

Hire Fitness Terms and Conditions for all Contracts after 14 July 2011

Please Note This is Protected By Copyright Ultim8 Fitness Ltd

1 Definitions

- (a) Hire Fitness is hereinafter referred to as the "Owner".
- (b) "Equipment" means the equipment which is provided to the Hirer under the Contract and delivered to the Hirer and detailed further on the Order Form.
- (c) "The Contract" means the contract between the Owner and the Hirer for the Rental of the Equipment.
- (d) "Order Form" means the order form to which these terms are appended.
- (e) "Rental" is the provision of the Equipment by the Owners to the Hirer for the Hirer's use for an agreed period and at an agreed cost and subject to these terms and conditions.
- (f) "Rental Fee" means the amount payable by the Hirer to the Owner for the hire of the Equipment for one (1) week.
- (g) "Rental Period" means the period of hire for which the Hirer hires the Equipment in accordance with these terms and conditions.

2 Equipment Hire and Rental Period

- (a) The Hirer shall let the Equipment to the Hirer subject to these terms and conditions. The Owner shall not, other than in the exercise of its rights under these terms and conditions or applicable law, interfere with the Hirer's quiet possession of the Equipment.
- (b) The minimum Rental is for four weeks ("Minimum Period").
- (c) The Contract shall commence on the date of delivery for the Minimum Period and shall terminate on the date of collection unless terminated earlier in accordance with these terms.

3 Rental Charges

- (a) Unless otherwise agreed between the parties, the Hirer shall, on the date of this agreement, pay a deposit equal to four weeks Rental ("Deposit") to the Owner. The Deposit shall be paid to the Owner and retained by the Owner until the termination of the Contract and the return of the Equipment in satisfactory condition.
- (b) The Deposit is a deposit against default by the Hirer of payment of any Rental Fees or any loss of or damage caused to the Equipment. If the Hirer fails to make any Rental Fees in accordance with these terms and conditions or causes any loss or damage to the Equipment (in whole or in part), the Owner shall be entitled to apply the Deposit against such default, loss or damage. The Hirer shall pay to the Owner any sums deducted from the Deposit within ten (10) Business Days of a demand for the same. The Deposit (or balance thereof) shall be refundable within [five (5)] Business Days of the end of the Rental Period.
- (c) The Rental Fee will be charged weekly (7 days) including Saturdays, Sundays and national holidays in England
- (d) The Rental Fee shall be payable in advance for periods of 4 weeks or such shorter period as the Owner may agree.
- (e) If the Hirer does not make the Equipment available for collection on termination of the Contract, the Hirer shall be responsible for the Rental Fee until the Equipment is collected by the Owner. Should the Hirer return or make the Equipment available to the Owner before the end of the agreed rental period, the Owner shall be entitled to charge the Hirer the full amount or a proportion of the Rental Fee that the Owner deems appropriate.

(f) The Owner shall be entitled to vary the amount of the Rental Fee at any time after the expiry of the minimum rental period and by giving the Hirer not less than four (4) weeks notice in writing.

(g) The Rental Fee is inclusive of Value Added Tax ("VAT").

(h) On termination, the final Rental Fee shall be calculated to include any complete and incomplete weeks hired.

4 Payment

(a) [Following the Advance Rental Fee] the Rental Fee shall be paid by the Hirer to the Owner as detailed in the Order Form in advance for the period of four (4) weeks at a time.

(b) Failure to pay in advance may, at the discretion of Owner, result in the termination of the Contract.

(c) If the Hirer fails to pay any Rental Fees or any other sums payable under this agreement by the due date for payment ("Due Date") then, without limiting the Owner's other rights and remedies, the Hirer shall pay interest on such sums for the period from and including the due date of payment up to the actual date of payment, whether before or after judgment. The interest shall be paid at the rate of 2 per cent (2%) per annum above the base lending rate from time to time of Bank of England.

(d) The Owner reserves the right to charge an administration fee of £40.00 in respect of each late payment of an invoice.

(e) The Hirer acknowledges that due to VAT rounding there may be a small discrepancy in the Rental Fee due by plus or minus £0.01.

5 References

Prior to accepting any order, the Owner may at its complete discretion request references, proof of identity and proof of residence of a Hirer and check with a consumer credit reference agency.

