

Supplier Terms and Conditions of Sale

1) DEFINITIONS

In the terms and conditions:

"Buyer" means the person to whom any quotation is made by Supplier, any person offering to contract with Supplier on these terms and conditions and any person who purchases Goods or Services from Supplier;

"Consequential Loss" means any loss or damage suffered by a party or any other person which is indirect or consequential, including but not limited to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

"Defect" means a defect, flaw or imperfection in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the Goods by Supplier prior to the date of purchase, or any defect, flaw or imperfection that is trivial or insubstantial;

"Goods" means all products and services agreed to be supplied by Supplier to the Buyer under any contract, arrangement or understanding between Supplier and the Buyer;

"Invoice" means the invoice issued by Supplier to the Buyer setting out the amount to be paid by the Buyer; and

"Order" means any order for Goods or Services placed by the Buyer with Supplier, in whatever form.

"Scheduled Service Time" means the date and time agreed by the Buyer and Supplier that Supplier will provide the Services;

"Services" means the sports training services provided by Supplier to the Buyer as agreed between the parties (including all Subscription Services); and

"Subscription Fee" means the fee payable by the Buyer for Subscription Services payable on a periodic payment basis.

"Subscription Services" means a service provided by the Supplier on an ongoing subscription basis.

"Supplier" means Terry Dillon Solutions Pty Ltd (609 580 903) and its agents, servants and employees and any related bodies corporate as defined in the Corporations Act 2001 (Cth) (if such related body corporate is named as the party making or accepting the Buyer's order of Goods or Services);

2) GENERAL

a) Unless Supplier otherwise agrees in writing, these are the only terms and conditions which apply to the sale of Goods or Services by Supplier and the Buyer agrees that these terms and conditions will in all circumstances prevail over any other document Order or other terms, including the Buyer's terms and conditions of purchase (if any).

b) These terms and conditions supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the supply of the Goods or Services including but not limited to, those relating to the performance of the Goods or Services or the results that ought to be expected from using the Goods or Services.

c) If there is an inconsistency between any other terms agreed by the Buyer and Supplier in writing and/or these terms and conditions, the terms agreed by the Buyer and Supplier in writing will prevail to the extent of any inconsistency.

3) ORDERS

a) Supplier has sole discretion to accept or reject any Order or any variation or modification of an Order requested by the Buyer.

b) Supplier has sole discretion to accept or reject any Order cancellation request by the Buyer. If a cancellation request is accepted by Supplier, the Buyer will be liable for any direct loss or expense incurred by Supplier in respect of that Order (including without limitation, payment for any Goods ordered by Supplier from its suppliers relating to that Order).

4) WARRANTIES

a) Supplier warrants that the Goods supplied will conform to the specifications published by it in relation to the Goods.

b) All warranties and conditions that are capable of exclusion and would, apart from this provision, form part of these terms and conditions, are expressly excluded.

c) Except where by legislation may not be limited, or where a limitation of a liability would otherwise render Supplier liable to a penalty, Supplier's liability in connection with the sale of the Goods and Services and these terms of sale is limited to any one of the following, as determined by Supplier, (i) the replacement of the Goods, (ii) the refund of the price paid by the Buyer for the Goods

or Services or (iii) re-performance of the Services.

d) To the extent the law permits and notwithstanding any other clause of these terms and conditions, Supplier excludes all liability whatsoever to the Buyer for any Consequential Loss.

5) ADVICES

The Buyer hereby acknowledges that it has not relied on any advice, recommendation, information or assistance provided by Supplier in relation to the Goods or Services or their intended use, application or stated benefit.

6) DELIVERY

a) Supplier will make all reasonable efforts to have the Goods and Services delivered to the Buyer on the date agreed between the parties as the delivery date. However, subject to clause 12, time is not of the essence under these terms and conditions and Supplier shall not be liable for any failure to deliver or delay in delivery for any reason.

b) The Buyer shall be responsible for checking the delivery of Goods upon receipt and shall report any discrepancy in the Goods ordered by the Buyer to Supplier at the time of delivery. Failure to report any discrepancy to Supplier within 7 days shall constitute acceptance by the Buyer that the quantity of Goods delivered matches the quantity of Goods ordered by the Buyer.

7) DEFECTS

a) The Buyer must examine the Goods for Defects upon delivery and notify Supplier of any Defects in writing within 7 days of delivery. If the Buyer does not notify Supplier within 7 days of delivery the Buyer shall be deemed to have accepted the Goods.

b) The Buyer must preserve any Goods that are found to have a Defect in the state in which they were delivered. If Supplier, agrees with the Buyer that such Goods have a Defect, the remedies set out in clause 4(c)(i)-(ii) will apply.

