

TERMS OF BUSINESS

This page provides you with the terms and conditions (the "**terms and conditions**") on which we supply our personal training services (the "**Services**") listed on our website www.motiv8trainer.co.uk (the "**Site**") and any documents made available by us whether through the Site or otherwise to you. Please read these terms and conditions (together with any documents referred to herein) carefully before ordering Services from the Site. You should understand that by ordering any of our Services, you agree to be bound by these terms and conditions.

You should print a copy of these terms and conditions for future reference.

Please make sure that you read these terms and conditions and the documents referred to herein carefully as by using the Site (including placing an order), you are acknowledging that you have read, understood, and agreed, without limitation or qualification, to be bound by these terms & conditions.

Please note that it is your responsibility to read these terms and conditions and check for updates from time to time. We reserve the right to amend our terms and conditions at any time and without prior notice.

1. INFORMATION ABOUT US

The Site is operated by Motiv8trainer, located at 30 Letham Gait, Dalgety Bay, Fife, KY11 9GT ("**we**", "**us**" or "**our**"). You can contact us at info@motiv8trainer.co.uk or by calling 0800 285 1348.

2. SERVICE AVAILABILITY

2.1 If you wish to purchase any of our Services, you will be required to complete a short questionnaire ("Questionnaire") and to provide contact details. Once you have submitted the Questionnaire, one of our Personal Trainers will contact you to arrange a free initial consultation. At this initial consultation, our Personal Trainer will meet with you face-to-face, take details from you and carry out an assessment of your fitness levels. The Personal Trainer will also answer any questions you may have about our Services. If, following the initial consultation, you decide to order any of our Services, you will be directed to place any such order via our Site.

2.2 In order to place an order for Services through this site, you will be required to provide certain information, including personal information, which will be held by us in accordance with the terms of our privacy policy.

2.3 By placing an order for Services and submitting this through the Site, you warrant that:

- (a) you are legally capable of entering into binding contracts;
- (b) the information you are providing to us is complete and accurate.

2.4 Access to some parts of the Site is restricted to those users who have registered with us and who hold valid login/password details as issued by us.

3. HOW THE CONTRACT IS FORMED BETWEEN YOU AND US

3.1 If you wish to order Services through the Site, you will be prompted to complete an order form (the "**Order Form**") and to specify the quantity of our Services you wish to purchase. After completing and submitting the Order Form on the Site, you will receive an e-mail from us acknowledging that we have received your order. Please note that this does not mean that your order has been accepted. Your order constitutes an offer to us to buy our Services in accordance with these

terms and conditions. All orders are subject to acceptance by us and our ability to obtain full payment for the Services ordered from the information provided by you on the Order Form. We will confirm such acceptance to you by sending you an email confirming that your card issuer has authorised your payment request and, in the case of your first order of our Services, by providing you with log in details (consisting of a user name and password) which will enable you to access your personal account with us ("**Personal** Account"). The Confirmation Email shall be sent to you within 7 days of payment being taken by us. The contract between us (the "**Contract**") will only be formed when we send you the Confirmation Email.

3.2 Once you have received a Confirmation Email in respect of your order of our Services, you may then contact your designated Personal Trainer to arrange for the Services to be provided on such date and at such times as are mutually convenient.

3.3 Where you have a Personal Account with us, each individual order of our Services that you place will be subject to a separate Confirmation Email as if each order was a new order.

3.4 The Contract will relate only to those Services which we have confirmed in the Confirmation Email. We will not be obliged to supply any other Services which may have been part of your order until the dispatch of such Services has been confirmed in a separate Confirmation Email.

4. AVAILABILITY AND DELIVERY

4.1 You shall only be permitted to book personal training sessions with your Personal Trainer for such time as your Personal Account remains in credit, for example, if you have placed an order to the value of three personal training sessions, and your Personal Trainer has subsequently provided you with three personal training sessions, you shall only be able to book any further sessions with your personal trainer once you have ordered further Services from us and received a Confirmation Email in respect of such order.

4.2 Where any details requested on the Order Form are omitted and requested by us, the delivery date and time scale for delivery will be amended to take account of any delay caused while you provide us with all details or missing information we require in order to provide the Services.

5. CANCELLATIONS

5.1 If you are unable to attend any personal training session, you must inform us by providing notice in accordance with any of the methods listed in clause 5.2 below, at least 24 hours prior to the date and time of the relevant personal training session.

5.2 Acceptable methods of cancellation are:

5.2.1 by email to info@motiv8trainer.com;

5.2.2 by telephone directly to your personal trainer on such telephone number as has been provided by your personal trainer for the purposes of booking or cancelling personal training sessions.

5.3 No refunds shall be given in respect of Services which have not been cancelled in accordance with the provisions of clauses 5.1 and 5.2 above.

5.4 Exceptions may be made to the provisions of this clause 5 in the event of medical emergency and it shall be entirely within the discretion of your personal trainer as to whether any such exception is applicable.

