



## TERMS AND CONDITIONS OF SUPPLY OF SERVICES BY ELEMENTAL

### 1. INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

**Conditions:** these terms and conditions.

**Contract:** the contract created by the Customer's acceptance of a Quote for Services by the Supplier under clause 2.1.

**Contract Price:** The price for the provision of Services, as set out in the Quote.

**Contract Documents:** these Conditions and the terms of the Quote accepted by the Customer.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer's Equipment:** any equipment provided by the Customer and used directly or indirectly in the supply of the Services.

**Deliverables:** all documents and materials developed by the Supplier and delivered to the Customer pursuant to the provision of the Services in any form, including nutritional reports.

**Quote:** a quote issued by the Supplier for the supply of Services.

**Services:** The services to be provided by the Supplier under the Contract as set out in the Quote together with any other services which the Supplier provides or agrees to provide to the Customer.

**Supplier:** David Kenyon t/a Elemental Fitness & Elemental Kickboxing Academy, of Cubic Business Centre, Suite 2, 533 Stanningley Road, Leeds, LS13 4EN.

**Supplier's Equipment:** any equipment provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

1.2 References to clauses are to the clauses of these Conditions. Words in the singular shall include the plural and vice versa.

1.3 Where the words "include(s)", "including" or "in particular" are used in these Conditions, they are deemed to have the words "without limitation" following them and where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them.

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## **2. THE CONTRACT**

- 2.1 The Quote may be accepted by the Customer at any time during its period of validity by signing and returning a copy to the Supplier. By accepting the Quote the Customer appoints the Supplier to supply the Services to it in consideration of the Contract Price and subject to the terms of the Contract Documents. If the Customer does not sign and/or return a copy of the Quote, it will nevertheless be deemed to have accepted the Quote if, after receipt of the Quote, it accepts the provision of any (or any part of) the Services by the Supplier.
- 2.2 These Conditions shall apply to and be incorporated into the Contract and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.3 Quotes are given by the Supplier on the basis that no Contract shall come into existence except in accordance with clause 2.1. Any Quote is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it. The appointment of the Supplier will commence upon receipt by the Supplier of a Quote signed by the Customer (or alternatively upon commencement of the Services) and will last until completion of the Services unless terminated in accordance with these Conditions.
- 2.4 In the event of any inconsistency between the terms of these Conditions and the Quote, the terms of the Quote will prevail.

## **3. SERVICES**

- 3.1 The Services will be provided at such intervals as may be agreed between the parties, but time for completion of the Services will not be of the essence of the Contract.
- 3.2 The Customer will be provided with an information pack which contains important information about health and safety. The Customer is required to read and understand such information prior to commencement of the Services.
- 3.3 The Customer may cancel any appointment or session at any time up to 24 hours prior to the agreed time for such appointment/session. If the Customer fails to appear at any appointment/session that has not been cancelled or rearranged in accordance with the provisions of this clause, the Customer will remain liable for the full price of that appointment/session. The supplier may waive this payment under special circumstances.
- 3.4 The Services may be provided at either premises rented by the Supplier, or (for personal fitness training) at the Customer's premises. If Services are provided at the Customers

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premises then it is the Customer's responsibility to ensure a safe environment is provided for the Supplier.

- 3.5 In no circumstances can sessions run on over the allotted times.
- 3.6 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the Quote. The Supplier will perform the Services with reasonable care and skill.

## **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
  - (b) where the Supplier is providing nutritional advice, provide access to such information as the Supplier may request or reasonably require and ensure that it is accurate in all material respects;
  - (c) where Services are provided at the Customer's premises, be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services and ensuring that such premises are safe, before and during the supply of the Services at those premises, and give the Supplier such access to those premises as it reasonably requires in order to provide the Services, and ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is to be used in relation to the Services.
- 4.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, or by any failure to comply with its obligations in clause 4.1 above, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention, delay or failure.
- 4.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

## **5. CHARGES AND PAYMENT**

- 5.1 The Customer will pay the Contract Price in consideration for the provision of the Services.
- 5.2 The Contract Price may be paid in instalments by cash or cheque prior to each session. The Customer may block book a number of personal fitness sessions, and pay for the block

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booking in advance. For academy sessions, the Customer may set up a standing order payment either per session or on a monthly basis, and any such payment should reach the Supplier's account by the first day of each month. The Supplier will not be obliged to provide any Services if the appropriate instalment of the Contract Price has not been paid to it in advance of performance of the Services.

- 5.3 The Contract Price excludes VAT which (if applicable) will be added by the Supplier to all its invoices to the Customer, and the Customer will duly pay the same in accordance with the provisions of this clause.
- 5.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) suspend some or all of the Services until payment has been made in full.
- 5.5 Time for payment shall be of the essence of the Contract.

## **6. LIMITATION OF LIABILITY**

- 6.1 This clause 6 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
  - (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 6.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or
  - (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by the Supplier.
- 6.4 Subject to clauses 6.2 and 6.3:
- (a) The Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, business, anticipated savings, goods, contract, use or loss or corruption of data,

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software or information, or for depletion of goodwill or any special, indirect or consequential or pure economic loss, costs, damages, charges or expenses.

- (b) The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Services shall be limited to the price paid by the Customer for the Services.
- (c) The Customer acknowledges that kickboxing, personal training and other similar fitness activities inherently feature an element of personal risk. In participating in such activities the Customer consents to such risk. In the absence of negligence by the Supplier, the customer acknowledges that the Supplier will not be liable for injuries arising from the activities comprising the Services.
- (d) The Customer acknowledges that, as Services will not be provided on premises owned or controlled by the Supplier, all occupier's liability relating to such premises will fall in full upon the owner of such premises.

## **7. TERMINATION**

7.1 Without prejudice to any other rights or remedies which the parties may have, the Supplier may terminate the Contract immediately on giving notice to the Customer if:

- (a) the Customer commits a breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or
- (b) the Customer, by reason of, for example, consistent cancellation or non-attendance at sessions, displays a lack of willingness to engage with the Services.

7.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices plus any interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **8. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing the Services by acts, events, omissions or accidents beyond its reasonable control.

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## 9. GENERAL

- 9.1 A waiver of any right under the Contract Documents is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 9.2 Personal data (as the same is defined in the Data Protection Act 1998) relating to the Customer or the Customer's employees acquired by the Supplier will be processed by or on behalf of the Supplier in connection with the Services and may be used by the Supplier for marketing other similar services to the Customer.
- 9.3 If any provision (or part of a provision) of the Contract Documents are found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 9.4 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights in the Deliverables to the Customer free of charge and on a non-exclusive basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Service.
- 9.5 Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to its subject matter other than as expressly set out in the Contract Documents.
- 9.6 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 9.7 Nothing in the Contract Documents is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other.
- 9.8 The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.
- 9.9 No variation of any of the Contract Documents shall be valid unless it is in writing and signed by each of the parties.
- 9.10 The Contract is governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.