8) RISK AND TITLE

a) All risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or any agent or other carrier commissioned by the Buyer to take possession of the Goods. Legal and equitable title in and to the Goods shall not pass to the Buyer until payment in full for all Goods is made.

b) The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause 8, the Buyer holds the Goods as bailee of Supplier and that a fiduciary relationship exists between the Buyer and Supplier.

c) Until title in and to the Goods passes to the Buyer in accordance with this clause 8, Supplier shall be entitled at any time until title in and to the Goods passes to the Buyer to demand the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer (or any other premises where the Buyer is holding the Goods) in order to search for and remove the Goods.

d) The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause 8, it sells the Goods as a fiduciary agent of Supplier provided that such sales shall not give rise to any obligations on the part of Supplier. The Buyer shall hold the proceeds of sale on trust for Supplier in a separate account and must pay to Supplier such amount as Supplier requests.

9) PROVISION OF SERVICES

a) Supplier will endeavour to provide the Services to the Buyer as close as possible to the Scheduled Service Time.

b) Time is not of the essence under this clause and Supplier shall not be liable for any failure or delay in the provision of Services for any reason whatsoever.

c) Notwithstanding any other clause in these terms and conditions, the Buyer acknowledges and agrees that Supplier's capacity to provide the Services to the Buyer at the Scheduled Service Time is subject to variables including but not limited to:

i) site access;

ii) weather conditions;

iii) compliance with all laws and regulations applicable to Supplier's operations and the provision of Services; and

iv) compliance with all applicable Supplier's policies, systems and guidelines, particularly in regard to safety.

10) PRICE

a) Subject to clause 12(b), and unless otherwise agreed in writing or for orders which have been accepted by Supplier, the price charged for the Goods and Services shall be the price determined by Supplier at the date of delivery.

b) Any price indications or price list provided by Supplier to the Buyer

or otherwise made available to the Buyer are subject to alteration at any time without notice.

11) FORCE MAJEURE

- a) Supplier is not liable for any failure to perform any of its obligations under these terms and conditions as a result of any event beyond its reasonable control including, without limitation, where Supplier is prevented or hindered from manufacturing, delivering or supplying the Goods or Services as a result of any strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, products, equipment, facilities or services from usual suppliers on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. In such circumstances, Supplier may suspend performance of any obligations under these terms and conditions while the event continues. Supplier shall not incur any liability to the Buyer in respect of such suspension.
- b) If any of the above events occur for more than 30 days, Supplier may, without liability, terminate any affected Order and/or these terms and conditions immediately by notice in writing to the Buyer.

12) PAYMENT AND DEFAULT

- a) Subject to clause 12(e), and unless otherwise agreed in writing by Supplier (including where otherwise identified on any invoice issued by Supplier), all invoices shall be payable by the Buyer on or before delivery of the Goods or Services.
- b) Where the Buyer purchases a Subscription Service from the Supplier, the Buyer must pay the Subscription Fee on a periodic basis on the terms advised by the Supplier from time to time.
- c) Supplier reserves the right to charge interest on any overdue amount at a rate of 10% per annum from the due date until payment in full is made.
- d) The Buyer agrees to bear all costs incurred by Supplier in collecting any overdue amounts including but not limited to collector agency fees, legal fees and court costs.
- e) If: (i) the Buyer defaults on any payments or is unable or states that it is unable to pay its debts as and when they fall due; (ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets; (iii) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it; (iv) a receiver, recover and manager, controller or voluntary administrators appointed over any part of the property or assets of the Buyer; or (v) the Buyer experiences any analogous event having substantially similar effect to any of the events specified above, then Supplier may, at its option, withhold further deliveries or cancel any Order without notice to the Buyer and without prejudice to any other action or remedy which Supplier has or might otherwise have under these terms and conditions. In such circumstances, all monies owing and outstanding to Supplier on any invoice and irrespective of whether the due date on any invoice has occurred or passed shall become immediately due and payable.
- f) Notwithstanding clause 12(a), Supplier may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons to such discretion, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of Supplier shall be final and Supplier accepts no liability or responsibility for any loss (including Consequential Loss), howsoever arising incurred by the Buyer due to the operation of the condition.

