

# Benchmark Fitness Solutions Limited

## Terms of business

This page tells you information about us and the legal terms and conditions (**Terms**) on which we sell any of the parts (**Parts**) or supply any services sourced via our website (**our site**) or through any other communication between us to you.

These Terms will apply to any contract between us for the sale of Parts or the provision of services to you (**Contract**). Please read these Terms carefully and make sure that you understand them, before ordering any Parts or services from us. Please note that you will be taken to have agreed these terms by placing any order with us.

We may amend these Terms from time to time as set out in clause 6. Every time you wish to order, please check these Terms to ensure you understand the terms which will apply at that time.

A paper copy of these terms can be supplied upon request.

These Terms, and any Contract between us, are only in the English language.

### 1. INFORMATION ABOUT US

1.1 We operate the website [www.benchmarkfitnesssolutions.co.uk](http://www.benchmarkfitnesssolutions.co.uk). We are Benchmark Fitness Solutions Limited, a company registered in England and Wales under company number 08130447 and with our registered office at Newland house, The Point, Weaver Road, Lincoln LN6 3QN. Our VAT number is 138 6173 01

#### 1.2 Contacting us if you are a consumer:

- (a) To cancel a Contract in accordance with your legal right to do so as set out in clause 7, you just need to let us know that you have decided to cancel. The easiest way to do this is to complete the cancellation form <http://benchmarkfitnesssolutions.co.uk/wp-content/uploads/2020/05/Benchmark-cancellation-30-05-20.pdf>
- (b) on our website. A link to the website cancellation form will be included in our Dispatch Confirmation. If you use this method, we will e-mail you to confirm we have received your cancellation. You can also e-mail us at service [@benchmarkfitnesssolutions.co.uk](mailto:@benchmarkfitnesssolutions.co.uk) or contact our Customer Services team by telephone on 01777 870 363. If you are emailing us, please include details of your order to help us to identify it. If you send us your cancellation notice by e-mail, then your cancellation is effective from the date you send us the e-mail.
- (c) If you wish to contact us for any other reason, including because you have any complaints, you can contact us by telephoning our customer service

team at 01777 870 363 or by e-mailing us at [service@benchmarkfitnesssolutions.co.uk](mailto:service@benchmarkfitnesssolutions.co.uk).

- (d) If we have to contact you or give you notice in writing, we will do so by e-mail or by pre-paid post to the address you provide to us in your order.
- (e) **Contacting us if you are a business.** You may contact us by telephoning our customer service team at 01777 870 363 or by e-mailing us at [service@benchmarkfitnesssolutions.co.uk](mailto:service@benchmarkfitnesssolutions.co.uk). If you wish to give us formal notice of any matter in accordance with these Terms, please see clause 16.3.

## 2. USE OF OUR SITE

Your use of our site is governed by these Terms and our Privacy policy <http://benchmarkfitnesssolutions.co.uk/wp-content/uploads/2020/05/Benchmark-privacy-30-05-20.pdf>

How we use your personal information

We only use your personal information in accordance with our Privacy Policy <http://benchmarkfitnesssolutions.co.uk/wp-content/uploads/2020/05/Benchmark-privacy-30-05-20.pdf>

Please take the time to read our Privacy Policy, as it includes important terms which apply to you.

## 3. IF YOU ARE A CONSUMER

**This clause 4 only applies if you are a consumer.**

- 3.1 If you are a consumer, you may only purchase Parts from our site if you are at least 18 years old.

## 4. IF YOU ARE A BUSINESS CUSTOMER

**This clause 5 only applies if you are a business.**

- 4.1 If you are not a consumer, you confirm that you have authority to bind any business on whose behalf you use our site to purchase Parts.
- 4.2 These Terms constitute the entire agreement between you and us and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.
- 4.3 You acknowledge that in entering into this Contract you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

4.4 You and we agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

## **5. HOW THE CONTRACT IS FORMED BETWEEN YOU AND US**

5.1 After you place an order, you will receive an e-mail from us acknowledging that we have received your order. However, please note that this does not mean that your order has been accepted. Our acceptance of your order will take place as described in clause 6.2.

5.2 We will confirm our acceptance to you by sending you a Dispatch Confirmation. The Contract between us will only be formed when we send you the Dispatch Confirmation.

5.3 If we are unable to supply you with a Product, for example because that Product is not in stock or no longer available or because we cannot meet your requested delivery date or because of an error in the price on our site as referred to in clause 10.4, we will inform you of this and we will not process your order. If you have already paid for the Parts, we will refund you the full amount paid as soon as possible.

## **6. OUR RIGHT TO VARY THESE TERMS**

6.1 We amend these Terms from time to time. Please look at the top of this page to see when these Terms were last updated and which Terms were changed.

