

## **Terms and Conditions applying to services to be delivered by Excel Race Academy**

These terms and conditions (conditions numbered 1 to 14.33) are the terms and conditions applicable to agreements made between Excel (as defined in these terms and conditions) and its customer and are the terms and conditions that may be referred to in any separate correspondence or other communication issued by Excel to its customer

### **Definitions**

1. “Excel”, “We”, “Us” or “Our” means Excel Race Academy Limited, a company registered in the United Kingdom with number 11331960 and having its registered office at 17 St Peter’s Place, Fleetwood FY7 6EB
2. “You” or “Your” means the Customer or Customers identified as such in any correspondence between him, her or them and Excel, being a person who has agreed to request Excel to deliver Services to that Customer or to a child for whom the Customer is parent or guardian.
3. “Athlete” means the person to whom Excel will deliver its Services.
4. “Child” means an Athlete under the age of 16 years at the time that the Customer enters into his, her or their contract with Excel for Excel to deliver Services to that Athlete.
5. “Commitment Fee” means the Initial Payment to be made by the Customer to Excel.
6. “Customer” means the person or persons with whom Excel enters into discussions for or subsequently enters into a contract to deliver Services to an Athlete to whom that Customer is parent or guardian.
7. On an expression of interest in its Services Excel will provide its Program Information to such Customer for the next available season or for individual training camps.
8. The Program Information will include:-
  - 8.1. details of the programs it is offering, including location and dates of the camps;
  - 8.2. the amounts of the payment that will be required from the Customer;
  - 8.3. the dates on which payment will be required from the Customer;

9. If the Customer wishes to proceed he shall pay the Commitment Fee prescribed by Excel set out in the Program Information.
10. A contract:-
  - 10.1. For Excel to deliver its services; and
  - 10.2. The Customer to pay Excel for the delivery of its services shall arise between Excel and the Customer on and from date on which the Commitment Fee paid by the Customer is received by Excel.
11. The Customer acknowledges that Excel will enter into its own commitments based on the contract with the Customer and that the Commitment Fee is not a deposit but is a payment towards the entire cost of the Program to which he has committed by making the payment of the Commitment Fee.
12. On receipt of the Commitment Fee Excel will:-
  - 12.1. reserve a place for the Athlete on the selected Program;
  - 12.2. deliver its Services to the Athlete as more particularly set out in the Program Information
13. "Services" means any one or more of the Services more particularly described in the Program Information or as agreed in email correspondence between Excel and the Customer.
14. Terms applicable to all Services:-
  - 14.1. The dates at which the Athlete shall attend the Programme to which he has committed shall be those prescribed by Excel; communicated to the Athlete or his representative by email to the Customer's email address and accepted by the Customer on his paying the Commitment Fee.
  - 14.2. There is no reduction or allowance made to a Customer if an Athlete is unable to attend any of the sessions to which the Athlete shall have been committed.
  - 14.3. The Customer shall ensure that the Athlete shall attend all sessions on the dates and times and at the places required and notified to him by Excel.
  - 14.4. The payment due from the Customer to Excel shall be paid by the dates specified in the Confirmation Invoice submitted by Excel to the Customer.

- 14.5. If the Customer does not pay any of the due payments by the due date Excel shall no longer be obliged to deliver any Services to that Customer or Athlete but:-
- 14.5.1. the remainder of the Fee due to Excel shall remain due and payable to Excel; and
- 14.5.2. Excel reserves the right at its discretion to allow the Athlete to resume attendance in training once payments due have been received.
- 14.6. Excel reserves all Intellectual Property Rights in these terms and conditions and all other terms of its business. For this purpose, “Intellectual Property Rights” means all vested contingent and future intellectual property rights including but not limited to copyright, trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.
- 14.7. In the case of any inconsistency between these terms and conditions and the provisions of the Program Information these terms and conditions shall prevail.
- 14.8. Excel shall have the right to relocate any training camp or ski session to one which it deems more suitable than the location indicated in the Program Information owing to adverse weather or snow conditions.
- 14.9. Excel shall comply with all applicable laws, regulations or other legal requirements concerning the Services and the delivery thereof to the Customer.
- 14.10. Charges
- 14.10.1. Excel’s Charges shall be as per the Program Information save that:-
- 14.10.1.1. If there is a material change (in the opinion of Excel acting reasonably) in the rate of exchange of Sterling and the currency of the country in which Excel will deliver its Services Excel will notify the Customer of the revised cost it requires to continue to deliver the Services.