6 Acceptance

The Hirer shall satisfy himself that the Equipment supplied by the Owner corresponds to the Order Form and is in working order. Any part of the Equipment found to be faulty, or not found to correspond with the Order Form, shall be notified to the Owner within one working day of receipt of the Equipment. Failure to do so will render the Hirer responsible for the payment of the Rental Fee up to the time of notification.

7 Suitability

It is the Hirer's responsibility to ensure that the Equipment is, if necessary, compatible with existing installations, and is suitable for all of the Hirer's requirements.

8 Substitution

The Owners reserve the right to substitute the Equipment proposed for the Rental with alternative equipment of an equal or higher specification (which, for the purposes of interpreting the Contract, shall become the Equipment). On termination of the Contract the Hirer may not substitute any Equipment delivered by the Owner.

9 Responsibilities of Hirer

(a) The Hirer acknowledge that by signing the Contract he has instructed in the safe operation of the Equipment and the Hirer undertakes to ensure no one else uses the Equipment who is not properly instructed and shall not allow the Equipment to be misused in any way other than in accordance with the instructions of the Owner.

(b) Save in respect of death or personal injury caused by the Owner's negligence the Hirer shall at all times and in all respects indemnify the Owner against and from, any and every expense, liability, loss, claim or proceeding whatsoever in respect of any personal injury or loss whatsoever (including but without prejudice to the generality of the foregoing, injury to the Hirer (if the same is possible) and injury to any servant, employee or agent of the Hirer) and in respect of damage to any property whatsoever (including the Equipment) or injury to any person arising out of or in connection with or consequent upon the hire, delivery, use, misuse, non-use, repossession, collection, return or non-return of the Equipment or any part thereof.

(c) The Owner shall not be liable for any consequential expense liability, what so ever caused by the late delivery, late collection, non-delivery, unsuitability, breakdown, failure or repossession of the Equipment.

(d) The Hirer will ensure that the equipment is not used by anyone under the age of 16 years old.

(e) The Hirer shall during the Contract:

- i) ensure that the Equipment is kept and operated in a suitable environment, used only for the purposes for which it is designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
- ii) take such steps (including compliance with all safety and usage instructions provided by the Owner) as may be necessary to ensure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- iii) be responsible for loss of, or damage to, or caused by, the Equipment;
- iv) not do or permit to be done any act or thing which will or may jeopardise the right, title and/or interest of the Owner in the Equipment;
- v) not suffer or permit the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is so confiscated, seized or taken, the Hirer shall notify the Owner and the Hirer shall at its sole expense use its best endeavours to procure an immediate release of the Equipment and shall indemnify the Owner on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- vi) not use the Equipment for any unlawful purpose;
- vii) ensure that at all times the Equipment remains identifiable as being the Owner's property and wherever possible shall ensure that a visible sign to that effect is attached to the Equipment;
- viii) deliver up the Equipment at the end of the Rental Period or on earlier termination of this agreement at such address as the Owner requires, or if necessary allow the Owner or its representatives access to the Premises or any premises where the Equipment is located for the purpose of removing the Equipment; and
- ix) not to anything which could invalidate or cause the insurances referred to in clause 10 to be invalidated.

10 Insurance

10.1 The Hirer indemnifies the Owner against any loss or damage to the Equipment and against any loss, damage or injury caused by the Equipment (except for any caused by the Owner's own negligence) in so far as it is not covered by insurance of the Equipment.

10.2 The Hirer must insure and keep the Equipment insured under a fully comprehensive policy at the Hirer's expense to their full replacement value with a reputable insurer chosen by the Hirer. Insurance must include cover against the risk of loss or damage by fire, theft, accident and other risks, including third party risks, as are normally insured against in the case of equipment of the type to which this Contract relates.

10.3 The Hirer must have the Owner's interest noted on the policy. The Hirer will produce to the Owner on demand evidence of the insurance cover and of the payments of premiums under the insurance policy.

10.4 The Hirer must notify the Company promptly of any loss of or damage to the Equipment and hold any insurance moneys received by the Hirer in trust for the Owner.

10.5 The Hirer irrevocably authorises the Owner to negotiate with the insurers to settle any insurance claim and to receive the insurance moneys.

10.6 The Owner shall apply the insurance moneys as follows:

10.6.1 in making good any damage;

10.6.2 in replacing the Equipment with goods of a similar type; and

10.6.3 in compensating the Owner for any loss or damage which it may suffer or incur.

