

# SPEEDE FITNESS LLC

## CONSUMER TERMS AND CONDITIONS OF SALE

**Last Updated** September 29, 2022

By purchasing a product from Speede Fitness LLC (“*Speede*,” “*we*,” or “*us*”), you are agreeing to be bound by these Terms and Conditions of Sale (“*Terms & Conditions*”) and the terms of the limited warranty described in the Speede Limited Warranty included with your purchase. Note that we reserve the right to change these Terms & Conditions at any time. Read carefully and if you have any questions regarding these Terms & Conditions, please contact us.

**THIS IS A LEGAL AGREEMENT. BY PLACING AN ORDER WITH SPEEDE, YOU ARE ACCEPTING AND AGREEING TO THESE TERMS & CONDITIONS ON BEHALF OF YOURSELF AND ANY ENTITY YOU REPRESENT IN CONNECTION WITH THE PURCHASE. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ACCEPT AND AGREE TO THESE TERMS & CONDITIONS ON BEHALF OF YOURSELF AND ANY SUCH ENTITY YOU REPRESENT. YOU REPRESENT THAT YOU ARE OF SUFFICIENT LEGAL AGE IN YOUR JURISDICTION TO PURCHASE AND USE SPEEDE’S PRODUCTS AND TO ENTER INTO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ANY OF THE PROVISIONS OF THESE TERMS & CONDITIONS, YOU MUST NOT PURCHASE SPEEDE’S PRODUCTS OR SERVICES.**

**THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION THAT, AS FURTHER SET FORTH BELOW, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR ANY OTHER COURT PROCEEDINGS, OR CLASS ACTIONS OF ANY KIND.**

The disclaimers, exclusions, and limitations of liability under these Terms & Conditions will not apply to the extent prohibited by applicable law. For a full description of your legal rights, you should refer to the laws applicable in your jurisdiction. Nothing in these Terms & Conditions will affect those other superseding legal rights.

### **YOUR USE OF SPEEDE’S PRODUCT**

You must be at least 15 years old to use Speede’s Challenger Machine, including any subsequent versions, or other fitness equipment product lines offered by Speede (the “*Product*”). The Product is offered and intended only for your personal use, and not for the use or benefit of any third party. Minors who are at least 15 years old and who can safely use the Product may do so with parent or guardian consent and a waiver and release of Speede for any such use and only so long as the parent or guardian is always present during the minor’s use of the Product.

Notwithstanding anything in these Terms & Conditions to the contrary, any software embedded in the Product (“*Software*”) is licensed (not sold) to you. Subject to the terms of these Terms & Conditions, Speede grants to you a limited, nonexclusive, nontransferable, revocable license to use the Product’s Software, solely in executable form, solely as embedded in the Product, solely for your internal, non-commercial use. You may not copy or modify the Software. You acknowledge that the Software contains trade secrets of Speede, and, in order to protect such trade secrets, you agree not to disassemble, decompile, or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law. Speede reserves all rights and licenses in and to the Software not expressly granted to you under these Terms & Conditions.

## **PRICING**

Speede’s Product pricing and the availability of the Product can change at any time without notice. Prices indicated are in U.S. dollars. We will notify you of other applicable shipping charges and taxes prior to completion of your purchase. In addition to the Product purchase price, you are responsible for paying any applicable charges and taxes. You agree to indemnify and hold Speede harmless from and against any liabilities, interest, penalties, or fees arising from a failure to pay any applicable charges or taxes related to your purchase.

## **ONLINE ORDERS**

Speede accepts Product orders and subscription-based Memberships (“*Services*”) through Speede’s online store. We may acknowledge your order by sending you a receipt or proof of purchase to the e-mail address you provide during the checkout process. Please contact us if you do not receive a receipt within three (3) business days after your payment has processed.

Unless otherwise specified at the time of purchase, you must pay for Products and Services when you place your order online. All Products ordered will be delivered to the shipping address you provide. If a credit card account is being used for payment of a transaction, Speede may obtain preapproval for any amount up to the full amount of the payment. If you enroll to make recurring installment payments automatically, all charges and fees will be billed to the credit card you designate during the installment payment setup process. If you want to designate a different credit card for payment, or if there is a change in your credit card (such as expiration/reissuance of a new card), you must change your information in your account online. Please be advised that any changes to your payment profile may temporarily delay your ability to make online payments while we verify your new payment information.

