

## TERMS AND CONDITIONS – SALE OF GOODS

### BACKGROUND

These Terms and Conditions explain the basis under which the Seller wishes to sell and the Buyer wishes to buy the Goods for the price described at clause 4.

The Buyer should read these Terms and Conditions very carefully to make sure that they understand what is agreed.

### 1 DEFINITIONS

In these Terms and Conditions, the following words and phrases have the following meanings:

<b>‘Buyer’</b>	the person or company purchasing the Goods
<b>‘Commercial Unit’</b>	a unit of Goods which cannot be divided without reducing its overall value or damaging the character of the unit
<b>‘Confirmation of Acceptance’</b>	the Seller’s confirmation that the Buyer’s order has been accepted and a binding agreement has been formed for the supply of Goods
<b>‘Digital Content’</b>	data which is produced and supplied in digital form
<b>‘Goods’</b>	the items that the Buyer is purchasing
<b>‘the Parties’</b>	the Buyer and the Seller
<b>‘Party’</b>	either one of the Buyer or the Seller
<b>‘Seller’</b>	the person or company selling the Goods
<b>‘Terms and Conditions’</b>	this document detailing the rights and responsibilities of the Parties

### 2 GOODS

2.1 The Seller is under a legal duty to supply Goods which are:

2.1.1 of satisfactory quality;

2.1.2 fit for purpose; and

2.1.3 as described by the Seller.

- 2.2 The Seller may modify or update, or require the Buyer or a third party to modify or update any Digital Content component of the Goods, provided that the Digital Content shall always match the description provided before purchase by the Buyer.

### 3 ORDERING

- 3.1 By ordering the Goods from the Seller, the Buyer makes an offer to buy the Goods for the price given by the Seller. There is no binding contract between the Parties at the time when the order is made.
- 3.2 The Seller will contact the Buyer by email to tell the Buyer when the Goods have been dispatched. This Confirmation of Acceptance is the Seller's acceptance of the Buyer's order. When the Confirmation of Acceptance is received there will be a binding contract between the Parties in accordance with these Terms and Conditions. The binding contract will only be for the Goods that are included in the Confirmation of Acceptance. It may not cover all the Goods the Buyer ordered, for example if stock is unavailable.

### 4 PRICE AND PAYMENT

- 4.1 Occasionally, the Seller's prices may change between the date of the order and the date of the Seller's Confirmation of Acceptance. Reasons for a price change include, but are not limited to, a change in the amount that the Seller is charged by their supplier(s) or a change in the VAT rate. What happens when the price changes depends on whether the new price is lower or higher than the price originally given:
- 4.1.1 if the new price is lower than that originally given, the Seller will charge the lower price and dispatch the Goods;
- 4.1.2 if the new price is higher than that originally given, the Seller will either cancel the order or contact the Buyer to confirm whether they would prefer to cancel or pay the higher price for the Goods.
- 4.2 Without prejudice to any other legal right or remedy:
- 4.2.1 if any agreed payment is not received by the Seller by the due date, the Seller can charge interest on the outstanding sum or sums. Interest will be charged at 0% per annum above the Bank of England base rate, accruing daily from the due date until payment is made;
- 4.2.2 if the amounts not paid to the Seller when due total 10% or more of the total value of the Goods, the Seller is entitled to suspend performance until such time as the outstanding payments are made; and
- 4.2.3 the Buyer will not refuse to pay any amount which is owed to the Seller where there is only a minor or inconsequential defect in the Goods.

### 5 DELIVERY

- 5.1 The Seller will arrange for the Goods to be delivered to the Buyer. Delivery will be attempted to the address given by the Buyer for the purpose.
- 5.2 Dates or times for the delivery of the Goods given by the Seller are estimates and cannot be relied on as definitive. The Goods will be delivered within an estimated 7 from the date of the

Seller's Confirmation of Acceptance. Delivery for the purposes of this clause includes attempted delivery at the delivery address given by the Buyer.

