

## Terms and Conditions of sale (these “terms”)

### 1. **These terms**

- 1.1 These are the terms on which we supply products to you. Please read these terms carefully before you place your order with us. 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 ordering 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 your order. 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**

- 2.1 Our acceptance of your order will take place when we email you to accept it (“**Confirmation Email**”), at which point a contract will come into existence between you and us on the basis of these terms.
- 2.2 If we are unable to accept your order, we will inform you of this and will not charge you for any products. This might be because a product is out of stock, because of unexpected limits on our resources for which we could not reasonably plan, because we have identified an error in the price or description of a product or because we are unable to meet a delivery deadline you have specified.
- 2.3 We may assign an order number to your order and tell you what it is when we accept your order. If applicable, it will help us if you can tell us the order number whenever you contact us about your order.

### **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 6.5, 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**

- 4.1 If you wish to make a change to any order you have placed 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 any changes to the price of the order, 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 product following us providing the Confirmation Email but prior to providing the product 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 product.
- 5.2 In addition, we may make some material changes to these terms or a product following us providing the Confirmation Email 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 and receive a refund where you have already paid for the product but have not yet received it.
- 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**

- 6.1 During the order process, we will let you know the cost of delivery and when we will 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. Provided we do this, we will not be liable for delays caused by the event, but if there is a risk of substantial delay, you may contact us to end the contract and receive a refund where you have already paid for a product but have not yet received it.

- 6.3 The product will be your responsibility from the time we deliver it to the address you have given to us when placing your order.
- 6.4 You will be the owner of the product once we have received payment in full from you. **This clause 6.4 is subject to clause 6.5.**
- 6.5 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. Once we have received payment in full from you, 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.
- 6.6 We may also have to suspend the supply of a product to:
- 6.6.1 deal with technical problems or make minor technical changes;
- 6.6.2 update the product to reflect changes in relevant laws and regulatory requirements; and/or
- 6.6.3 make changes to the product as requested by you or notified by us to you (see clause 5).

## 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 you have bought, when you decide to end the contract and whether you are a consumer or business customer:
- 7.1.1 If the product that you have bought is faulty or misdescribed, you may have a legal right to end the contract (or to get the product repaired or replaced or to get some or all of your money back). **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 the product you have bought, see clauses 8.2 and 8.3. You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions and you will have to pay the costs of return of the product;**
- 7.1.4 If we have otherwise agreed with you in writing or you wish to exercise any right granted to you by any promotional offer that we are running from time to time, see clause 7.3;
- 7.1.5 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 7.2.5, the contract will end immediately and we will refund you in full for any products which you have already paid for but have not yet received and you may also be entitled to compensation:
- 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 price or description of the product you have ordered and you do not wish to proceed;

- 7.2.3 there is a risk that supply of the products may be significantly delayed because of an event outside our control;
  - 7.2.4 we have suspended supply of the products for technical reasons, or notify you we are going to suspend them for technical reasons, in each case for a period of more than 30 (thirty) days; or
  - 7.2.5 you have a legal right to end the contract because of something we have done wrong.
- 7.3 If we have agreed in writing separately with you, or if the details of your purchase qualify you for any promotional offer that we are running from time to time, you may be entitled to end your contract with us and receive a refund after you have received and used such products. Your right to end the contract in these circumstances shall be subject to our separate written agreement with you or the terms of the relevant promotional offer.

## 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 Where you buy a product following a live demonstration, by exchange of email, or over the telephone, you have a legal right to change your mind within 14 (fourteen) days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.

8.3 If you wish to cancel the contract because you have changed your mind about the product you have bought, you have 14 (fourteen) days after the day you (or someone you nominate) receives the product.

8.4 Even if we are not at fault and you do not have a right to change your mind, 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 when the product is delivered and paid for. If you want to end a contract before it is completed where we are not at fault and you have not changed your mind, just contact us to let us know. The contract will end immediately and we will refund any sums paid by you for products not provided but we may deduct from that refund or, if you have not made an advance payment, charge you reasonable compensation for the net costs we will incur as a result of your 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 what you bought, 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. You must return the product 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:

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 We will refund you the price you paid for the product including delivery costs by the method you used for payment. However, we may make deductions from the price, as described below.

9.6 **If you are consumer exercising your right to change your mind:**

9.6.1 We may reduce your refund of the price (excluding delivery costs) to reflect any reduction in the value of the goods, if this has been caused by your handling them in a way that is not compliant with any guidance that we have provided to you in any live demonstrations to you and/or instructional manuals. 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.