10.7 The Hirer agrees to pay any shortfall to the Owner on demand.

10.8 Any loss of or damage to the Equipment shall not affect the continuance of this Contract.

10.9 If the Hirer fails to pay any insurance premium the Owner may, but shall not be obliged to, pay the same and the Hirer will reimburse the Owner on demand.

11 Equipment Location

(a) The location of the Equipment, during the Rental, should remain at the delivery address and should only be relocated after the Hirer has obtained the prior written consent of the Owner ("Premises").

(b) The Owner will be granted access to the Premises by the Hirer at all reasonable times and with reasonable notice to inspect, maintain, replace, substitute or remove the Equipment under the terms stipulated herein.

12 Modification to Equipment

The Equipment shall not be altered modified or adjusted defaced or repaired by the Hirer. The Owner shall be entitled to pursue the Hirer for the full replacement cost of the Equipment for failure to comply with this clause 12.

13 Care of Equipment

(a) The Hirer shall at his own expense keep the Equipment in a clean and good condition and not subject it to any misuse or wear and tear over that consistent with normal and reasonable use, maintaining where applicable the manufacturers' recommendations. The Hirer undertakes not to remove or interfere with any identification marks affixed to the Equipment, or to deface or add to the Equipment.

(b) The Hirer agrees to pay all costs incurred by the Owner in rectifying any damage or cleaning of the Equipment. Hire charges will continue until such rectification is complete.

(c) The Equipment must returned in a clean good condition and a charge of up to £50 may be made for cleaning the Equipment on its' return in an unsatisfactory condition.

14 Maintenance

(a) In the event of Equipment failure the Owner will use reasonable endeavours to repair or replace the Equipment with the same or similar/higher specification equipment, within five working days at no charge to the Hirer. Should the Equipment failure prove to be due to misuse or the fault of the Hirer, the Owner reserves the right to pass on the repair costs and engineering charges to the Hirer. Under no circumstances shall the Hirer attempt any repairs.

(b) The Hirer is responsible for day to day adjustment and care of the equipment (for example: running belt alignment, pedal, handle bar and seat adjustments). The Owner will impose a charge of up to £50.00 for visits to the Equipment for matters of this nature.

15 Termination by the Hirer

(a) The Rental will terminate within seven days of the Owner receiving written notification that the Hirer wishes to terminate the Contract after the expiry date of any fixed minimum contract period. If the Hirer does not contact the Owner in writing seven days prior to the end of the minimum contract period, the Contract shall continue seven days after the Owner receives written notice of termination from the Hirer.

(b) The Hirer may terminate the Contract by agreement in writing of both parties. The Owner reserves the right to enforce a cancellation charge of such amount that may be necessary to indemnify the Owner against all loss resulting from the said cancellation.

16 Termination by the Owner

(a) The Owner may terminate the Rental if the Hirer is in breach of the Contract, or is in default of any payment due, or in the Owner's sole opinion may become in breach or default during the period of Rental.

(b) The Owner shall be entitled at any time and for any reason what so ever without explanation terminate this Contract by giving the Hirer 7 days notice in writing.

17 Liability

(a) The Hirer expressly acknowledges that the Owners are not the original manufacturer or supplier of the Equipment, and that the Equipment has been selected by the Hirer as suitable for its purpose. The Hirer accordingly agrees and acknowledges that all conditions, warranties or representations whether express or implied or statutory or otherwise in respect of the Equipment or its fitness for any particular purpose are hereby expressly excluded to the fullest extent permitted by law.

(b) The Hirer acknowledges that the Owner or its representatives are not qualified to advise the Hirer on any aspects of physical exercise or personal health. The Hirer should consult his Doctor before undertaking in any strenuous exercise.

(c) It is the Hirer's responsibility to ensure that he is capable of undergoing a routine of exercises on the Equipment. The Hirer accepts the risk of injury from performing exercises on the Equipment and is advised to consult his doctor prior to beginning any fitness program or exercise on the Equipment supplied.

18 Ownership

(a) The Equipment is and shall remain the sole property of the Owner and the Hirer shall have no right, title or interest in or to the Equipment (save the right to possession and use of the Equipment subject to these terms and conditions).

(b) The Hirer shall not sell offer for sale, assign, mortgage, pledge, lend or otherwise deal with or part with possession of the Equipment.

19 Law and Jurisdiction

Any dispute between the Owner and the Hirer arising from the Contract shall be subject to English Law and the parties submit to the exclusive jurisdiction of the English Courts.