- 5.3 If the Buyer or anyone nominated by the Buyer to take delivery of the Goods fails to take delivery when it is attempted, the Seller may charge the Buyer any costs incurred for storage and redelivery as a result.
- 5.4 The Goods may be delivered directly from the manufacturer or the Seller's supplier and may be delivered in instalments.
- 5.5 The Seller only delivers to the mainland United Kingdom.

## 6 **PASSING OF RISK AND OWNERSHIP**

- 6.1 The Goods will be at the Seller's risk until delivered either to the Buyer or otherwise at the Buyer's direction.
- 6.2 The ownership of the Goods shall not pass to the Buyer until the Seller has sent the Confirmation of Acceptance to the Buyer and has received payment in full, regardless of whether the Goods have been delivered to the Buyer at that date.
- 6.3 For the purposes of this clause, if the Goods include Digital Content which is to be downloaded by the Buyer, the delivery of the Digital Content is effected at the time when it reaches the Buyer's device.

## 7 **RIGHT TO CANCEL**

- 7.1 This clause does not apply to any Digital Content.
- 7.2 The Buyer has the right to cancel within 14 days without giving any reason.
- 7.3 The cancellation period will expire after 14 days from:
  - 7.3.1 if the Goods are to be delivered all together, the day that the Buyer, or someone else nominated by the Buyer (other than the delivery agent), gets physical possession of the Goods;
  - 7.3.2 if the Buyer has ordered multiple Goods or Goods consisting of multiple lots or pieces to be delivered on different days, the day that the Buyer, or someone else nominated by the Buyer (other than the delivery agent), gets physical possession of the last of the Goods; or
  - 7.3.3 if there is to be regular delivery of Goods during a defined period of time, the day that the Buyer, or someone else nominated by the Buyer (other than the delivery agent), gets physical possession of the first delivery.
- 7.4 To exercise the right to cancel, the Buyer must inform the Seller, using the contact details provided below, of the decision to cancel by a clear statement (eg a letter or email). The Buyer can use the model cancellation form provided at the end of these Terms and Conditions, but it is not obligatory.
- 7.5 To meet the cancellation deadline, it is enough for the Buyer to send a notice under this clause before the cancellation period has expired.

- 7.6 The Buyer will not be able to cancel this contract as described in this clause if the price payable is £42 or less, or it relates to the supply of:
- 7.6.1 Goods (other than the supply of water, gas, electricity or district heating) where the price is dependent on fluctuations in the financial market which cannot be controlled by the Seller and which may occur within the cancellation period described above;
  - 7.6.2 Goods relating to urgent repairs or maintenance where the Buyer has specifically requested a visit from the Seller for that purpose;
  - 7.6.3 sealed Goods which are not suitable for return due to health protection or hygiene reasons, if they become unsealed after delivery;
  - 7.6.4 sealed audio or sealed video recordings or sealed computer software, if they become unsealed after delivery;
  - 7.6.5 Goods which become inseparably mixed with other items after delivery;
  - 7.6.6 Goods that are made to the Buyer's specifications or are clearly personalised;
  - 7.6.7 Goods which are liable to deteriorate or expire rapidly;
  - 7.6.8 newspapers, periodicals or magazines (with the exception of subscription contracts for the supply of such publications);
  - 7.6.9 alcoholic beverages where their price has been agreed at the time of the conclusion of the contract, and their delivery can only take place after 30 days, and their value is dependent on fluctuations in the market which cannot be controlled by the Seller;
  - 7.6.10 medicinal products by administration or under a prescription or directions given by a prescriber;
  - 7.6.11 Goods under arrangements for the supply of services as part of the health service, where the product is one that, in some circumstances, is available free or on prescription; or
  - 7.6.12 foodstuffs, beverages or similar which are supplied by the Seller on frequent and regular rounds to the Buyer's home, residence or workplace.

