

## Terms and Conditions for the transfer of products (these “terms”)

### 1. **These terms**

- 1.1 These are the terms on which we supply products to you. Please read these terms carefully. These terms tell you who we are, how we will supply products to you, how you and we may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us.
- 1.2 We are Swellaway Limited (“**Swellaway**”, “**we**” “**us**”, “**our**”), a company registered in England and Wales with company registration number 06940022 and our registered office at Great Oak Farm Offices, Mag Lane, Lymm, Cheshire, WA13 0TF. Our registered VAT number is 164605706.
- 1.3 You can contact us by telephoning our customer services team on 0845 901 0227, by emailing us at [customerservices@swellaway.com](mailto:customerservices@swellaway.com), or by writing to us at Great Oak Farm Offices, Mag Lane, Lymm, Cheshire, WA13 0TF.
- 1.4 If we have to contact you, we will do so by telephone or by writing to you at the email address or postal address you provide to us when placing your order.
- 1.5 When we use the words “**writing**” or “**written**” in these terms, this includes emails.
- 1.6 **Are you a business customer or a consumer?** In some areas, you will have different rights under these terms depending on whether you are a business customer or a consumer. If you are an individual and you are receiving a product from us wholly or mainly for your personal use (**not** for use in connection with your trade, business, craft or profession), you will be deemed to be a consumer.
- 1.7 **Terms included below that are specific to consumers only or business customers only will be expressly stated as such in bold. All other terms will apply to both consumers and business customer.**
- 1.8 **This clause is applicable to businesses only. If you are a business customer, this is our entire agreement with you.** If you are a business customer, these terms constitute the entire agreement between us in relation to our supply of products to you. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in these terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

### 2. **Our contract with you**

We shall contact you (or a third party authorised by you) via email or some other form of electronic communication to confirm our acceptance of your offer to provide statistical and general feedback on our products in return for us providing our products to you (“**Confirmation Communication**”), at which point a contract will come into existence between you and us on the basis of these terms for the transfer of ownership of the products.

### 3. **Our products**

- 3.1 Some of our products (such as the ProMOTION EV1) incorporate, use, generate, and/or share digital content, which may include text, information, data, software, executable code, images, audio, or video material (“the **Content**”). Please see clause 6.6, which sets out how we own the Content as well as your right to use the Content as a result of owning any such product.
- 3.2 The images of our products on our website or in any sales or marketing documentation are for illustrative purposes only. Although we have made every effort to display the colours accurately, we cannot guarantee that a device’s display of the colours accurately reflects the colour of the product. The product you receive may vary slightly from those images.

- 3.3 The packaging of any products may vary from that shown in images on our website or in any sales or marketing documentation.
- 3.4 You acknowledge and agree that none of our products are considered to be medical devices (as defined in the Medical Devices Regulations 2002 and/or the Medicines and Medical Devices Act 2021) and that we make no claims about any of the products, or any recommendations made by such products, in respect of the diagnosis, monitoring, treatment, and/or the alleviation of, or compensation for, an injury or handicap.

#### **4. Your rights to make changes**

If you wish to make a change to the terms of your contract with us, please contact us. We will let you know if the change is possible. If it is possible, we will let you know about the implications of such a change such as the timing of supply or anything else which would be necessary as a result of your requested change and ask you to confirm whether you wish to proceed with the change. If we cannot make the change or the consequences of making the change are unacceptable to you, you may want to end the contract (see clause 8, Your rights to end the contract).

#### **5. Our rights to make changes to our products and these terms**

- 5.1 We may make minor changes to the products following us providing the Confirmation Communication but prior to providing the products to you. These changes may be necessary for us:

- 5.1.1 to reflect changes in relevant laws and regulatory requirements; and/or
- 5.1.2 to implement minor technical adjustments and improvements, for example to address a security threat. These changes will not affect your use of the products.

- 5.2 In addition, we may make some material changes to these terms or a product following us providing the Confirmation Communication but prior to providing the product to you, but if we do so, we will notify you and you may then contact us to end the contract before the changes take effect.

- 5.3 We may update or require you to update the Content, provided that the Content shall always match the description of it that we provided to you before you bought it.

#### **6. Providing the products and your use of the products**

- 6.1 The Confirmation Communication will set out when we will aim to provide the products to you.

- 6.2 If the supply of the products is delayed by an event outside our control, we will contact you as soon as possible to let you know and we will take steps to minimise the effect of the delay. However, we shall not, under any circumstances be liable for delays in providing any products to you.

- 6.3 The product will be your responsibility from the time we deliver it to the address set out in the Confirmation Communication or to any other address you provide to us in writing.