- 14.10.1.2. In such event the Customer shall elect to pay the revised charges or to terminate the contract with Excel.
- 14.10.1.3. If the Customer shall terminate the Contract such termination will be immediately effective; and:-
- 14.10.1.3.1. Excel shall be released from any obligation to provide Services;
- 14.10.1.3.2. The Customer shall be released from any unpaid payment obligations;
- 14.10.1.3.3. No refund will be made for payments already made by the Customer.
- 14.11. All fees are inclusive of Value Added Tax or other similar tax charged in substitution for the same.
- 14.12. The Customer will pay for additional costs as indicated in the Program Information incurred by Excel in respect of the Athlete as and when these are invoiced by Excel.
- 14.13. Charges shall be expressed and payments made in Pounds Sterling unless otherwise agreed between the parties.
- 14.14. Excel shall raise an invoice in respect of each payment due from the Customer.
- 14.15. All invoices (except in respect of the Commitment Fee) are to be paid by the Customer so that cleared funds are received by Excel by the dates specified in the outlined invoicing period set out by Excel in its pre-contract negotiations with the Customer and in accordance with the terms specified in the invoice.
- 14.16. Invoices to the Customer will be emailed to the Customer and treated as delivered at the moment of transmission.
- 14.17. Excel recommends that the Customer should take out cancellation insurance to cover the eventuality of the Athlete being unable to attend any elements of the Program. Excel agrees to use its best endeavours to assist a Customer in the event of there being a necessity to make a claim against such insurance.
- 14.18. Intellectual Property Rights
- 14.18.1. The Customer is granted no rights in Excel's Intellectual Property Rights.

14.19. Limitation of liability

14.19.1. Excel's maximum liability to the Customer for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:

14.19.1.1. the sum for which Excel carries comprehensive insurance cover (subject to Excel actually recovering such sum from the insurer); or

14.19.1.2. a sum equivalent to the aggregate of payments made to Excel by the Customer.

14.19.2. In no event shall Excel be liable to the Customer for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred by the Customer solely or substantially because Excel's obligation to deliver Services has been terminated.

14.19.3. All liability that is not expressly assumed by Excel by these terms and conditions is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause "Excel" includes its employees, and sub-contractors. The Customer acknowledges that Excel employees, and sub-contractors shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these terms and conditions shall exclude or limit liability for fraudulent misrepresentation.

14.19.4. Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of Services to be delivered to the Customer and to the Athlete and the respective commercial and negotiating positions thereof.

14.20. Excel warrants that:-

14.20.1. all Services will be performed by adequately qualified and trained personnel with due care and diligence and in accordance with the Program Information.

- 14.20.2. The warranty set out in 14.20.1 is Excel's sole warranty with respect to the Services and any other warranties, terms and conditions express or implied, including any warranties, terms or conditions of satisfactory quality or fitness for any particular purpose are expressly excluded to the maximum extent permitted by law.
- 14.21. Both parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of these terms and conditions.
- 14.22. In these terms and conditions unless the context otherwise requires:
- 14.22.1. words importing any gender include every gender;
  - 14.22.2. words importing the singular number include the plural number and vice versa;
  - 14.22.3. words importing persons include firms, companies and corporations and vice versa;
  - 14.22.4. references to numbered clauses and parts are references to the relevant clause or parts of these terms and conditions;
  - 14.22.5. the headings to the clauses, parts and paragraphs of these terms and conditions contained in the Index will not affect the interpretation thereof;
  - 14.22.6. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
  - 14.22.7. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - 14.22.8. These terms and conditions shall not create or novate, constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in these terms and conditions.
- 14.23. All notices shall be in writing and may be in the form of a letter, an email or by posting and shall be deemed to have been duly given:

- 14.23.1. when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 14.23.2. when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 14.23.3. on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid, in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party and in default the addresses appearing in any information exchanged between the parties.