You represent and warrant that (i) the information you provide is true, accurate, and complete, (ii) charges incurred by you will be honored by your credit/debit card company or bank, as applicable, (iii) you will pay the price and charges incurred by you in the amounts posted, including any applicable taxes and fees, and (iv) you are the person whose name the credit/debit card was issued to and you are authorized to make the purchase or other transaction with the relevant credit/debit card and credit/debit card information.

## **ORDER ACCEPTANCE**

We reserve the right, in our sole discretion, to refuse or cancel any order for any reason. Some situations that may result in your order being canceled include limitations on quantities available for purchase, inaccuracies or errors in Product, Service, or pricing information, or problems identified by our fraud avoidance department. We may also require additional verifications or information before accepting any order. We will contact you at the e-mail address or telephone number you provide during the checkout process if all or any portion of your order is canceled or if additional information is required to accept your order. If your order is canceled after your credit card (or other payment account) has been charged, we will issue a credit to your credit card (or other applicable payment account) in the amount of the charge.

## **SHIPPING**

The Products and Services are not offered or intended for sale outside of the United States. Speede will not ship any Product outside of the United States, and you will be solely and completely responsible for any purchase or use of the Product outside of this area. To the extent permitted by applicable law, Speede will accept no responsibility or liability associated with any loss, damage, or other injury caused by your purchase or use of the Product outside of the United States. You are responsible for complying with all applicable laws and regulations of the country for which the Product is destined or in which the Product is used. We are not liable or responsible if you violate any such law.

Title to the Product and risk of loss will pass to you upon delivery of the Product to a carrier. You acknowledge that all scheduled shipment dates are estimates only. Speede will make reasonable efforts to meet the scheduled shipment dates, but in no event will Speede be liable for any loss, damage, or penalty resulting from any delay in shipment or delivery.

Any estimated arrival or delivery date provided by Speede is not a guarantee. Although Speede will make reasonable effort to meet estimated dates, delivery of the Product may take more or less time than estimated and Speede disclaims any loss, damage, or injury resulting from a delay in arrival or delivery. Deliveries that are refused may be returned to us; in such case it may take up to forty-five (45) days for returned Products to be processed for any potential refund or replacement.

If you finance your purchase through Affirm or another third-party credit arrangement, in limited cases your credit arrangement may be due to expire before your Product ships. We will notify you and give you the option to either (a) start installment payments, or (b) cancel your existing order and place a new order with a credit card. If you cancel your order and place a new order, your place in line will remain the same, although your Product will not ship until you place the new order. Note that if you finance the new order with Affirm or another third-party credit arrangement, we cannot guarantee the same interest rate as your existing loan or other credit arrangement.

## **INSTALLATION**

By purchasing the Product, you agree to allow and provide Speede or its designees access to your designated location of installation of the Product for purposes of Speede or its affiliates installing, maintaining, repairing, or uninstalling and removing the Product as necessary, if and to the extent that Speede agrees to undertake such activities. Speede is not responsible for choice of location of installation and is not responsible for damage or injury resulting from installation at an improper location, such as one without adequate structural support or an adequate or safe power supply. You are solely responsible for determining whether the Product is appropriate for your home, and you accept that inability to install the Product or improper Product function as the result of your choice of location of installation are not valid claims under the Speede Limited Warranty and do not establish a basis for receiving a refund after the 30-day refund policy described below. You acknowledge and agree that although the Speede-approved installers shall use commercially reasonable efforts to limit damage during any installation, maintenance, repair, or removal, there may be damage to walls, paint, or other structures and that you are fully responsible for any such damage. Speede is not responsible for any such damage, nor is Speede responsible for any damage or injury caused by unauthorized or self-installation, maintenance, repair, or removal of the Product.

## **RETURNS**

If for any reason you are not satisfied with the Product you can return the Product within thirty (30) days of installation of the Product for a full refund. Proof of Purchase in the form of the original purchase order or receipt must accompany the return. No refunds will be issued thirty (30) days after the date of installation of the Product.

To initiate a refund and to arrange for a return, contact [support@speede.fit](mailto:support@speede.fit). You will receive a refund of the purchase price and taxes you paid for the Product, including charges paid for delivery and installation of the Product. If you financed your purchase, Affirm will refund your paid installments less any interest paid. Refunds issued through other third-party credit arrangements will be made in accordance with the terms and conditions you initially agreed to with that third party. If the Product is returned in damaged condition or with missing parts, you may be charged a restocking fee. We will process the refund due to you as soon as possible.