## 8 **RIGHT TO CANCEL – DIGITAL CONTENT**

- 8.1 This clause only applies to any Digital Content.
- 8.2 The Buyer has the right to cancel within 14 days without giving any reason.
- 8.3 The cancellation period will expire after 14 days of the Buyer's order being accepted by the Seller.
- 8.4 To exercise the right to cancel, the Buyer must inform the Seller, using the contact details provided below, of the decision to cancel by a clear statement (eg a letter or email). The Buyer can use the model cancellation form provided at the end of these Terms and Conditions, but it is not obligatory.

8.5 To meet the cancellation deadline, it is enough for the Buyer to send a notice under this clause before the cancellation period has expired.

8.6 Where the Buyer has agreed to delivery of any Digital Content before the expiry of the 14-day cancellation period, and delivery of the Digital Content has begun (eg downloading or streaming of the Digital Content has already begun), the Buyer acknowledges that they will thereby lose their right to cancel under this clause.

## 9 EFFECTS OF CANCELLATION

9.1 If the Buyer cancels under these Terms and Conditions, the Seller will reimburse any payments received from the Buyer, including the costs of delivery (except for the supplementary costs arising if the Buyer chose a type of delivery other than the least expensive type of standard delivery offered by the Seller).

9.2 The Seller may make a deduction from the reimbursement for loss in value of any Goods supplied, if the loss is the result of unnecessary handling by the Buyer.

9.3 The Seller will make the reimbursement without undue delay, and not later than:

9.3.1 14 days after the day the Seller receives back from the Buyer any Goods supplied; or

9.3.2 (if earlier) 14 days after the day the Buyer provides evidence that the Seller has returned the Goods; or

9.3.3 If there were no Goods supplied, 14 days after the day on which the Seller is informed about the Buyer's decision to cancel.

9.4 The Seller will make the reimbursement using the same means of payment as the Buyer used for the initial transaction, unless the Buyer has expressly agreed otherwise; in any event, the Buyer will not incur any fees as a result of the reimbursement.

9.5 If the Buyer has already received some or all of the Goods at the date of cancellation the Seller will collect the Goods. The Buyer will have to bear the direct cost of returning the Goods.

9.6 The Buyer will be liable for any reduction in the value of the Goods resulting from handling the Goods, other than handling which is necessary to establish the nature, characteristics and functioning of the Goods.

## 10 RETURNS

10.1 This clause applies if the Buyer wishes to return Goods that are not Digital Content, or are only partly Digital Content.

10.2 If the Goods are not of satisfactory quality, are unfit for purpose or are not as described by the Seller, the Buyer has a right to reject the Goods and claim a full refund. Alternatively, the Buyer can request that the Seller either repairs or replaces the Goods in these circumstances. If the Buyer wishes to exercise any of these rights, they must do so in writing using the contact details below.