- 6.4 We may also have to suspend the supply of a product to:

- 6.4.1 deal with technical problems or make minor technical changes;
- 6.4.2 update the product to reflect changes in relevant laws and regulatory requirements; and/or
- 6.4.3 make changes to the product as requested by you or notified by us to you (see clause 5).

- 6.5 You will be the owner of the product once we deliver it to the address set out in the Confirmation Communication. **This clause 6.5 is subject to clause 6.6.**
- 6.6 You acknowledge and agree that you will **not** own any Content (please see clause 3.1). The Content will be owned by us at all times. However, you and any authorised users of the relevant products will have a non-exclusive licence to use the Content in accordance with these terms and any of our applicable terms and conditions and/or policies. Such licence is subject always to you owning the relevant product.
- 6.7 You acknowledge and agree that:
- 6.7.1 any Content generated by your use, or any authorised users' use, of any products, shall be owned by us and you agree to allow us to access such Content by any means that we consider necessary;
  - 6.7.2 you shall be required to promptly respond to any reasonable request we make for you to provide feedback on your use of any products provided by us to you; and
  - 6.7.3 you shall not be entitled to sell or otherwise transfer the ownership of any of our products to a third party for a period of 24 (twenty-four) months from when we first deliver such products to you.

## 7. **Your rights to end the contract**

- 7.1 Your rights when you end the contract will depend on whether there is anything wrong with the product, when you decide to end the contract and whether you are a consumer or business customer:
- 7.1.1 If the product is faulty or misdescribed, you may have a legal right to end the contract (or to get the product repaired or replaced). **See clause 12 if you are a consumer and clause 13 if you are a business;**
  - 7.1.2 If you want to end the contract because of something we have done or have told you we are going to do, see clause 7.2;
  - 7.1.3 **This clause 7.1.3 is applicable to consumers only. If you are a consumer and have changed your mind about receiving product, see clauses 8.2 and 8.3.**
  - 7.1.4 In all other cases (if we are not at fault and you are not a consumer exercising your right to change your mind), see clause 8.4.
- 7.2 If you are ending a contract for a reason set out at in clauses 7.2.1 to 7.2.3, the contract will end immediately:
- 7.2.1 we have told you about an upcoming change to the product or these terms to which you do not agree (see clause 5.2);
  - 7.2.2 we have told you about an error in the description of the product and you do not wish to proceed; or
  - 7.2.3 you have a legal right to end the contract because of something we have done wrong.
- ## 8. **Your rights to end the contract if you are a consumer**
- 8.1 **This clause 8 is applicable to consumers only and is in addition to the provisions of clause 7.**
- 8.2 You have a legal right to change your mind under the Consumer Contracts Regulations 2013. This right is explained in more detail in these terms.

8.3 If you wish to cancel this contract because you have changed your mind, you may do so within 14 (fourteen) days of you (or someone you nominate) receiving our products.

8.4 Even if we are not at fault and you do not have a right to change your mind (as the 14 (fourteen) day period has expired), you can still end the contract before it is completed, but you may have to pay us compensation. A contract between us and you is completed after a period of 24 (twenty-four) months from when we first deliver such products to you has expired. If you want to end a contract under these circumstances, just contact us to let us know. The contract will end immediately but we shall require you to return the products to us and we may charge you reasonable compensation for the net costs we will incur as a result of ending the contract.

## 9. **How to end the contract with us (including if you have changed your mind)**

9.1 To end the contract with us, please let us know by:

9.1.1 calling customer services on 0845 901 0227;

9.1.2 emailing us at [customerservices@swellaway.com](mailto:customerservices@swellaway.com); or

9.1.3 completing the cancellation form attached to these terms and posting it to us at Swellaway Ltd., Great Oak Farm Offices, Mag Lane, Lymm, Cheshire, WA13 0TF

In each case, please provide details of the product when you ordered or received it and your name and address.

9.2 If you end the contract for any reason after the products have been dispatched to you or you have received them, you must return them to us by posting them back to us at Swellaway Ltd., Great Oak Farm Offices, Mag Lane, Lymm, Cheshire, WA13 0TF.

9.3 If you are exercising your right to change your mind, you must send off the goods within 14 (fourteen) days of telling us that you wish to end the contract.

9.4 We will pay for the costs of return (by providing you with a refund of the delivery costs you incur):

9.4.1 if the product is faulty or misdescribed; or

9.4.2 if you are ending the contract because we have told you of an upcoming change to the product or these terms, an error in pricing or description, a delay in delivery due to events outside our control or because you have a legal right to do so as a result of something we have done wrong.

In all other circumstances (including where you are exercising your right to change your mind), you must pay the costs of return.

9.5 **If you are consumer exercising your right to change your mind** then the maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method we offer.

9.6 We will endeavour to make any refunds due to you within 14 (fourteen) days from the day on which we receive the product back from you.