13) RELEASE

Except where legislation cannot be excluded or would make this clause 13 illegal, or where the inclusion of this clause 13 would otherwise make Supplier liable to a penalty, the Buyer releases Supplier from any claim that is made against Supplier for damages or otherwise in respect of any loss, damage, death or injury arising from negligence or otherwise caused directly or indirectly by or arising out of the use or condition of Goods or Services sold to the Buyer, except to the extent that such loss, damage, death or injury has been caused by Supplier.

14) SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

15) VARIATION AND ASSIGNMENT

These terms and conditions may be varied by agreement between the parties in writing only. The Buyer may not assign its rights under these terms and conditions without Supplier's prior written consent.

16) GOVERNING LAW

These terms and conditions are governed by the law of the State of Victoria, Australia, and any dispute, controversy or claim arising out of, relating to or in connection with this document, including any question regarding its existence, validity or termination which is not resolved between the parties within 30 days of a written notice of a dispute, controversy of claim, shall, at the election of Supplier, be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of the arbitration shall be Melbourne, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.

17) TAXES AND DUTIES

Notwithstanding any other clause in these terms and conditions, to the extent that any supply made under or in connection with these terms and conditions attracts sales tax, the Buyer must pay to Supplier, in addition to the consideration provided for under these terms and conditions for that supply an amount (additional amount) equal to the amount of that consideration multiplied by the rate at which any sales tax is imposed in respect of the supply. The Buyer must pay to Supplier the additional amount at the same time as the consideration to which it is referable. The Buyer is responsible for paying any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Goods and Services.

18) WAIVER

Waiver by Supplier of a breach of these terms and conditions or of any right or power arising on a breach of these terms and conditions must be in writing and signed by Supplier. A right or power created or arising on a breach of these terms and conditions is not waived by any failure to exercise or delay in exercising, or a partial exercise of, that or any other right or power.

19) NO RIGHT TO OFFSET

No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by the Buyer to Supplier may be offset against any amount owing whether present, future, actual, contingent or prospective of the Buyer to Supplier hereunder on any other account whatsoever.

20) MONEY BACK GUARANTEE FOR SUBSCRIPTION SERVICES

- a) Subject to clause 20(b), where the Buyer purchases Subscription Services from the Supplier, the Buyer will be entitled to a refund of the Subscription Fee paid to the Supplier in the previous 12 months where on the first anniversary of the purchase by the Buyer of Subscription Services, the Buyer (or such other third party using the Subscription Services purchased by the Buyer (User)) has not recovered the annual Subscription Fee paid by the Buyer or the Buyer or User has not otherwise seen a minimum of 20% improvement in the operations of the Buyer's or User's business based on the survey undertaken at time of purchase and repeated on the anniversary date of purchase
- b) Before the Buyer is entitled to a refund of the Subscription Fee pursuant to clause 20(a), the following conditions must have been satisfied:
- i) The Buyer must advise the Supplier, in writing, within 14 days of the first anniversary of the date the Buyer purchased the Subscription Services that the Buyer is seeking a refund of the Subscription Fee pursuant to this clause 20 and must provide the Supplier with all information reasonably requested by the Supplier to determine whether the Buyer is in fact entitled to a refund;
- ii) The Buyers and any User must watch all contents of the goods on a minimum of two occasions and participate in a compulsory survey prepared by the Supplier within 14 days of purchase of the Subscription Services and on the 12 month anniversary date of that purchase (**Survey**). The Survey will provide a point ranking of where your business sits in terms of efficiency of operations and its ranking over the 12 month period;
- iii) The Buyer must raise any concerns or issues with the Subscription Services by direct email to the Supplier at info@tdcommunitysolutions.com.au within 90 days from the date the Buyer purchased the Subscription Services; and
- iv) The Buyer must make email contact with the Supplier at info@tdcommunitysolutions.com.au every 3 months (minimum of 4 times over the year) explaining challenges / concerns and inability to recover the annual Subscription Fee paid.
- c) Subject to the Buyer strictly complying with this clause 20, the Buyer will be entitled to a full refund on the annual Subscription Fee and such fee shall be refunded by the Supplier within 30 days of the 12 month anniversary of the Buyer purchasing the Subscription Services.

21) INTELLECTUAL PROPERTY

The purchase of Goods under these terms and conditions does not confer on the Buyer any licence or assignment of any copyright, patent, design or trade mark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.

22) INDEMNITY

The Buyer must indemnify, and keep indemnified, Supplier from and against any loss or claims, including any third party claims, arising out of a breach of these terms and conditions by the Buyer or anyone else authorised to represent the Buyer.