- 10.3 If the Buyer exercises the right to reject under this clause within 30 days after the Goods are delivered to the Buyer, the Seller will arrange to collect the Goods from the Buyer or ask the Buyer to return the Goods at the Seller's expense; and either:
- 10.3.1 refund the Buyer the full amount paid if requested; or
  - 10.3.2 repair or replace the Goods if requested. If it is disproportionate in the circumstances for the Seller to repair the Goods, they can choose to replace them instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Goods, they may choose to repair them.
- 10.4 If the Goods have been repaired or replaced under this clause and the repair or replacement still does not meet the required standard, the Buyer is entitled to a full refund provided that they request one from the Seller using the contact details below, within whichever is the later of:
- 10.4.1 7 days of receipt of the repair or replacement of the Goods; or
  - 10.4.2 if still within the 30-day period from the delivery of the original Goods, whatever time is left on that, extended by the number of days that the Buyer has had to wait to receive the repair or replacement of the Goods after notifying the Seller.
- 10.5 If the Buyer exercises their right to reject under this clause more than 30 days but less than 6 months after the delivery of the Goods to the Buyer, the Seller can choose whether to repair the Goods, replace them, or give a refund in exchange for their return, provided the Seller's choice can be carried out within a reasonable time and does not cause significant inconvenience to the Buyer. If the Seller opts to repair or replace and the repair or replacement still does not meet the required standard, the Buyer is entitled to a full refund or, if they wish to keep the Goods, a price reduction that takes the problems into account provided that they request one from the Seller using the contact details below.
- 10.6 The Buyer is not entitled to only reject part of the Goods if the Goods form a Commercial Unit. In these circumstances the Buyer must reject all or none of the Goods.
- 10.7 Any refund payable under this clause will be paid within 14 days of the Seller agreeing that the Buyer is entitled to a refund. The Seller may not be able to tell whether the Buyer is entitled to a refund until they have received the returned Goods and has had an opportunity to examine them.
- 10.8 The Buyer cannot rely on any problem with the Goods as a reason for returning them if, before agreeing to buy them, the Buyer was expressly informed of the problem or inspected a sample of the Goods from which the problem was obvious.
- 10.9 If the Goods are perishable, they cannot be returned after the date by which they can reasonably be expected to perish.
- 10.10 Nothing in this clause prevents the Buyer from seeking other remedies to which they are entitled by law.
- 11 RETURNS (DIGITAL CONTENT ONLY BEING RETURNED)**
- 11.1 This clause applies if the Buyer wishes to return Digital Content only.

- 11.2 If Digital Content is not of satisfactory quality, is unfit for purpose or not as described by the Seller, the Buyer has a right to request that the Seller either repairs or replaces the Digital Content. If the Buyer wishes to exercise either of these rights, they must do so using the contact details below. The Buyer does not have a right to a refund except as described in this clause.
- 11.3 If the Buyer exercises the right to request a repair or replacement within 6 months of the Digital Content reaching the Buyer's device, the Seller will repair or replace the Digital Content as requested. If it is disproportionate in the circumstances for the Seller to repair the Digital Content, they can choose to replace it instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Digital Content, they may choose to repair it.
- 11.4 If the Buyer exercises the right to request a repair or replacement under this clause more than 6 months after the Digital Content reaches the Buyer's device, the Seller will only repair or replace the Digital Content if satisfied that the problem with it existed on the day it was supplied to the Buyer. If it is disproportionate in the circumstances for the Seller to repair the Digital Content, they can choose to replace it instead. Equally, if it is disproportionate in the circumstances for the Seller to replace the Digital Content, they may choose to repair it.
- 11.5 If the Digital Content has been repaired or replaced under this clause and the repair or replacement still does not meet the required standard, the Buyer is entitled to a price reduction. The amount of any reduction will take into account the problems with the Digital Content and may be up to the full price. If the Buyer has already paid more than the reduced price for the Digital Content, the Seller will refund the difference.
- 11.6 Any refund payable under this clause will be paid within 14 days of the Seller agreeing that the Buyer is entitled to a refund.
- 11.7 The Buyer cannot rely on any problem with the Goods as a reason for returning them if, before agreeing to buy them, the Buyer was expressly informed of the problem, inspected a sample of the Goods or used a trial version of the Digital Content from which the problem was obvious.
- 11.8 Nothing in this clause prevents the Buyer from seeking other remedies to which they are entitled by law.

## 12 LIABILITY AND INDEMNITY

- 12.1 Nothing in these Terms and Conditions seeks to limit the liability of the Seller for fraudulent acts or omissions, death or personal injury caused in connection with this sale of Goods, whether arising in contract, negligence, tort, breach of statutory duty or otherwise.
- 12.2 Neither Party shall be liable to the other whether in contract, negligence, tort, breach of statutory duty or otherwise for any loss or damage sustained by the other Party indirectly or consequentially and including but not limited to economic loss or loss of profits, goodwill or business in general.
- 12.3 Subject to the rest of this clause, the Seller's total liability to the Buyer will not, in any circumstances, exceed the total amount of the price payable by the Buyer.
- 12.4 In the event that the Buyer or their servants or agents breach these Terms and Conditions, or are negligent in their actions, the Buyer will, to the fullest extent permitted by law, indemnify the Seller against any liability, loss, claim, damage, expense suffered by the Seller as a result.

