



Blue Fitness Limited Terms and Conditions of Trade

Fitness, sporting and gym equipment (“Goods”) are sold and supplied in and from Auckland, New Zealand (“NZ”) by Blue Fitness Limited (“BFL”) to customers (“the Customer”) on the following terms of trade which supercede any previous terms and conditions.

1. Orders / Purchases

Any advice supplied to the Customer does not constitute an offer for sale and BFL reserves the right to decline any order for Goods. All prices given are in NZ dollars and exclusive of Goods and Services Tax (GST) unless expressly stated otherwise and are subject to change without notice and at the sole discretion of BFL; however any quotation given by BFL is valid for 7 days. BFL reserves the right to immediately terminate and without any notice or liability, any agreement to supply Goods.

A full GST invoice (inclusive of delivery or shipping costs) will be issued on Delivery or immediately following installation. Should the customer require a GST Invoice for deposit and instalments they will be provided with a corresponding credit against the final equipment Invoice.

The Customer has a limited right to cancel its order and be refunded monies with exception of the deposit amount paid provided e-mail advice to this effect including the order number is provided to BF within 12 hours of making the order. If the Customer cancels its order outside this time and the order is being delivered the Customer shall meet all of BFL’s freight costs including any costs to return the goods to BFL in a timely manner.

Where the Customer requires a purchase order number to execute the order, the responsibility is on the Customer to supply such number at the time of the order placement. The Customer may not withhold payment, after receiving delivery of Goods, due to an omission of a purchase order number being supplied.

2. Payment

The Customer shall pay in full and without deduction, setoff or counterclaim for the Goods upon placing an order or as specifically notated within the order confirmation. BFL reserves the right to charge interest on overdue accounts at the rate of 2.5% per month on the balance outstanding from the date payment was due until payment is received. The right to charge interest is without prejudice to BFL’s other rights in respect of non or late payment.

BFL further reserves the right to recover from the Customer all costs and/or expenses incurred in repossession of the Goods or instructing a solicitor or debt collection agency to recover any amount overdue for payment and such costs and expenses shall bear interest as provided for above.

3. Delivery and Installation

Delivery or shipping costs will be clearly advised in writing at the time the Customer places the order.

Where the Goods are in stock will make every effort to ship the Goods within 2 working days of receiving the order.

BF shall not be liable in any way for any loss or damage (including consequential loss or damage) arising from delays beyond its control in relation to the supply, delivery and installation of Goods. Risk in the Goods shall pass to the Customer when Goods are delivered to the delivery point agreed with the Customer; or to any agent of the Customer, or are in the control of the Customer or when the Customer has title to the Goods; whichever is the earliest event.

BFL will endeavour to have Goods delivered and installed on the agreed delivery dates but will not be held liable for any direct or consequential loss arising from late delivery for any reason. Late delivery does not entitle the Customer to cancel any order or withhold payment.

The Customer acknowledges that the Company may use an independent carrier for delivery of any items. If the Customer is not at the agreed delivery point, the carrier may leave the Goods at the delivery point at the Customer's risk.

If the Customer fails or refuses to take delivery of any Goods at an agreed delivery time, BFL may (without limiting any other right BFL may have) charge the Customer for expenses incurred including (without limitation) waiting time, storage and transportation charges.

BFL shall in good faith consider any complaint or warranty claim (pursuant to clause 6. below) that a Customer may have with the Goods and may refund the sale price and/or the delivery costs provided that the Goods are returned in a saleable condition within a reasonable time of delivery.

4. **Title**

BFL shall retain full legal and equitable title in all supplied Goods, and title to all supplied Goods shall not pass to the Customer, and there shall be no right to deal with, on-sell or encumber or mortgage Goods, until all payments (including delayed or deferred payments on a credit basis and any enforcement costs or penalty interest) have been paid in full and without deduction, setoff or counterclaim to BFL.

BFL reserves the right to enter onto the Customer's premises or upon any third parties' premises without notice where Goods are located, to take possession of Goods and BFL shall not be held responsible nor liable in any manner whatsoever for any damage caused or any loss that results from such action. The Customer hereby grants BFL and its agents an irrevocable and on-going licence and authority to enter upon any applicable premises and to repossess Goods in the event of any default by the Customer under these terms.