## **RESALE NOT AUTHORIZED**

Resale of the Product is not authorized by Speede. The Product is intended for use by you, the end user, only.

## **THIRD PARTY SOFTWARE AND APPLICATIONS**

You agree not to download and/or install any third-party software and/or applications that are not expressly authorized by Speede on any Speede Product hardware. The unauthorized downloading and/or installing of any such third-party software and/or applications is at your own risk and may void any applicable warranty, including the Speede Limited Warranty, and Speede expressly disclaims all responsibility for any damage or injury that may result.

## GOVERNING LAW

These Terms & Conditions are governed by the laws of the United States and the State of Illinois, U.S.A., without regard to its principles of conflicts of law, and regardless of your location.

## ARBITRATION CLAUSE & CLASS ACTION WAIVER

If a dispute arises between you and Speede, we would like the opportunity to talk to you about it to come to an amicable resolution. Please contact us at [support@speede.fit](mailto:support@speede.fit) with any such issue. If we are unable to resolve the issue or dispute, you agree to submit the dispute to binding arbitration as described below. Please read this section carefully as it affects your legal rights.

### Agreement to Binding Arbitration and Class Action Waiver:

EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS & CONDITIONS OR USE OF THE PRODUCT OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND SPEEDE, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY AND YOU AGREE THAT SPEEDE AND YOU ARE EACH WAIVING THE RIGHT TO TRIAL BY A JURY. SUCH DISPUTES INCLUDE, WITHOUT LIMITATION, DISPUTES ARISING OUT OF OR RELATING TO INTERPRETATION OR APPLICATION OF THIS ARBITRATION PROVISION, INCLUDING THE ENFORCEABILITY, REVOCABILITY, OR VALIDITY OF THE ARBITRATION PROVISION OR ANY PORTION OF THE ARBITRATION PROVISION. ALL SUCH MATTERS SHALL BE DECIDED BY AN ARBITRATOR AND NOT BY A COURT OR JUDGE.

YOU AGREE THAT ANY ARBITRATION UNDER THESE TERMS & CONDITIONS WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION.

Opt-Out of Arbitration Agreement: You may opt out of this agreement to arbitrate by e-mailing [support@speede.fit](mailto:support@speede.fit) with “Arbitration Opt-Out” in the subject line and include your first name, last name, address, and a statement that you decline this arbitration agreement in the body of the e-mail within thirty (30) days of accepting this agreement to arbitrate.

Arbitration Procedures: The arbitration will be administered by the American Arbitration Association under its Consumer Arbitration Rules, as amended by these Terms & Conditions. The Consumer Arbitration Rules are available online at <https://www.adr.org/consumer>. The

arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by the AAA or by the arbitrator. The arbitrator's decision will follow these Terms & Conditions and will be final and binding. The arbitrator will have authority to award temporary, interim, or permanent injunctive relief or relief providing for specific performance of these Terms & Conditions, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms & Conditions will preclude you from bringing issues to the attention of federal, state, or local agencies and, if the law allows, they can seek relief against us for you.

## **WARRANTIES AND DISCLAIMERS**

As far as permitted by applicable law, the Product and all other products and Services provided by Speede are provided on an "as-is" basis without warranties or conditions of any kind, either express or implied, including, without limitation, warranties of title or non-infringement or implied warranties of merchantability or fitness for a particular purpose unless otherwise expressly noted in the Speede Limited Warranty.

Your use of the Product or Service is at your own discretion and risk. You acknowledge and agree that it is your sole responsibility to consult with your personal physician regarding any medical condition, impairment, or disability that may prevent or limit your ability to use the Product or Service. You further understand and agree that you are solely responsible for abiding by your personal physician's recommendation as to any such medical restrictions, and for using the Product or Service solely in accordance with your personal physician's advice.

You are solely responsible for any and all loss, liability, or damages resulting from any use of the Product, including injury, damage or loss to your person, other persons, your home, the Product, accessories to the Product, and all other items and pets in your home. Speede disclaims all and any such loss, liability, or damages.