9.6.2 The maximum refund for delivery costs will be the costs of delivery by the least expensive delivery method we offer.

9.7 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 make any payment to us when it is due; 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 will refund any money you have paid in advance for products that we have not provided but we may deduct or charge you reasonable compensation for the net costs we will incur as a result of you ending the contract.

10.3 We may write to you to let you know that we are going to stop providing the product. We will let you know as soon as possible in advance of our stopping the supply of the product and will refund any sums you have paid in advance for products which will not be provided.

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

11.1 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](mailto: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 warrant that on delivery, and for a period of [12] months from the date of delivery (“**warranty period**”), each product shall:

13.2.1 conform in all material respects with its description and its relevant specification; and

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

13.3 Subject to clause 13.4, if:

13.3.1 you give us notice in writing during the warranty period as soon as possible after discovery that a product does not comply with the warranty set out in clause 13.2;

13.3.2 we are given a reasonable opportunity of examining such product; and

13.3.3 you return such product to us at our cost,

we shall, at our option, repair or replace the defective product, or refund the price of the defective product in full.

13.4 We will not be liable for a product's failure to comply with the warranty in clause 13.2 if:

13.4.1 you make any further use of such product after giving notice in accordance with clause 13.3.1;

13.4.2 the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, use or maintenance of the product;

13.4.3 you alter or repair the product without our written consent; or

13.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

13.5 Except as provided in this clause **13**, we shall have no liability to you in respect of a product's failure to comply with the warranty set out in clause 13.2.

13.6 These terms shall apply to any repaired or replacement products supplied by us under clause 13.3.

#### 14. **Price and payment**

14.1 The price of the product (which includes VAT) will be the price indicated when you place your order. We take all reasonable care to ensure that the price of the product advised to you is correct. However, please see clause 14.3 for what happens if we discover an error in the price of the product you order.

14.2 If the rate of VAT changes between your order date and the date we supply the product, we will adjust the rate of VAT that you pay, unless you have already paid for the product in full before the change in the rate of VAT takes effect.

14.3 It is always possible that, despite our best efforts, some of the products we sell may be incorrectly priced. We will normally check prices before accepting your order so that, where the product's correct price at your order date is less than our stated price at your order date, we will charge the lower amount. If the product's correct price at your order date is higher than the price stated to you, we will contact you for your instructions as to how to continue with your order.

14.4 We accept payment with all major credit and debit cards and by bank transfer to the bank account we nominate to you.

14.5 You must pay for the product before we dispatch it. We will not charge your credit or debit card until we dispatch the product to you.

14.6 **This clause 14.6 is applicable if you are a business customer.** If you are a business customer, you must pay all amounts due to us under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

14.7 If you do not make any payment to us by the date specified in the Confirmation Email or otherwise, we may charge interest to you on the overdue amount at the rate of 4 (four) per cent a year above the Bank of England base lending rate of in force from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You must pay us interest together with any overdue amount.

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

15.1 **This clause 15 is applicable if you are a consumer.**

15.2 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, for example, if you discussed it with us during the sales process.

15.3 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.

15.4 **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 16.

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

16.1 **This clause 16 is applicable if you are a business customer.**

16.2 Nothing in these terms shall limit or exclude our liability for:

16.2.1 death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);

16.2.2 fraud or fraudulent misrepresentation; or

16.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

16.2.4 defective products under the Consumer Protection Act 1987.

16.3 Except to the extent expressly stated in clause 13.2, 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.

16.4 Subject to clause 16.2:

16.4.1 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 indirect or consequential loss arising under or in connection with any contract between us; and

16.4.2 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) per cent of the total sums paid by you to us under this contract.

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

17.1 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 \(promotion.fitness\)](#)

17.2 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 \(promotion.fitness\)](#)

## 18. **Other Important Terms**

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

18.2 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.

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

18.4 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.

- 18.5 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.
- 18.6 **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.
- 18.7 **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.

Schedule 1

**Model Cancellation Form**

*(Complete and return this form only if you wish to withdraw from the contract)*

To:

**Swellaway Ltd., Great Oak Farm Offices, Mag Lane, Lymm, Cheshire, WA13 0TF**

Telephone: 0845 901 0227

Email: customerservices@swellaway.com

I/We [\*] hereby give notice that I/We [\*] cancel my/our [\*] contract of sale of the following

goods [\*]:.....

Ordered on [\*/received on [\*]:.....

Name of consumer(s):.....

Address of

consumer(s):.....

.....

Signature of consumer(s) (only if this form is notified on paper):.....

Date:.....

***We make no claims in respect of diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,***

***[\*] Delete as appropriate***