

## 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 2.8.

**Contract:** the contract between the Service Provider and the Client for the supply of Services in accordance with these Conditions.

**Client:** the person or firm who purchases the Services from the Service Provider.

**Deliverables:** all documents, products and materials developed by the Service Provider or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including but not limited to training materials.

**Fees:** the Fees payable by the Client for the supply of the Services in accordance with clause 5.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Premises:** the premises or outdoor site used by the Service Provider for provision of Services from time to time.

**Programme:** a course of personal training over a period of weeks as set by the Service Provider from time to time.

**Services:** personal training, health coaching, group fitness training and corporate workshops on an individual, group class or longer term programme basis.

**Service Provider:** Day One Wellness

**Site:** the Service Provider's site at [www.dayonewellness.co.uk](http://www.dayonewellness.co.uk)

**Workshop:** a workshop or presentation for a corporate client at the premises of the client.

1.2 **Construction.** In these Conditions, the following rules apply:

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

## 2. SERVICES AND BASIS OF CONTRACT

2.1 Services for individual Clients are provided by participation in the following:

- (a) participation in an individual Programme; or
- (b) participation in a group class Programme.

2.2 Services for Corporate Clients include the following:

- (a) one off workshops/presentations; and
- (b) tailor-made programmes for employees.

2.3 A request for any of the Services may be made by either of the following methods:

- (a) directly contacting the Service Provider to make a request; or
- (b) completing an online contact form requesting contact from the Service Provider who will then contact the Client to provide; and
- (c) the Client confirming a request for specific Services.

2.4 The request for Services constitutes an offer by the Client to purchase Services in accordance with these Conditions.

2.5 The request shall only be deemed to be accepted when the Service Provider issues written acceptance of the request at which point the Contract shall come into existence (**Booking**).

2.6 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Service Provider which is not set out in the Contract.

2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.8 These Conditions may change from time to time and such changes shall be notified on the Site.

## 3. SUPPLY OF SERVICES

3.1 The Service Provider shall supply the Services to the Client in accordance with the Contract in all material respects.

3.2 The Service Provider shall use all reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Service Provider shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Service Provider shall notify the Client in any such event.

3.4 The Service Provider warrants to the Client that the Services will be provided using reasonable care and skill.

## 4. CLIENT OBLIGATIONS

4.1 The Client shall:

- (a) ensure that any information provided to the Service Provider is complete and accurate including full disclosure of all health issues;
- (b) disclose any disability, special needs or limitations that might affect the Service Provider's provision of Services;
- (c) co-operate with the Service Provider in all matters relating to the Services;
- (d) provide the Service Provider with such information, and access to such Premises and equipment as where relevant, as the Service Provider may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

4.2 If the performance of the Service Provider of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) the Service Provider shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the performance of the Service Provider of any of its obligations;
- (b) the Service Provider shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the failure or delay of the Service Provider to perform any of its obligations as set out in this clause 4.2; and
- (c) the Client shall reimburse the Service Provider on written demand for any costs or losses sustained or incurred by the Service Provider arising directly or indirectly from the Client Default.

## 5. FEES AND PAYMENT

5.1 The Service Provider may require a non-refundable deposit at the time of Booking, such requirement will be set out in the Booking and the Services shall not commence until payment of the Deposit.

5.2 The Fees for the Services shall be on a time costs basis:

- (a) the Fees shall be calculated in accordance with the Services required by the Client;
- (b) the above mentioned Services may change from time to time and any changes shall be reflected on the Service Provider's Site.

5.3 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Service Provider may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Service Provider to the Client.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services and Deliverables shall be owned by the Service Provider.

6.2 All Deliverables are the exclusive property of the Service Provider and, subject to the Client fulfilling all obligations under the Contract, the Service Provider shall grant such pre-paid, revocable licences as are necessary for the Client to enjoy the Services.

## 7. INSURANCE

The Service Provider shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Services.

## 8. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, health records, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**). The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 8 shall survive termination of the Contract.