## **LIMITATION OF LIABILITY**

Notwithstanding the foregoing, nothing in these Terms & Conditions and within this "Limitation of Liability" clause shall attempt to exclude liability that cannot be excluded under applicable law.

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW: (A) SPEEDE WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND, UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER THEORY, INCLUDING DAMAGES FOR LOSS OF ENJOYMENT, LOSS OF PROFITS, USE, OR

DATA, LOSS OF OTHER INTANGIBLES, OR OTHER DAMAGES WHATSOEVER IN CONNECTION WITH THE PURCHASE, USE, REPAIR, MAINTENANCE, MODIFICATION, OR MOVEMENT OF THE PRODUCT OR PARTS, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES; (B) WITHOUT LIMITING THE FOREGOING, SPEEDE WILL NOT BE LIABLE FOR DAMAGES OF ANY KIND RESULTING FROM YOUR OR A THIRD PARTY'S USE OF OR INABILITY TO USE THE PRODUCT; (C) YOUR SOLE AND EXCLUSIVE REMEDY FOR DISSATISFACTION WITH THE PRODUCT IS TO STOP USING THE PRODUCT; AND (D) THE MAXIMUM AGGREGATE LIABILITY OF SPEEDE FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE THE TOTAL AMOUNT, IF ANY, PAID BY YOU TO SPEEDE FOR THE PRODUCT. ALL LIMITATIONS OF LIABILITY OF ANY KIND (INCLUDING IN THIS SECTION AND ELSEWHERE IN THIS TERMS & CONDITIONS) ARE MADE FOR THE BENEFIT OF BOTH SPEEDE AND SPEEDE'S AFFILIATED ENTITIES, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

## **INDEMNIFICATION**

You agree to indemnify, defend, and hold harmless Speede and its affiliates, and its and their directors, officers, employees, and agents, from and against all direct or indirect claims, damages, losses, and costs that arise from or relate to your or third-party use of the Product or your violation of these Terms & Conditions.

## **DATA PROTECTION**

You can place orders for the Product through Speede's online store. When you place an order, you will enter certain identifying information such as name, telephone number, e-mail address, and shipping and billing address, so we can fulfill your order. You agree and understand that Speede or a third-party provider or affiliate may store, process, and use that information for purposes of fulfilling your order. You also agree that the information you provide is true and complete and that you will pay the total purchase price, including any additional charges or taxes identified during the checkout process.

## **NOTIFICATIONS**

Speede may provide notifications to you as required by law or for marketing or other purposes via e-mail to the primary e-mail associated with the purchase, hard copy, or posting of such notice on the Speede website. Speede is not responsible for any automatic filtering you or your network provider may apply to e-mail notifications.

## **MISCELLANEOUS**

These Terms & Conditions do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between you and Speede. If any provision of these Terms & Conditions is found to be unlawful, void, or for any reason unenforceable, that provision will be deemed severable from these Terms & Conditions and will not affect the validity and enforceability of any remaining provision.

You may not assign, transfer, or sublicense any or all of your rights or obligations under these Terms & Conditions without Speede's express prior written consent. We may assign, transfer or sublicense any or all of our rights or obligations under these Terms & Conditions without restriction. No waiver by either party of any breach or default under these Terms & Conditions will be deemed to be a waiver of any preceding or subsequent breach or default. Any heading, caption or section title contained herein is for convenience only, and in no way defines or explains any section or provision. All terms defined in the singular shall have the same meanings when used in the plural, where appropriate and unless otherwise specified. Any use of the term "including" or variations thereof in these Terms & Conditions shall be construed as if followed by the phrase "without limitation." These Terms & Conditions, including any terms and conditions incorporated herein, is the entire agreement between you and Speede relating to the subject matter hereof, and supersedes any and all prior or contemporaneous written or oral agreements or understandings between you and Speede relating to such subject matter. Without limitation, a printed version of these Terms & Conditions shall be admissible in judicial or administrative proceedings based upon or relating to these Terms & Conditions to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

Failure or delay by us to enforce any of these Terms & Conditions will not constitute a waiver of our rights against you and does not affect our right to require future performance thereof.

Speede will not be responsible for any failure to fulfill any obligation due to any cause beyond its control. Speede will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations that is caused by an act or event beyond our reasonable control, including acts of God, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic or other natural disaster, failure of public or private telecommunications networks or impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.

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