

## TERMS OF TRADE

### Definitions

Unless the context otherwise requires, the following words have these meanings: **BASI** means BASI Systems Pilates Sanayi Ticaret AŞ (a Turkish company); **Contract** means the relevant contract between the Seller and the Customer for the Goods comprising the Terms of Trade and the relevant Proposal; **Customer** means the customer specified in the Proposal; **Force Majeure Event** means any circumstance, matter or event which is outside the reasonable control of the Seller and includes strikes, fires, floods and storms; **Goods** means the goods referred to in the Proposal; **GST** means the goods and services tax payable pursuant to the GST Act; **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the regulations thereunder; **Invoice** means a Tax Invoice if GST applies to the items in the invoice, otherwise a non-Tax Invoice; **Proposal** means a written proposal for the supply of Goods as issued by the Seller to the Customer; **PPS** means the *Personal Property Securities Act 2009 (Cth)* and the regulations thereunder; **PPSR** means the personal property securities register established pursuant to the PPS; **Seller** means Dynamic Pilates Imports Pty Limited ACN 623 050 724 its successors and assigns; **Tax Invoice** means an invoice that complies with the GST Act; **Terms of Trade** means these terms of trade.

### Customer Obligations

The Customer must promptly provide all information reasonably requested by the Seller relating to the Contract. To the fullest extent permitted by law, the Seller is not liable to the Customer for any loss or damage of any kind suffered by the Customer arising from or relating to any failure or delay by the Customer in respect of the foregoing and, as applicable, the Seller is entitled to a reasonable extension of any timeframe applicable to its obligations as a result of such failure or delay. The Customer must read before using the Goods, and comply with when using the Goods, any safety and/or instructional information that are included with the Goods.

### Proposals and Acceptance

The Seller will provide the Customer with a Proposal. The Contract is entered into when the Seller receives the signed acceptance of the Proposal (unaltered apart from adding the requested name, signature and date) from the Customer and the required deposit (as set out in the Proposal) prior to the expiry/validity date set out in the Proposal. The Customer understands that once the Contract has been entered into, the Seller will in turn place an order with BASI (as BASI supply the Goods to the Seller).

### Cancellation by Seller

The Seller may cancel a Contract at any time before the Goods are supplied to the Customer due to: (a) a Force Majeure Event occurring; (b) BASI refusing to accept, or delaying acceptance of, an order from the Seller; or (c) due to any act, omission, default or breach by BASI of its obligations to the Seller. In that case the Seller has no liability to the Customer save for refunding any deposit paid by the Customer to the Seller.

### Cancellation or Variation by Customer

The Customer can only cancel or vary a Contract with the Seller's written acceptance.

In respect of cancellations accepted by the Seller the Customer agrees that: (a) if the cancellation occurs within 20 days of the Contract being entered into, the Customer will forfeit 50% of any deposit paid by the Customer to the Seller where BASI has not commenced manufacturing the relevant Goods at the time the Seller accepts the cancellation; or (b) in all other cases the full amount of any deposit paid by the Customer to the Seller will be forfeited.

### Delivery and Delays

Although the Seller will use reasonable endeavours to deliver the Goods by the due date, this time is not of the essence. To the fullest extent permitted by law, the Seller is not liable to the Customer for any loss or damage of any kind suffered by the Customer arising from or relating to any failure by the Seller to deliver the Goods on or by the agreed or specified date or within a reasonable time. Without limiting the foregoing, and in addition to any other rights of the Seller, the Seller is entitled to a reasonable extension of any timeframe applicable to its obligations arising from or relating to a Force Majeure Event.

### Payment, GST and Merchant Fees

Unless otherwise agreed in writing, all payments are due as set out in the Proposal. All times for payment of all amounts are of the essence. Unless otherwise stated, all amounts are expressed to be exclusive of GST. The Customer must pay any applicable GST to the Seller in addition to the amount payable at the same time as the amount to which it relates is payable. If any payment is made by credit card, the Customer agrees the Seller may also charge and deduct from the credit card any merchant fees that apply.

### Indemnity

To the fullest extent permitted by law, the Customer indemnifies the Seller from and against all claims, demands, suits, actions, litigation, judgments, proceedings, losses, costs, damages, liabilities and expenses (including legal costs and disbursements on a full indemnity basis

and any debt collection agency fees on a full indemnity basis) of whatever description that are suffered, incurred, instituted or defended by the Seller arising from or relating to any breach of the Contract by the Customer.

### **Suspension**

If the Customer breaches the Contract then in addition to and without prejudice to any other rights or remedies of the Seller (including exercising a right of termination after suspension), the Seller may suspend the performance of its obligations until such breach is rectified and: (a) to the fullest extent permitted by law, the Seller is not liable to the Customer for any loss or damage of any kind suffered by the Customer arising from or relating to such suspension; and (b) the Seller is entitled to a reasonable extension of any timeframe applicable to its obligations arising from or relating to such suspension.