20 Delivery & Collection

(a) All times or dates quoted for delivery and collection of the Equipment are given in good faith but without any responsibility on the part of the Owner. The delivery or collection will take place during Monday to Friday between the hours of 9.30am to 4.30pm unless otherwise Agreed in writing. Time of delivery shall not be of the essence of the Contract.

(b) The Owner will arrange collection of the Equipment from the location detailed on the Contract during Monday – Friday, between the hours of 9.30am to 4.30pm within ten days after the termination date.

(c) The Owner cannot be held liable for any damage made while delivering, collecting and installing the Equipment in the Hirer's home or place of business however it so may be caused.

(d) If the Hirer cancels the delivery or collection with less than 24 hours notice to the Owner or is not in at the agreed delivery or collection time a charge of up to £50.00 will be made for re-delivery or collection of the Equipment.

(e) The Owner may charge extra fee for deliveries and collections outside standard hours of Monday – Friday, between the hours of 9.30am to 4.30pm.

21 Validity of Conditions

Should any term in the Contract be held to be invalid such invalidation shall not affect the validity of the remaining terms.

22 Data Protection

(a) To help the Owner decide whether to enter into this Contract or any future agreement with the Hirer, the Owner may make the use of the information provided to it by the Hirer; information received from enquiries made about the Hirer; and information gained from the Hirer's performance of this and any other agreement which the Hirer has with the Owner. The Owner's enquiries may include searching the Hirer's record at one or more credit reference agencies ("the Credit Reference Agencies") who will keep details of the search. These details will be seen by other organisations that make searches. Information held about the Hirer by the Credit Reference Agencies may be linked to records relating to one or more of the Hirer's partners. This is called "association". For the purposes of this Contract and the application, the Hirer may be treated as financially linked and assessed with reference to any associated records.

(b) If this is a joint application or if the Owner is informed by the Hirer of a financial association with another person, the Hirer must ensure that he has the authority (i) to disclose information about the joint applicant and any such other person and (ii) to authorise the Owner to search, link or record information about the joint applicant or such other person, at one or more of the Credit Reference Agencies. An "association" will be created at the Credit Reference Agencies between the joint applicants and/or between the Hirer and any person with whom the Hirer has stated there is a financial relationship. This links together all the financial records, and unless a disassociation is successfully filed at the Credit Reference Agencies, all the financial records will be taken into account in any future applications by the joint applicants, whether such applications are made together, or separately. The Owner may also use a credit storing system.

(c) If the Owner enters into this Agreement with the Hirer, the Owner may disclose information about the Hirer, this agreement and the conduct of the Hirer's account (including payment record) to any of the Credit Reference Agencies.

(d) Such information may also be disclosed to other lenders, the supplier, the insurer, and any other person or company, which the Owner may select from time to time for the purposes of considering any future applications for finance and financial related services that may be made by the Hirer or any member of the Hirer's household, fraud prevention, tracing debtors and recovering debt, carrying out statistical analysis and administering the Hirer's account.

(e) The information which the Owner holds about the Hirer may be used for the purpose of carrying out market research. The Owner may also provide the Hirer with information about the Owner's other products and services. For these purposes, the Company may contact the Hirer by post, telephone, or other means. If the Hirer does not wish to be contacted for this purpose he/she should write to the Owner.

23 Force Majeure

Neither party shall be in breach of these conditions nor liable for delay in performing, or failure to perform, any of its obligations if such delay or failure result from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations], provided that if the period of delay or non-performance continues for [6] weeks, the party not affected may terminate this agreement by giving [10 (ten)] Business Days' written notice to other party.

24 Assignment

The Hirer may not transfer any of its rights or obligations under these terms and conditions to another person without the Owner's prior written consent. The Owner can transfer all or any of its rights and obligations under these terms and conditions.

25 Notices

Any notice served under these terms and conditions is sufficiently served if sent by prepaid letter to the usual or last known place of business of the addressee, and proof of dispatch shall be conclusive evidence of receipt by the addressee in due course of transmission.

26 Severability

If any court or competent authority decides that any of the provisions of these terms and conditions are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

27 Third Party Rights

A person who is not party to these terms and conditions shall not have any rights under or in connection with them under the Contracts (Rights of Third Parties) Act 1999.

28 Waiver

(a) A waiver of any right under these terms and conditions is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its

further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

COPYRIGHT ULTIM8 FITNESS LTD 2011