## 13 AMENDMENT AND TRANSFER OF RIGHTS

13.1 These Terms and Conditions can only be amended by the agreement of the Parties in writing with signatures on behalf of both.

13.2 The Seller is permitted to assign or transfer any rights or obligations under these Terms and Conditions, or subcontract the same for performance to a third party. The Buyer is not permitted to assign or transfer any rights or obligations under these Terms and Conditions without the prior written permission of the Seller.

#### 14 SEVERANCE

14.1 If any of the provisions of these Terms and Conditions are unlawful, invalid or otherwise unenforceable, they will be severed from the remainder. The Terms and Conditions which are left will remain valid and enforceable.

#### 15 THIRD PARTIES

15.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, these Terms and Conditions are not intended to and do not confer any rights on any person who is not a Party. Any person who is not a Party does not have the right to enforce any provision of these Terms and Conditions.

#### 16 CIRCUMSTANCES BEYOND THE CONTROL OF THE PARTIES

16.1 Neither Party shall be liable for any delay or failure to do anything under these terms and conditions due to circumstances beyond the reasonable control of that Party. Such circumstances include – but are not limited to – industrial action, lock out, trade dispute, power failure, internet outage, fire, natural disaster or outbreak of war. As soon as is reasonably possible after the discovery of such circumstances, the affected Party must notify the other Party in writing of any anticipated or existing delay or failure in performance.

16.2 If the circumstances referred to in this clause continue for a period of longer than 60 days, either Party can end the contract by giving 5 days' notice in writing to the other. All money owing under these Terms and Conditions before the circumstances arose shall be paid immediately.

#### 17 ENTIRE AGREEMENT

17.1 These Terms and Conditions and the Confirmation of Acceptance taken together are the entire agreement between the Seller and the Buyer and supersede any and all prior terms, conditions, warranties or representations to the fullest extent permitted by law.

#### 18 WAIVER

18.1 Any failure or delay by the Seller in using rights or powers provided by these Terms and Conditions shall not constitute a waiver of the whole or any part of these Terms and Conditions. The partial or sole use of any rights or powers provided by these Terms and Conditions shall not prevent any additional use of the same rights or powers. The rights, powers and remedies in these Terms and Conditions are additional to the rights of the Parties provided by law.

#### 19 GOVERNING LAW AND JURISDICTION

19.1 These Terms and Conditions shall be governed by and construed in accordance with English law and the courts of England and Wales will have exclusive jurisdiction in relation to them.



20 **COMPLAINTS**

20.1 In the event of a complaint of any nature the Seller can be contacted using the details below.

21 **CONTACT DETAILS**

21.1 The Seller is Scot Pro Swim School Limited of 7/7 Dicksonfield , Edinburgh, EH7-5ND and can be contacted at )7506954130 or [info@scotproswimschool.co.uk](mailto:info@scotproswimschool.co.uk). In circumstances where the Buyer is required to contact the Seller in writing, they can email them at [info@scotproswimschool.co.uk](mailto:info@scotproswimschool.co.uk).

**CANCELLATION FORM**

To:

Scot Pro Swim School Limited

7/7 Dicksonfield , Edinburgh, EH7-5ND

[I/We]\* hereby give notice that [I/We]\* cancel [my/our]\* contract [for the sale of the following goods/for the supply of the following service(s)]\*

[Ordered on/received on]\* (date):.....

Name of consumer(s): .....

Address of consumer(s): .....

Signature of consumer(s) (only if this form is notified on paper):

.....

Date:.....

\*Consumer to delete as applicable