### **Termination**

If the Customer or the Seller: (a) has a receiver, receiver and manager, administrator, liquidator, provisional liquidator or any form of external controller appointed to or over it or in respect of any of its assets; (b) becomes bankrupt, insolvent or is wound-up; (c) has a resolution passed for its winding-up, commits an act of insolvency or bankruptcy, or has an application or order made to a court for its winding-up; (d) enters into any scheme, compromise or arrangement with its creditors; (e) breaches an essential term of the Contract; (f) breaches a term of the Contract that is not capable of remedy; or (g) subject to the foregoing, breaches a term of the Contract that is capable of remedy but is not so remedied within 14 days of written demand; then the other party by written notice may terminate the Contract immediately.

### **Effects of Termination or Completion**

Termination or completion of a Contract does not affect any provision of the Contract expressed or capable of operating or having effect subsequent to termination or completion and is without prejudice to any accrued right or remedy of a party in relation to any breach or default by the other party occurring prior to termination or completion.

### **Risk and Title**

Risk in respect of loss, damage or destruction of the Goods passes to the Customer upon delivery (which will be to the front of the relevant delivery address unless otherwise specified in the Proposal). Despite the passing of risk, the Seller retains full title to the Goods until such time as all payments due by the Customer under the Contract are received by the Seller.

### **Australian Consumer Law**

If the Customer acquires Goods from the Seller as a “**consumer**” within the meaning of that term in the Australian Consumer Law, then the following applies:

*Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.*

### **Limitation of Liability**

**This clause does not exclude or modify any rights the Customer has under the Australian Consumer Law unless the Australian Consumer Law allows such rights to be excluded or modified.** Subject to the foregoing, to the fullest extent permitted by law: (a) the Seller is not liable to the Customer for any consequential, special, incidental or other indirect loss or damage including loss of profit, loss of opportunity, business, revenue, goodwill or anticipated savings arising out of the performance, non-performance or defective performance of the obligations of the Seller irrespective of whether or not the Seller was made aware of the possibility of such loss; (b) all implied warranties, terms and conditions in relation to the obligations of the Seller including those implied by use, trade, custom or otherwise are hereby excluded; (c) subject to the foregoing, the Seller's total liability to the Customer for breach of its obligations to the Customer whether under the Contract, in tort (including due to negligence) or otherwise are at the option of the Seller limited to: (i) replacing or resupplying the Goods or paying for the cost of replacing or resupplying the Goods; or (ii) repaying the Customer the amount paid by the Customer to the Seller under the Contract.

### **PPS**

In respect of the PPS: (a) each Contract and all relevant Invoices constitute a “**security agreement**” for the purposes of the PPS; (b) for the purposes of s115 of the PPS, the parties agree that to the fullest extent permitted by law, they have agreed to contract out of ss95, 117, 118, 120, 121(4), 123, 125, 128, 129, 130, 132(3)(d), 132(4), 134, 135, 142 and 143 of the PPS and contract out of all matters permitted to be contracted out of pursuant to s115(7) of the PPS; and (c) to the fullest extent permitted by law, the Customer hereby waives its rights to receive any notice under s157 of the PPS pursuant to s157(3)(b) of the PPS.

### **Authority to Contract**

The person accepting the Proposal warrants that they have full power and authority to accept the Proposal for and on behalf of the Customer.

### **Inconsistency**

If there is any inconsistency between the Terms of Trade and the Proposal, the terms of the Proposal prevail to the extent of the inconsistency. Any terms put forward by the Customer in respect of the Goods to be supplied are null and void and of no effect unless accepted by the Seller in writing.

### **Interpretation**

Unless the context otherwise requires: (a) headings and boldings are for convenience only and do not affect the interpretation of the Contract; (b) words importing the singular include the plural and vice versa; (c) reference to a 'person' includes a company, partnership, joint venture, association, trust, corporation and vice-versa; (d) reference to any legislation includes all legislation varying, consolidating or replacing it; (e) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of any part of this Contract; (f) the words "includes", "including" and similar expressions are not words of limitation; (g) all references to dollars are to the lawful currency of Australia; and (h) an agreement on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.

### **Miscellaneous**

In respect of the Contract: (a) it is governed by and construed in accordance with the laws of New South Wales, Australia; (b) any legal action may be brought in the courts of New South Wales, Australia and each party accepts generally and unconditionally the jurisdiction of those courts; (c) subject to the terms of the Contract, the Contract only confers rights and benefits upon a person expressed to be a party; (d) the Customer cannot transfer or assign its rights or obligations under the Contract without the prior written consent of the Seller; (e) the Seller may transfer or assign its rights or obligations under the Contract at anytime; (f) the failure to exercise or delay in exercising any right does not operate as a waiver; (g) each party must promptly execute all documents and perform all acts necessary to give full effect to the Contract; (h) it expresses and incorporates the entire agreement between the parties in relation to its subject matter and supersedes and excludes all prior or collateral negotiations, understandings, communications, agreements and representations; and (i) any provision which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions or affecting the validity or enforceability of that provision in any other jurisdiction.