6. INTELLECTUAL PROPERTY

We retain all intellectual property rights, including but not limited to copyright, moral rights and design rights resulting from the provision of the Services ("**Intellectual Property Rights**") and nothing in these terms and conditions shall be taken to grant any rights to you in respect of such Intellectual Property Rights save to the extent provided in these terms and conditions.

7. PRICE AND PAYMENT

7.1 In relation to your first order of Services, payment for the Services will be taken prior to log in details being provided in the Confirmation Email. You should use the same login details to place any further order of our Services via your Personal Account.

7.2 Each time you place an order for our Services, your Personal Account will be credited with the amount paid. Your Personal Account must be in credit in order that you may book any of our Services.

7.3 The price of any Services will be as quoted on the Site from time to time, except in cases of obvious error. All prices are quoted exclusive of Value Added Tax.

7.4 Prices are liable to change at any time, but changes will not affect orders in respect of which we have already sent you a Confirmation Email.

7.5 It is always possible that, despite our best efforts, some of the Services listed on the Site may be incorrectly priced. We will normally verify prices as part of our dispatch procedures so that, where a Services' correct price is less than our stated price, we will charge the lower amount when invoicing for Services. If a Service's correct price is higher than the price stated on the Site, we will normally, at our discretion, either contact you for instructions before processing your request for the Services, or reject your order and notify you of such rejection.

7.6 We are under no obligation to provide the Services to you at the incorrect (lower) price, even after we have sent you a Confirmation Email, if the pricing error is obvious and unmistakable and could have reasonably been recognised by you as a mis-pricing.

7.7 Payment will be taken online for all Services and must be made by any of the following methods:

7.7.1 Paypal

7.7.2 Google Checkout; or

7.7.3 Nochex

7.8 You should refer to the above noted websites and read their respective terms and conditions which shall apply to any order of Services you place via their website(s), in addition to these terms and conditions.

8. OUR LIABILITY

8.1 We, including all directors, other office holders, employees or other representatives of ours and any contributors to the Site are not engaged in rendering medical, nutritional, dietary, legal or other professional advice, and the contents of the Site are not intended to take the place of such advice. You should consult a physician, dietician or other appropriate professional before ordering any of our Services or using any of the information, advice, goods or other resources that you may find on the Site. Nothing contained in the Site is intended to be instructional for medical diagnosis or treatment.

8.2 We offer no warranties, indemnities or representations as to the security or otherwise of the payment methods outlined in clause 7.7 above and disclaim all liability in relation thereto.

8.3 Our liability for damages, losses or liabilities you suffer as a result of us breaking the Contract is strictly limited to the purchase price of the Services you purchased.

8.4 This does not include or limit in any way our liability:

- (a) for death or personal injury caused by our negligence;
- (b) under section 2(3) of the Consumer Protection Act 1987;
- (c) for fraud or fraudulent misrepresentation; or
- (d) for any matter for which it would be illegal for us to exclude, or attempt to exclude, our liability.

8.5 We are not responsible for indirect losses which happen as a side effect of the main loss or damage and which are not foreseeable by you and us, including but not limited to:

- (a) loss of income or revenue;
- (b) loss of business;
- (c) loss of profits or contracts;
- (d) loss of anticipated savings;
- (e) loss of data;
- (f) loss of data, or
- (g) waste of management or office time however arising and whether caused by delict (including negligence), breach of contract or otherwise.

8.6 Any and all waivers, disclaimers, limitations or exclusions of liability set out or contained in any of the other policies and terms and conditions of use relevant to this Site shall apply to the Contract as if set out fully in these terms and conditions.

9. YOUR OBLIGATIONS

9.1 If you are provided with a Personal Account for the Site, you will protect and keep safe and confidential the login details and password provided by us to you in order to enable you to access your Personal Account with us and you will ensure that the password is not used by anyone other than you for use in the proper manner for which the password was issued.

9.2 You agree to abide by and must comply with our website terms and conditions.

You will indemnify us against any loss incurred by us as a result of any breach of the obligations contained in this clause 9 by you or any other person who has accessed the Site by using your Personal Account.

9.3 You are responsible for providing us with such information and materials as we may reasonably require in order to supply the Services, to comply with all such reasonable requests, and you are responsible for ensuring that such information is accurate in all material respects.

10. DISCLAIMER

10.1 Whilst we take every effort to provide high quality information, we disclaim any implied guarantee about the accuracy, completeness, timeliness or relevance of any information contained on the Site. The information should not be relied on to suggest a course of treatment for a particular individual, and it should not be used in place of a visit, call, consultation or the advice of a physician, dietician or other qualified healthcare provider. You should call or see your physician, dietician or other qualified healthcare provider promptly if you have any healthcare related questions or before embarking on a new treatment, diet or fitness program. You should never disregard or delay

in seeking medical advice from your physician, dietician or other qualified healthcare provider because of something you have read, heard or seen on the Site.

