single shipping charge as advised in your Order Confirmation which shall be applied to the first invoice issued.
- 3.3 In the interests of better quality and value, we are constantly improving and updating our products. We therefore reserve the right to change the color, design, specification or packaging in respect of any or all of our product range.

4. CUSTOMISED, BESPOKE AND SPECIAL ORDER GOODS

- 4.1 In respect of any Order for customized, 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 Customers Order. To avoid such inaccuracies, the Supplier recommends a site survey of the installation premises. Surveys are carried out by our expert partners who will provide a Survey Fee on application. 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 including installation. 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 Suppliers Intellectual Property Rights unless a separate contract for the purchase of a license 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 color 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 Customers 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. If the Customer delays an installation date on less than 14 days notice; the Customer shall similarly 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 hourly rate 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. DELIVERY

- 5.1 Delivery lead times vary according to the products ordered. Products ordered from stock will be shipped within 48 hours of the date of the Order Confirmation. Any date quoted for delivery is approximate only, and time of delivery is not of the essence. We shall not be liable for any delay in delivery of the products that is caused by a Force Majeure Event (as defined in clause 5.5 below), or other event beyond our control, nor any failure by you to provide us with adequate delivery instructions, or any other instructions that are relevant to the supply of the products.
- 5.2 Customized, bespoke, special order and assembled products have varying manufacturing lead times which will be notified to you as the estimated delivery date. A firm delivery date will be notified to you once the finished products are physically ready for dispatch.
- 5.3 Delivery is complete once the products arrive at the exterior access point of the delivery address. Your(or your agents) signature recorded on the Delivery Note (or similar device operated by the carrier) shall be conclusive evidence of the quantities shipped and delivered.
- 5.4 It is your responsibility to ensure that appropriate arrangements are in place to:
 - 5.4.1 accept delivery of the products; and
 - 5.4.2 where there are large/heavy products delivered; provide adequate manpower to unload the products and dispose of any transit packaging supplied.
- 5.5 If you (or your agent) fail to accept or take delivery of the products in accordance with clause 5.4 above, then, save where such failure or delay is caused by a Force Majeure Event or by our failure to comply with our obligations under this Contract, then delivery of the products shall be deemed to have been completed at 9.00am on the day after the delivery date notified by us. We shall store such products until actual delivery takes place, and charge you 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.

6 TITLE AND RISK.

- 6.1 The risk in the products shall pass to you when delivery is complete.
- 6.2 Title to the products shall not pass to you until we have received payment in full (in cleared funds). Until title passes, you shall hold the products on a fiduciary basis as our bailee, store the products separately from all other products held, and maintain the products in new condition and keep them insured against all risks for their full retail price on our behalf.
- 6.3 In the event that you are unable, for whatever reason, to pay in full for the products, you hereby irrevocably authorize us, or our agents to enter your premises or the premises where the products are stored and take possession of the products supplied. If any products which become subject to this clause 6.3 are sold or hired out by you to any third party before payment is made to us, then all monies received from such third party transactions are the property of, and will be claimed by us in satisfaction of, and to the extent only of any unpaid invoices.

7 CANCELLATIONS, AMENDMENTS AND RETURNS.

- 7.1 Once an Order Confirmation is issued, orders may only be amended or cancelled if :-
- 7.1.1 the Customer formally notifies the Supplier in writing by email to aftersales@escapefitness.com or Customer Services Department, Escape Fitness LLC., 4434 West Muhlhauser Road, West Chester, OH; and
 - 7.1.2 the notification is received within 14 days of the date of the Order Confirmation; and
 - 7.1.3 no products 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.
- 7.2 Where products have already been shipped, and you wish to return some or all of the products; then in respect of products which require no assembly, they may be returned within 14 days after delivery (as recorded by the Carrier) provided you follow the procedure notified by the Customer Service Department who may be contacted on 614 706 4462 or in writing at aftersales@escapefitness.com or Customer Services Department, Escape Fitness LLC., 4434 West Muhlhauser Road, West Chester, OH . The products must be returned to us and you must pay the cost of shipping. Returned products must reach us in a new and unused condition with all original labels and packaging intact. A re-stocking fee of 20% of the returned products value (net of tax) will be deducted from the sum to be refunded.
- 7.3 Be-spoke or customized products may not be returned.
- 7.4 Products may only be returned with a “returns reference number” which you can get from our Customer Service Team. No exceptions! Please call 614 706 4462.