6.2 Every time you order Parts or services from us, the Terms in force at the time of your order will apply to the Contract between you and us.

## **7. YOUR CONSUMER RIGHT OF RETURN AND REFUND**

**This clause 8 only applies if you are a consumer.**

7.1 If you are a consumer, you have a legal right to cancel a Contract [under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 during the period set out below in clause 8.3. This means that during the relevant period if you change your mind or decide for any other reason that you do not want to receive or keep a Product, you can notify us of your decision to cancel the Contract and receive a refund. Advice about your legal right to cancel the Contract is available from your local Citizens' Advice Bureau or Trading Standards office.

7.2 However, this cancellation right does not apply in the case of any Parts which become mixed inseparably with other items after their delivery.

7.3 Your legal right to cancel a Contract starts from the date of the Dispatch Confirmation (the date on which we e-mail you to confirm our acceptance of your order), which is when the Contract between us is formed. Your deadline for cancelling the Contract then depends on what you have ordered and how it is delivered, as set out in the table below:

Your Contract	End of the cancellation period
<p>Your Contract is for a single Product (which is not delivered in instalments on separate days).</p>	<p>The end date is the end of <b>14 days</b> after the day on which you receive the Product.</p> <p>Example: if we provide you with a Dispatch Confirmation on 1 January and you receive the Product on 10 January you may cancel at any time between 1 January and the end of the day on 24 January.</p>
<p>Your Contract is for either of the following:</p> <ul style="list-style-type: none"> <li>• one Product which is delivered in instalments on separate days.</li> <li>• multiple Parts which are delivered on separate days.</li> </ul>	<p>The end date is <b>14 days</b> after the day on which you receive the last instalment of the Product or the last of the separate Parts ordered.</p> <p>Example: if we provide you with a Dispatch Confirmation on 1 January and you receive the first instalment of your Product or the first of your separate Parts on 10 January and the last instalment or last separate Product on 15 January you may cancel in respect of all instalments and any or all of the separate Parts at any time between 1 January and the end of the day on 29 January.</p>
<p>Your Contract is for the regular delivery of a Product over a set period.</p>	<p>The end date is <b>14 days</b> after the day on which you receive the first delivery of the Parts.</p> <p>Example: if we provide you with a Dispatch Confirmation on 1 January in respect of Parts to be delivered at regular intervals over a year and you receive the first delivery of your Product on 10 January, you may cancel at any time between 1 January and the end of the day on 24 January. 24 January is the last day of the cancellation period in respect of all Parts to arrive during the year.</p>

7.4 To cancel a Contract, you just need to let us know that you have decided to cancel. The easiest way to do this is to complete the cancellation form <http://benchmarkfitnesssolutions.co.uk/wp-content/uploads/2020/05/Benchmark-cancellation-30-05-20.pdf>

- 7.5 on our website. A link to the website cancellation form will be included in our Dispatch Confirmation. If you use this method, we will contact you to confirm we have received your cancellation.
- 7.6 You can also e-mail us at [service@benchmarkfitnesssolutions.co.uk](mailto:service@benchmarkfitnesssolutions.co.uk) or contact our Customer Services team by telephone on 01777 870 363 please include details of your order to help us to identify it. If you send us your cancellation notice by e-mail, then your cancellation is effective from the date you send us the e-mail US. For example, you will have given us notice in time as long as you get your letter into the last post on the last day of the cancellation period or e-mail us before midnight on that day.
- 7.7 If you cancel your Contract, we will:
- (a) refund you the price you paid for the Parts. However, please note we are permitted by law to reduce your refund to reflect any reduction in the value of the goods, if this has been caused by your handling them in a way which would not be permitted in a shop. If we refund you the price paid before we are able to inspect the goods and later discover you have handled them in an unacceptable way, you must pay us an appropriate amount.
  - (b) refund any delivery costs you have paid, although, as permitted by law, the maximum refund will be the costs of delivery by the least expensive delivery method we offer (provided that this is a common and generally acceptable method).
  - (c) make any refunds due to you as soon as possible and in any event within the deadlines indicated below:
    - (i) if you have received the Product and we have not offered to collect it from you: 14 days after the day on which we receive the Product back from you or, if earlier, the day on which you provide us with evidence that you have sent the Product back to us. For information about how to return a Product to us, see clause 7.10;
    - (ii) if you have not received the Product or you have received it and we have offered to collect it from you: 14 days after you inform us of your decision to cancel the Contract.
- 7.8 If you have returned the Parts to us under this clause 7 because they are faulty or mis-described, we will refund the price of the Parts in full, together with any applicable delivery charges, and any reasonable costs you incur in returning the item to us.
- 7.9 We will refund you on the credit card or debit card used by you to pay.
- 7.10 If a Product has been delivered to you before you decide to cancel your Contract:

- (a) then you must return it to us without undue delay and in any event not later than 14 days after the day on which you let us know that you wish to cancel the Contract. ;
- (b) unless the Product is faulty or not as described (in which case, see clause 7.8), you will be responsible for the cost of returning the Parts to us. If the Product is one which cannot be returned by post, we estimate that if you use the carrier which delivered the Product to you, these costs should not exceed the sums we charged you for delivery. If we have offered to collect the Product from you, we will charge you the direct cost to us of collection.