14.24. Force Majeure

- 14.24.1. This condition and its sub-clauses shall apply in any case where Excel is incapable (in the reasonable opinion of Excel) of delivering any element of its services to Athletes as a direct or indirect consequence of Governmental (whether National, Departmental, Regional or Local) intervention or as a direct or indirect consequence of the occurrence of some natural event.
- 14.24.2. In such event:-
  - 14.24.2.1. Excel shall use its best endeavours to deliver its Services with as little disruption to Athletes as reasonably possible;
  - 14.24.2.2. If Excel has to cancel any weeks of delivery of its Services to any Athletes it shall change (and the Athlete shall accept) such weeks to another week or weeks up to but not after 30<sup>th</sup> April in the calendar year in which such change is effected;
  - 14.24.2.3. If Excel decides (acting reasonably) that no further weeks can be delivered to Athletes the charges payable by Athletes will be reduced so that they shall be obliged to pay (at the Flexible Fee rates, not at the weekly rate for the Full Time program) for no more than the weeks for which Excel shall have delivered its Services to any of such Athletes;

- 14.25. If any of these terms and conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall to the extent required;
- 14.25.1. be severed from these terms and conditions and rendered ineffective as far as possible without modifying the remaining terms and conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of the contract between Excel and its Customer; and
- 14.25.2. be substituted by a provision deemed effective and enforceable to the extent of the laws of England and Wales then current.
- 14.26. No delay, neglect or forbearance on the part of either party in enforcing against the other party any provisions of the contract or these terms and conditions shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these terms and conditions. No right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.
- 14.27. Excel and the Customer agree that the contract between them need not be physically signed by either of them to become binding on that party.
- 14.28. These terms and conditions shall apply to such contract; and that the contract shall become binding on the parties once the Commitment Fee shall have been paid to Excel.
- 14.29. These terms and conditions are specified only in the English language. If there is any conflict in the meaning between the English language version of these terms and conditions and any version or translation of it in any other language, the English language version shall prevail.
- 14.30. The parties confirm their intent save where otherwise expressly provided not to confer any rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply thereto.
- 14.31. These terms and conditions and any dispute resolutions referred to below shall be governed by and construed in accordance with English law.
- 14.32. Where there is a dispute concerning any of these terms and conditions:-

- 14.32.1. the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. A representative from Excel shall discuss the issue with the Customer and try to meet in person or communicate by telephone within five Working Days of the date of the written notification of the matter in dispute in order to seek to reach an agreement about the matter and any corrective action to be taken by the respective parties.
- 14.32.2. If the Customer or Excel is not satisfied with the outcome following that meeting either party may (with the assistance of the Centre for Alternative Dispute Resolution) seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution ('ADR') procedure acceptable to both parties before pursuing any other remedies available to them. If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, the matter shall be settled in accordance with the procedure in this clause.
- 14.32.3. While the dispute resolution procedure above is in progress and an invoice has been raised by Excel the amount of the invoice shall be paid into an interest bearing deposit account to be held in the names of both or all relevant parties at a clearing bank and such payment shall be a good discharge of the party's payment obligations under the contract. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.
- 14.33. The policies adopted by Excel from time to time and published on its website [www.excelraceacademy.co.uk](http://www.excelraceacademy.co.uk) are deemed to be incorporated to these terms and conditions. Excel reserves the right to terminate the contract in the event of continued breach of any of the provisions of any such policies.