8 DAMAGES AND DELIVERY DISCREPANCIES.

- 8.1 All deliveries must be checked as soon as received and BEFORE the Delivery Note is signed. When signing for a delivery, you are accepting that the correct number of parcels have been delivered and the products have not been damaged in transit. If there is damage or a discrepancy, you should either refuse the delivery or record the damage or discrepancy on the Delivery Note (or similar device operated by the carrier) and report the claim by telephoning our Customer Services Team within 24 hours of the delivery time. NOTE: the time of delivery is the time recorded on the Delivery Note (or similar device operated by the carrier). It is your responsibility to ensure that the actions above are followed BEFORE SIGNING as mistakes cannot be rectified once the products have been signed for. Reports of damage or discrepancy will not be entertained after the expiration of 24 hours from the time of delivery as recorded on the Delivery Note or similar device operated by the carrier.
- 8.2 Any latent damage to the products MUST be notified to us by telephoning our Customer Services Team immediately upon discovery when you will need to supply us with full details of the products ordered and the damage identified. In our sole discretion, we will either replace or repair the products.

9 INTELLECTUAL PROPERTY RIGHTS.

You acknowledge that all intellectual property rights in the products (including actual products as well as product, flooring and 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, or are used by Escape under Licence or one of its associated companies. You agree not to use the same unless a license has been granted within a contract for the provision of products by us or one of our associated companies.

10 PRODUCT COMPLIANCE.

- 10.1 All products supplied by us comply with all applicable laws (including patent laws) statutes, rules and regulations of the United States government and any related law, rule or regulation. Whilst we endeavour to ensure that the product images, descriptions, weights and measurements which appear in any of our literature are fair and accurate; the colour, packaging and product specification may vary according to manufacturing changes, tolerances and availability. We reserve the right to discontinue or change the specification and/or the design of a product without prior notice N.B. All weight indications are KG dominant and conversions to Lb’s are therefore approximate. We accept no responsibility for any error or omission to the Customer or at all.
- 10.1 You agree to use the products delivered herein in accordance with all applicable laws (including without limitation all patent laws), statutes, rules, regulations or orders of the United States government or of any state or political subdivision thereof.
- 10.3. We agree to indemnify you from (i) any and all judgments and decrees that may be entered against you or your affiliates, arising out of the use or supply of the products, whether it be immediate or remote, and (ii) any and all costs and expenses that you may incur by virtue of our violation of any such laws (including any claims for infringement, whether such infringement be direct or indirect). We agree that we will, at your request and our sole cost and expense, defend or assist in the defense of any suit or action that may be brought against you, your affiliates, immediate or remote, with respect to any violation or infringement.

11 WARRANTIES AND LIMITATION OF LIABILITY.

- 11.1 We warrant to the original purchaser that the products supplied (deletion) 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 warranty period stated on the website in respect of each product and subject to specific product exclusions listed therein.
- 11.2 We shall not be liable for the products’ failure to comply with the warranty in clause 11.1 if:

- 11.2.1 you make any further use of such products after notifying us of a defect; or
 - 11.2.2 the defect has arisen as a result of your failure to properly store, care for or maintain the products; or
 - 11.2.3 the defect has arisen as a result of us following any drawing, design or specification supplied or specifically requested by you; or
 - 11.2.4 you alter or repair the products without our prior written consent; or
 - 11.2.5 the defect arises as a result of fair wear and tear, corrosion due to perspiration, wilful or negligent damage or the use of the products for a purpose other than the purpose intended or in abnormal use conditions; or
 - 11.2.6 the products differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 11.3 Where a warranty claim is made, you are responsible for returning the product to us for inspection (including shipping) following the returns policy outlined in clause 7.4 Once inspected, we will, at our sole discretion, repair or replace the product, issue a credit note or where we find the claim unsubstantiated reject and return the product to you.
- 11.4 Except as provided in this clause 11, we shall have no liability to you in respect of the products' failure to comply with the warranty set out in clause 11.1 or otherwise. We assume no responsibility for personal injury or property damage by or through the use of products supplied by us.
- 11.5 THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY LAW OR OTHERWISE INCLUDING WARRANTY, MERCHANTABILITY OR FITNESS FOR PURPOSE, AND IS IN LIEU OF ALL OTHER LIABILITIES OF ESCAPE FITNESS USA LLC INCLUDING DIRECT, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES OR PENALTIES EXPRESSED OR IMPLIED WHETHER ARISING OUT OF CONTRACTING, NEGLIGENCE OR TORT.

12 GENERAL.

- 12.1 These Conditions, including the documents referred to herein, supersede all prior representations, understandings, agreements and contracts between us relating to the supply of products and sets forth the entire agreement and understanding between us.
- 12.2 Nothing in this Contract is intended to, nor shall be deemed to, constitute a partnership or joint venture of any kind, 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.
- 12.3 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.4 You may not assign or sub-contract any of the rights or obligations imposed by this Contract unless agreed to in writing by us.
- 12.5 We reserve 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.
- 12.6 No delay or failure by us 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 one of our authorized signatories.
- 12.7 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 the laws of the State of Ohio, and the parties irrevocably submit to the exclusive jurisdiction of the Ohio District Courts.