

ROCKSTAR SWIMMING LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

The Customer's attention is particularly drawn to the provisions of clause 7.

1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 10.6.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person, persons, firm, organisation or association who purchases Services from the Supplier.

Deposit: the sum payable by the Customer to the Supplier in accordance with clause 5.2.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Lifeguard: a person who is qualified to act as a lifeguard in Great Britain and has the National Pools Lifeguard Qualification (N.P.L.Q.).

Order: the Customer's order for Services as set out in the order form.

Qualified Coach: a person who is qualified and registered with the Amateur Swimming Association (A.S.A.) to coach or teach swimmers in Great Britain.

Services: the swimming coaching and / or teaching services supplied by the Supplier to the Customer as agreed by the parties.

Specification: the description or specification of the Services provided in writing by the Supplier to the Customer.

Supplier: Rockstar Swimming Limited of 225 Outwood Road, Heald Green, Cheshire, SK8 3JL, registered in England and Wales with company number 09809275.

- 1.2 **Construction.** In these Conditions, the following rules apply:
- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
 - (b) a reference to a party includes its personal representatives, successors or permitted assigns;
 - (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
 - (d) any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (e) a reference to **writing** or **written** includes e-mails.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any descriptive matter or advertising issued by the Supplier, and any descriptions contained in the Supplier's website, catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation or price for services given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 The Supplier shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.3 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information provided in it are complete and accurate;
 - (b) co-operate with the Supplier in all matters relating to the Services;
 - (c) obtain and maintain all necessary licences, permissions and consents including arranging and being wholly responsible for the hire and availability of the swimming pool as required for the Supplier to provide the Services;
 - (d) prepare the pool and premises as necessary for the Supplier to supply of the Services;
 - (e) ensure that at least one Lifeguard is present and on duty for the entire period during which the Supplier provides the Services for the Customer. In the event that pool or leisure centre rules require more than one lifeguard to be present and on duty the Customer must ensure compliance with this rule;
 - (f) ensure that at least one Qualified Coach (in addition to any qualified coaches provided by the Supplier) is present for the entire period during which the Supplier provides the Services for the Customer;
 - (g) ensure that only swimmers of a suitable swimming ability are permitted to participate in the Services provided by the Supplier to the Customer;
 - (h) provide the Supplier with all necessary information and materials, including but not limited to health and safety information, prior to the provision of Services to enable the Supplier to carry out the Services in a safe manner;
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be determined in accordance with the Supplier's standard hourly fee rates which are calculated per participating swimmer, as set out in Schedule 1.
- 5.2 The Customer shall pay to the Supplier a Deposit, in the amount specified in Schedule 1, not less than 30 days before the date on which the services are to be performed.
- 5.3 In the event that the Charges for the Services equals or exceeds the amounts of the Deposit under clause 5.2, the Deposit will be credited against the invoiced amount for the Supplier's Services.
- 5.4 In the event that the Charges for the Services is less than the amount of the Deposit under clause 5.2, the Deposit will be retained by the Supplier as payment for the Services and there will be no further Charges to the Customer in respect of the Services.
- 5.5 The Supplier shall invoice the Customer after completion of the Services.
- 5.6 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding

required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

7. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

7.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- (b) fraud or fraudulent misrepresentation.

7.2 Subject to clause 7.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Customer, 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 the Contract; and
- (b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges agreed between the parties for the Service.

7.3 This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other party written notice at least one week before the date on which the Service was to be provided.

- 8.2 In the event that the Supplier terminates the Contract by giving the Customer written notice in accordance with clause 8.1 or otherwise, the Supplier shall return to the Customer the Deposit within 30 days.
- 8.3 In the event that the Customer terminates the Contract by giving the Supplier written notice in accordance with clause 8.1 the Supplier shall return to the Customer the Deposit within 30 days.
- 8.4 If the Customer terminates the Contract in a manner not in accordance with clause 8.1, including but not limited to providing less than one week's notice of termination to the Supplier, the Deposit will not be refunded to the Customer.
- 8.5 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract, including but not limited to the deposit, on the due date for payment.

9. FORCE MAJEURE

- 9.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).
- 9.2 Without prejudice to clause 9.1, if the Force Majeure Event prevents the Supplier from providing the Services for the Customer the Supplier shall return to the Customer the Deposit.

10. GENERAL

10.1 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.1(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.2 **Severance.**

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.3 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

10.5 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

10.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing by the Supplier.

10.7 **Governing law.** This Contract, and any dispute or claim arising out of or in connection with it 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.

10.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1 Pricing

The Deposit payable by the Customer to the Supplier in accordance with clause 5.2 shall be £150.00.

TIME	PRICE
1 hour pool session	£15.00 per swimmer
2 hour pool session	£30.00 per swimmer
More than a 2 hour pool session or multiple session booking	Price to be negotiated