## 10. **Our rights to end the contract**

10.1 We may end your contract with us at any time by writing to you if:

10.1.1 you do not comply with:

10.1.1.1 these terms (especially clause 6.7); or

10.1.1.2 the terms of any other agreement that we have entered into with you;  
and/or

10.1.2 you do not, within a reasonable time, allow us to deliver the product to you.

10.2 If we end the contract in the situations set out in clause 10.1, we shall require you to return the products to us and we may charge you reasonable compensation for the net costs we will incur as a result of ending the contract.

**11. If there is a problem with the product**

If you have any questions or complaints about the product, please contact us. You can telephone our customer service team on 0845 901 0227 or write to us at customerservices@swellaway.com.

**12. Your rights if the product is defective if you are a consumer**

**12.1 This clause 12 is applicable if you are a consumer.**

12.2 We are under a legal duty to supply products in conformity with this contract. See the box below for a summary of your key legal rights in relation to the product. Nothing in these terms will affect your legal rights.

**Summary of Your Key Legal Rights**

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information, please visit the Citizens Advice website [www.adviceguide.org.uk](http://www.adviceguide.org.uk) or call 03454 04 05 06.

The Consumer Rights Act 2015 states that goods must be as described, fit for purpose and of satisfactory quality. During the expected lifespan of your product, your legal rights entitle you to the following:

a) Up to 30 (thirty) days: if your goods are faulty, you can get an immediate refund.

b) Up to 6 (six) months: if your goods can't be repaired or replaced, you are entitled to a full refund, in most cases.

c) Up to 6 (six) years: if your goods do not last a reasonable length of time, you may be entitled to some money back.

**13. Your rights if the product is defective if you are a business**

**13.1 This clause 13 is applicable if you are a business customer.**

13.2 We do not warrant that any product shall:

13.2.1 conform with its description and its relevant specification; or

13.2.2 be free from material defects in design, material and workmanship.

**14. Our responsibility for loss or damage suffered by you if you are a consumer**

**14.1 This clause 14 is applicable if you are a consumer.**

14.2 We are responsible to you for foreseeable loss and damage caused by us. If we fail to comply with these terms, we are responsible for loss or damage you suffer that is a foreseeable result

of our breaking this contract or our failing to use reasonable care and skill, but we are not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the contract was made, both we and you knew it might happen.

14.3 We do not exclude or limit in any way our liability to you where it would be unlawful to do so. This includes liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; for fraud or fraudulent misrepresentation; for breach of your legal rights in relation to the products as summarised at clause 12.2; and for defective products under the Consumer Protection Act 1987.

14.4 **We are not liable for business losses.** If you are a consumer, we only supply products to you for domestic and private use. If you use any products for any commercial, business or re-sale purpose our liability to you will be limited as set out in clause 15.

## 15. **Our responsibility for loss or damage suffered by you if you are a business**

### 15.1 **This clause 15 is applicable if you are a business customer.**

15.2 In the absence of any negligence or other breach of duty by us, the use of our products is completely at your own risk.

15.3 All terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are excluded.

15.4 We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any direct, indirect or consequential loss arising under or in connection with any contract between us.

15.5 Our total liability to you for all other losses arising under or in connection with any contract between us, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to £100 (one hundred pounds).

## 16. **How we may use your personal information**

16.1 We will only use your personal information as set out in our privacy policy, as may be updated from time to time and is accessible via [Swellaway-Privacy-Policy.pdf \(promotion.fitness\)](#)

16.2 If you are a business customer and you collect personal information belonging to other individuals as a result of using any products (such as the ProMOTION EV1) and such personal information is shared with us, you agree that the sharing of such personal information shall be carried out in accordance with our data sharing addendum as may be updated from time to time and is accessible via [Swellaway-Privacy-Policy.pdf \(promotion.fitness\)](#)

## 17. **Other important terms**

17.1 We may transfer our rights and obligations under these terms to another organisation. We will always tell you in writing if this happens.

17.2 You need our consent to transfer your rights to someone else. You may only transfer your rights or your obligations under these terms to another person if we agree to this in writing.

17.3 This contract is between you and us. No other person shall have any rights to enforce any of its terms.

17.4 Each of the clauses of these terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

- 17.5 Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us taking steps against you at a later date.
- 17.6 **If you are a consumer**, these terms are governed by English law and you can bring legal proceedings in respect of our products in the English courts. If you live in Scotland, you can bring legal proceedings in respect of our products in either the Scottish or the English courts. If you live in Northern Ireland, you can bring legal proceedings in respect of our products in either the Northern Irish or the English courts.
- 17.7 **If you are a business**, any dispute or claim arising out of or in connection with a contract between us 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 and the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.