10.2 The information contained on this Site is provided strictly on an "as is" basis and we make no, and expressly exclude all, representations, conditions or warranties of any kind with respect to the Site or its contents, or any content on or accessed through the Site, including, without limitation, fitness for a particular purpose, accuracy, timeliness, legal enforceability or completeness. We shall not be liable for any loss or damage of whatever nature (direct, indirect consequential or other) whether arising in contract, tort or otherwise, which may arise as a result of your use of (or inability to use) this Site, or from your use of (or failure to use) the information on this Site. This disclaimer is without prejudice to any disclaimers that may appear from time to time on our employment contracts, disciplinary procedures, literature or products.

10.3 We, including all directors, other office holders, employees or other representatives of ours will not be liable for any complications, injuries or other medical accidents arising from, or in connection with, the use of, or reliance upon any information on the Site or on the Internet generally. All users to this Site agree to indemnify, defend or hold harmless Motiv8trainer, its directors, other office holders, employees and all other representatives against any liability, damages or claims arising at any time from such users reliance upon, reference to or other use of any information or material contained or referenced within the Site. This does not affect our liability for death or personal injury arising from any negligence on our part, nor does it affect our liability for fraudulent misrepresentation or misrepresentation as to a fundamental matter, nor any other liability which cannot be excluded or limited under applicable law.

10.4 We will process your order and any data provided by you in accordance with your instructions and in accordance with our Privacy Policy.

11. WRITTEN COMMUNICATIONS

When using the Site, you accept that communication with us will be mainly electronic. We will contact you by e-mail or provide you with information by posting notices on the Site. For contractual purposes, you agree to this electronic means of communication and you acknowledge that all contracts, notices, information and other communications that we provide to you electronically comply with any legal requirement that such communications be in writing. This condition does not affect your statutory rights in the UK.

12. NOTICES

All notices given by you to us must be given to us at info@motiv8trainer.com We may give notice to you at either the e-mail or postal address you provide to us when placing an order, or in any of the ways specified in clause 11 above. Notice will be deemed received and properly served immediately when posted on the Site, 24 hours after an e-mail is sent, or three days after the date of posting of any letter. 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.

13. TRANSFER OF RIGHTS AND OBLIGATIONS

- 13.1 The Contract between you and us is binding on you and us and on our respective successors and assigns.
- 13.2 You may not transfer, assign, charge or otherwise dispose of a Contract, or any of your rights or obligations arising under it, without our prior written consent.
- 13.3 We may transfer, assign, charge, sub-contract or otherwise dispose of a Contract, or any of our rights or obligations arising under it, at any time during the term of the Contract.

14. EVENTS OUTSIDE OUR CONTROL

- 14.1 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 events outside our reasonable control ("**Force Majeure Event**").
- 14.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:
- (a) strikes, lock-outs or other industrial action;
 - (b) civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
 - (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;
 - (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
 - (e) impossibility of the use of public or private telecommunications networks;
 - (f) the acts, decrees, legislation, regulations or restrictions of any government.

14.3 Our performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

15. WAIVER

15.1 If we fail, at any time during the term of a Contract, to insist upon strict performance of any of your obligations under the Contract or any of these terms and conditions, or if we fail to exercise any of the rights or remedies to which we are entitled under the Contract, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

15.2 A waiver by us of any default shall not constitute a waiver of any subsequent default.

15.3 No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing in accordance with clause 12 above.

16. SEVERABILITY

If any of these terms and conditions or any provisions of a Contract are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

17. ENTIRE AGREEMENT

17.1 These terms and conditions and any document expressly referred to in them represent or contained within the Site the entire agreement between us in relation to the subject matter of any Contract and supersede any prior agreement, understanding or arrangement between us, whether oral or in writing.

17.2 We each acknowledge that, in entering into a Contract, neither of us has relied on any warranties, guarantees or representation, undertaking or promise given by the other or be implied from anything said or written in negotiations between us prior to such Contract except as expressly stated in these terms and conditions. Accordingly, each of us waives any and all rights and remedies that may be awarded to us in respect of any such warranties, guarantees, representations, undertakings or promises which are hereby excluded to the fullest extent permitted by law.

17.3 We intend to rely upon these terms and conditions and any document expressly referred to in them in relation to the subject matter of any Contract. While we accept responsibility for statements and representations made by our duly authorised agents, please make sure you ask for any variations from these terms and conditions to be confirmed in writing.

18. OUR RIGHT TO VARY THESE TERMS AND CONDITIONS

18.1 We have the right to revise and amend these terms and conditions from time to time.

18.2 You will be subject to the policies and terms and conditions in force at the time that you order the Services from us, unless any change to those policies or these terms and conditions is required to be made by law or governmental authority (in which case it will apply to orders previously placed by you), or if we notify you of the change to those policies or these terms and conditions before we send you the Confirmation Email (in which case we have the right to assume that you have accepted the change to the terms and conditions, unless you notify us to the contrary within seven working days of receipt by you of the performance of the Services).

19. LAW AND JURISDICTION

Contracts for the purchase of Services through the Site will be governed by Scots law. Any dispute arising from, or related to, such Contracts shall be subject to the exclusive jurisdiction of the courts of Scotland.