7.11 Because you are a consumer, we are under a legal duty to supply Parts that are in conformity with this Contract. As a consumer, you have legal rights in relation to Parts that are faulty or not as described. These legal rights are not affected by your right of return and refund in this clause 7 or anything else in these Terms. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

## **8. DELIVERY**

8.1 We will contact you with an estimated delivery date, which will be within 30 days after the date of the Dispatch Confirmation (the date on which we e-mail you to confirm our acceptance of your order). Occasionally our delivery to you may be affected by an Event Outside Our Control. See clause 15 for our responsibilities if this happens.

8.2 If no one is available at your address to take delivery, we will leave you a note that the Parts have been returned to our premises, in which case, please contact us to rearrange delivery.

8.3 Delivery of an Order shall be completed when we deliver the Parts to the address you gave us and the Parts will be your responsibility from that time.

8.4 You own the Parts once we have received payment in full, including all applicable delivery charges.

**This clause 9.5 only applies if you are a consumer.**

8.5 If we miss the 30 day delivery deadline for any Parts then you may cancel your Order straight away if any of the following apply:

- (a) we have refused to deliver the Parts;
- (b) delivery within the delivery deadline was essential (taking into account all the relevant circumstances); or
- (c) you told us before we accepted your order that delivery within the delivery deadline was essential.

8.6 If you do not wish to cancel your order straight away, or do not have the right to do so under clause 8.5, you can give us a new deadline for delivery, which must be reasonable, and you can cancel your Order if we do not meet the new deadline.

8.7 If you do choose to cancel your Order for late delivery under clause 8.6 or clause 8.7, you can do so for just some of the Parts or all of them, unless splitting them up would significantly reduce their value. If the Parts have been delivered to you, you will have to return them to us or allow us to collect them, and we will pay the costs of this. After you cancel your Order we will refund any sums you have paid to us for the cancelled Parts and their delivery.

## **9. NO INTERNATIONAL DELIVERY**

9.1 Unfortunately, we do not deliver to addresses outside the UK and Ireland.

9.2 You may place an order for Parts from outside the UK, but this order must be for delivery to an address in the UK and Ireland.

## **10. PRICE OF PARTS AND DELIVERY CHARGES**

10.1 The prices of the Parts will be as quoted at the time you submit your order. We use our best efforts to ensure that the prices of Parts are correct at all times. However please see clause 10.4 for what happens if we discover an error in the price of Product(s) you ordered.

10.2 Prices for our Parts may change from time to time, but changes will not affect any order you have already placed.

10.3 The price of a Product includes VAT (where applicable) at the applicable current rate chargeable in the UK for the time being. However, if the rate of VAT changes between the date of your order and the date of delivery, we will adjust the VAT you pay, unless you have already paid for the Parts in full before the change in VAT takes effect.

10.4 We pride ourselves on being able to source a large number of Parts. It is always possible that, despite our best efforts, some of the Parts available may be incorrectly priced. We will normally check prices as part of our dispatch procedures so that:

- (a) where the Product's correct price is less than the price stated on our site, we will charge the lower amount when dispatching the Parts to you. However, if the pricing error is obvious and unmistakeable and could have reasonably been recognised by you as a mispricing, we do not have to provide the Parts to you at the incorrect (lower) price; and
- (b) if the Product's correct price is higher than the price stated on our site, we will contact you as soon as possible to inform you of this error and we will give you the option of continuing to purchase the Product at the correct price or cancelling your order. We will not process your order until we have

your instructions. If we are unable to contact you using the contact details you provided during the order process, we will treat the order as cancelled and notify you in writing.

## **11. HOW TO PAY**

11.1 You can only pay for Parts and Service Work using any debit card or credit card except for American Express.

11.2 Payment for the Parts and all applicable delivery charges is in advance. We will not charge your debit card or credit card until we dispatch our order.

## **12. OUR WARRANTY FOR THE PARTS**

12.1 For Parts which do not have a manufacturer's guarantee, we provide a warranty that on delivery and for a period of 6 months from delivery, the Parts shall be free from material defects. However, this warranty does not apply in the circumstances described in clause 12.2.