BFL can issue proceedings to recover the price of Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.

5. **Personal Property Securities Act 1999 ("the Act")**

Should the Customer not pay for the Goods upon making an order the Customer grants to BFL a first ranking security interest over the Goods (plus its proceeds) and over all its present and after acquired personal property except only for any such property (and proceeds thereof) in or to which the Customer has rights and which has not been supplied by BFL to the Customer.

On request, the Customer must properly execute any documents and do anything else required by BFL to ensure that this security interest constitutes a perfected security interest (as defined by the Act) including:

- (a) executing any amendments to these terms as reasonably required by BFL;
- (b) executing any new, replacement or additional security document(s); and
- (c) providing any information to BFL to enable it to complete a financing statement or a financing charge statement (as both defined by the Act).

The Customer must not agree to any other person or entity filing a financing statement over the Goods without the prior written consent of BFL and to notify BFL immediately it becomes aware of any other person or entity taking steps to file a financing statement over the Goods. The Customer waives its right to receive a copy of the verification statement confirming registration of the financing statement or a financing change statement relating to the security interest created by these terms.

6. **Limitation of Liability / Warranties**

Initial training of the Customer or its staff regarding the use and operation of the Goods will be provided free of charge by BFL following the installation of the Goods. Full details of any applicable express warranties for the Goods are available for viewing at www.bluefitness.com from time to time. Any warranties are only for the benefit of the Customer and are not capable of being assigned or transferred to any other party.

If the Customer acquires the Goods for the purposes of business, it agrees and acknowledges that it is not a "consumer" as defined by the Consumer Guarantees Act 1993 ("**the Consumer Act**") and that the Goods supplied to it are for the purpose of business; and the Customer further agrees that the guarantees and rights available to it under the Consumer Act including the right to consequential losses are expressly excluded pursuant to section 43(2) of the Consumer Act.

Without prejudice to the above, where relevant and where any inconsistency exists between the provisions of these conditions and the provisions of the Consumer Act, the provisions of the Consumer Act shall apply.

The warranties and any liability implied by section 16 of the Sale of Goods Act 1908 are expressly excluded by pursuant to section 56 of that Act.

Warranty on Goods supplied, cover manufacturing defects only. Warranty does not cover faults caused by misuse, lack of maintenance, or normal wear and tear.

7. **Collection of Information**

The Customer, notwithstanding the requirements under the Privacy Act 1993, acknowledges, authorises and directs that BFL can seek and obtain any information concerning the credit or business standing of the Customer from any other trader, merchant, firm organisation, company or other agency or source whatsoever including any credit agency or association and directs any such person or entity to supply such information to BFL.

The Customer further consents to BFL providing such credit information as requested from any other trader, merchant, organisation, company or other agency whatsoever, including any credit agency or association.

The Customer consents to receiving commercial electronic messages from BFL until such time as this consent is expressly withdrawn.

8. **General**

- (a) In the case of any conflict between these terms or any other document provided by BFL, these conditions shall prevail.
- (b) These terms shall not be modified or varied unless expressed in writing and agreed to by BFL and the Customer.
- (c) Where BFL fails to enforce any term or fails in any way to exercise its rights under these terms, BFL shall not be deemed to have waived those rights with respect to any breach or subsequent breach of any term/s.
- (d) If any of these terms are held to be invalid or unenforceable for whatever reason, the remaining terms shall remain in full force and effect.
- (e) The expression "**Customer**" in these terms means the entity confirming BF's quotation and, where an order has been placed with BF by an agency or third party, includes that agency or third party. Any entity purchasing Goods on behalf of the Customer expressly warrants that they are authorized by the Customer to do so and indemnifies BFL on a continuing and unlimited basis for any losses or damages incurred by BFL as a result.
- (f) The Customer by making an order or offer for the Goods by any medium it does so on the basis that the Customer has read, understood and agrees to be bound by these terms having relied solely upon its own judgment. Should the Customer have any queries regarding these terms it should seek independent legal advice before making an order/offer. BFL is not responsible for any incorrect interpretation of these terms by the Customer.
- (g) BFL retains all rights in or to any intellectual property associated with the Goods, irrespective of their sale or delivery to the Customer.
- (h) BFL and the Customer submit to the non-exclusive jurisdiction of the courts of New Zealand.