## 9. MEDICAL DISCLAIMER

- 9.1 The Service Provider does not provide any medical advice or treatment and, for the sake of clarity, Clients are made aware of and agree to the following:
- (a) Clients should consult their doctors before commencing any exercise programme;
  - (b) Clients must not rely on the information provided by the Service Provider as an alternative to medical advice from a doctor or other professional healthcare provider;
  - (c) if a Client has any specific questions about any medical matter, he should consult a doctor or other professional healthcare provider;
  - (d) if a Client believes that he (or a delegate sent by a corporate Client) thinks that he may be suffering from any medical condition, he should seek immediate medical attention.
  - (e) Clients should never delay seeking medical advice, disregard medical advice or discontinue medical treatment because of information on provided by the Service Provider.
- 9.2 The Service Provider may make suggestions about a healthy diet and lifestyle, such suggestions are not a substitute for medical advice in relation to dietary requirements, allergy issues or any other diet-related issue.

## 10. LIMITATION OF LIABILITY

- 10.1 The Service Provider shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.
- 10.2 The total liability of the Service Provider to the Client in respect of all other 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 Contract amount.
- 10.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.4 This clause 10 shall survive termination of the Contract.

## 11. CANCELLATION AND REFUNDS

- 11.1 In relation to individual and group class Bookings paid for in advance:
- (a) If a Client wishes to cancel a Booking more than 24 hours in advance, a full refund less an administrative fee shall be made;
  - (b) If a Client wishes to cancel a Booking less than 24 hours in advance or misses a session, no refund shall be made.
- 11.2 In relation to Programmes paid for in advance:
- (a) If the Client wishes to cancel a Programme, cancellation must be made 30 days prior to the Programme start date for a refund to be applied less an administrative fee;
  - (b) If the Booking is cancelled within 30 days of the Programme start date, the client may elect to rebook at no extra cost.
- 11.3 In relation to Workshops paid for in advance:
- (a) If a Client wishes to cancel a Workshop, cancellation must be made 30 days prior to the Workshop for a refund to be applied less an administrative fee;
  - (b) If the Booking is cancelled within 30 days of the Workshop, the client may elect to rebook at no extra cost.
- 11.4 Where Services have been Booked but not paid for in advance, the Charge shall be applied and payable to the same effect as the refunds described in clauses 11.1 – 11.3.
- 11.5 Where a Deposit has been requested, it shall not be refunded in any circumstances.

## 12. TERMINATION

- 12.1 Subject to clause 11, where Services are provided on an ongoing basis as opposed to a "one off" booking, then without limiting its other rights or remedies, either party may terminate the Contract by giving the other party 1 week's written notice.
- 12.2 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so;
  - (b) the other party appears to be insolvent or undergoes an insolvency event.
- 12.3 Without limiting its other rights or remedies, the Service Provider may suspend or terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment and fails to pay all outstanding amounts within 7 days after being notified in writing to do so.

## 13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Service Provider all outstanding invoices and, in respect of Services supplied but for which no invoice has been submitted, the Service Provider shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables which have not been fully paid for;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 14. FORCE MAJEURE

- 14.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Service Provider including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Service Provider or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Service Providers or subcontractors.
- 14.2 The Service Provider shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 14.3 If the Force Majeure Event prevents the Service Provider from providing any of the Services for more than 4 weeks, the Service Provider shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.

## 15. DISPUTES

- 15.1 If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute requesting a mediation. A copy of the request should be sent to CEDR.
- 15.2 The mediation will start not later than 28 days after the date of the ADR notice. The commencement of a mediation will not prevent the parties commencing or continuing court proceedings.

## 16. GENERAL

- 16.1 **Assignment and other dealings.** The Contract is personal to the parties and shall not be assigned, transferred or otherwise dealt with without the written consent of the other party which shall not be unreasonably withheld.
- 16.2 **Notices.** Any notice or communication under this Contract shall be by email unless the Client has indicated an alternative preference upon Booking and it shall be the Client's responsibility to ensure that the Service Provider has up to date contact details. Notice sent by email shall be deemed to be received at 9am the following business day.
- 16.3 **Severance.** 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.
- 16.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Service Provider.
- 16.8 **Governing law.** The 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.

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