12.2 The warranty in clause 12.1 does not apply to any defect in the Parts arising from:

- (a) fair wear and tear;
- (b) wilful damage, abnormal storage or working conditions, accident, negligence by you or by any third party;
- (c) if you fail to operate or use the Parts in accordance with the user instructions;
- (d) any alteration or repair by you or by a third party who is not one of our authorised repairers;

12.3 If you are a consumer, this warranty is in addition to, and does not affect, your legal rights in relation to Parts that are faulty or not as described. Advice about your legal rights is available from your local Citizens' Advice Bureau or Trading Standards office.

## **13. OUR LIABILITY IF YOU ARE A BUSINESS**

**This clause 134 only applies if you are a business customer.**

13.1 We only supply the Parts for internal use by your business, and you agree not to use the Product for any resale purposes.

13.2 Nothing in these Terms limits or excludes our liability for:

- (a) death or personal injury caused by our negligence;
- (b) fraud or fraudulent misrepresentation;



- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (d) defective parts under the Consumer Protection Act 1987.
- 13.3 Subject to clause 13.2, we will under no circumstances whatever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
  - (a) any loss of profits, sales, business, or revenue;
  - (b) loss or corruption of data, information or software;
  - (c) loss of business opportunity;
  - (d) loss of anticipated savings;
  - (e) loss of goodwill; or
  - (f) any indirect or consequential loss.
- 13.4 Subject to clause 13.2, our total liability to you in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Parts supplied.
- 13.5 Except as expressly stated in these Terms, we do not give any representation, warranties or undertakings in relation to the Parts. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, we will not be responsible for ensuring that the Parts are suitable for your purposes.

#### **14. OUR LIABILITY IF YOU ARE A CONSUMER**

**This clause 14 only applies if you are a consumer.**

- 14.1 If we fail to comply with these Terms, we are responsible for loss or damage you suffer that is a foreseeable result of our breach of these Terms or our negligence, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if it is an obvious consequence of our breach or if it was contemplated by you and us at the time we entered into this contract.
- 14.2 We only supply the Parts for domestic and private use. You agree not to use the product for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, or loss of business opportunity.
- 14.3 We do not in any way exclude or limit our liability for:
  - (a) death or personal injury caused by our negligence;

- (b) fraud or fraudulent misrepresentation;
- (c) any breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- (d) any breach of the terms implied by section 13 to 15 of the Sale of Goods Act 1979 (description, satisfactory quality, fitness for purpose and samples); and
- (e) defective parts under the Consumer Protection Act 1987.

## 15. EVENTS OUTSIDE OUR CONTROL

15.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. An Event Outside Our Control is defined below in clause 15.2.

15.2 An **Event Outside Our Control** means any act or event beyond our reasonable control, including without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

15.3 If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract:

- (a) we will contact you as soon as reasonably possible to notify you; and
- (b) our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. Where the Event Outside Our Control affects our delivery of Parts to you, we will arrange a new delivery date with you after the Event Outside Our Control is over.

15.4 You may cancel a Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact us. If you opt to cancel, you will have to return (at our cost) any relevant Parts you have already received and we will refund the price you have paid, including any delivery charges.

## 16. COMMUNICATIONS BETWEEN US

16.1 When we refer, in these Terms, to "in writing", this will include e-mail.

16.2 **If you are a consumer** you may contact us as described in clause 1.2.

16.3 **If you are a business:**

- (a) Any notice or other communication given by you to us, or by us to you, under or in connection with the Contract shall be in writing and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at our registered office; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or if sent by e-mail, one Business Day after transmission.
- (c) In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail, that such e-mail was sent to the specified e-mail address of the addressee.
- (d) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **17. OTHER IMPORTANT TERMS**

- 17.1 You may only transfer your rights or your obligations under these Terms to another person if we agree in writing. However if you are a consumer and you have purchased a Product as a gift, you may transfer the benefit of our warranty in clause 12 to the recipient of the gift without needing to ask our consent.
- 17.2 This Contract is between you and us. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise. However, if you are a consumer, the recipient of your gift of a Product will have the benefit of our warranty at clause 12, but we and you will not need their consent to cancel or make any changes to these Terms.
- 17.3 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.
- 17.4 If we fail to insist that you perform any of your obligations under these Terms, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.
- 17.5 **If you are a consumer**, please note that these Terms are governed by English law. This means a Contract for the purchase of Parts and/or the supply of a service and any dispute or claim arising out of or in connection with it will be governed by English law. You and we both agree to that the courts of England and Wales will have non-exclusive jurisdiction.

- 17.6 **If you are a business**, a 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 law of England and Wales.
- 17.7 **If you are a business**, we both irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).