

**1. Definitions**

- 1.1 "Seller" means Industrial Athletic Limited, its successors and assigns or any person acting on behalf of and with the authority of Industrial Athletic Limited.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.
- 1.3 "Products" means all Products or Services supplied by the Seller to the Customer, at the Customer's request, from time to time (where the context so permits the terms 'Products' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable for the Products as agreed between the Seller and the Customer in accordance with clause 4 below.
- 1.5 "Site" means the address nominated by the Customer to which the Products are to be supplied by the Seller.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Products, or Services, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Change in Control**

- 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

**4. Price and Payment**

- 4.1 At the Seller's sole discretion, the Price shall be either:
  - (a) as indicated on invoices provided by the Seller to the Customer in respect of Products supplied; or
  - (b) the Price as at the date of Delivery according to the Seller's current price list/labour rates, which are subject to change without notice; or
  - (c) the Seller's quoted Price (subject to clause (b)) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within the specific timeframe allowed at the time of quoting.
- 4.2 The Seller reserves the right to change the Price:
  - (a) if a variation to the Products which are to be supplied (including any applicable designs, plans and/or specifications) is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, obscured site defects, existing construction or equipment faults, delays in installation of other products and services, approvals, consents and other paperwork by local authorities, availability of Products, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
  - (c) in the event of increases to the Seller in the cost of labour or materials, the event of storage costs, or fluctuations in currency exchange rates, which are beyond the Seller's control.
- 4.3 At the Seller's sole discretion, a non-refundable deposit may be required prior to Delivery.
- 4.4 Time for payment for the Products being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
  - (a) as laid out in a Quote provided by the Seller to the Customer
  - (b) on Delivery;
  - (c) by way of instalments/progress payments in accordance with the Seller's payment schedule;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is twenty (20) days following the end of the month of any invoice given to the Customer by the Seller.
- 4.5 In the event of delivery delays caused by the discovery of hidden or unidentifiable difficulties (including, but not limited to, obscured site defects, existing construction or equipment faults, delays in installation of other products and services, approvals, consents and other paperwork by local authorities, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) payment will be required as per the original agreement. Additional costs will be invoiced separately on a 7 (seven) day invoice basis.
- 4.6 Payment may be made by cash, cheque, credit card, electronic/online banking, or by any other method as agreed between the Customer and the Seller. Payment is not deemed to have been received until funds are cleared by the Seller's bank.
- 4.7 Unless otherwise stated all prices are given in New Zealand Dollars and do not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any New Zealand GST the Seller must pay for any supply of Products by the Seller under this or any other agreement in accordance with New Zealand tax law. The Customer must pay New Zealand GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**5. Delivery and Installation**

- 5.1 Delivery of the Products ("Delivery") is taken to occur at the time that:
  - (a) the Customer, or the Customer's nominated carrier, takes possession of the Products at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Products to the Site, even if the Customer is not present.

- 5.2 The costs of Delivery are not included in the Price and will be advised in writing at the time the Customer places the order. Where there is a variance on any order placed the Seller reserves the right to adjust the costs of Delivery accordingly.
- 5.3 The Seller may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 All deliveries must be checked and signed for immediately upon delivery. Any discrepancies and damages should be immediately noted. Undocumented damage and loss are at the Customer's expense
- 5.5 The Customer acknowledges that any time specified by the Seller for Delivery is an estimate only and the Seller will not be liable for any loss or damage incurred by the Customer as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Products to be supplied at the time and place as was arranged between both parties. In the event that the Seller is unable to supply the Products as agreed solely due to any action or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for re-supplying the Products at a later time and date. The Customer may elect to allow held products to be on-sold, and await the next shipment, for which estimated dates will be made available at the earliest possibility. The Customer may elect to request Products be stored by Industrial Athletic at the Customer's cost.
- 5.6 If the Customer fails or refuses to take delivery of any Products at an agreed Delivery time, Industrial Athletic may (without limiting any other right Industrial Athletic may have) charge the Customer for costs incurred including but not limited to waiting time, storage and transportation charges.
- 5.7 The Customer warrants that any structures (including the foundations) to which the Products are to be affixed are able to withstand the installation of the Products and are of suitable capacity to handle the Products once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that the Seller, its employees or the Seller's sub-contractors reasonably form the opinion that the Site is not safe for the installation of Products to proceed then the Seller shall be entitled to delay installation of the Products until the Seller is satisfied that it is safe for the installation to proceed. Any costs incurred as a result of these delays will be the responsibility of the Customer.

## **6. Customer's Responsibilities**

- 6.1 It shall be the Customer's responsibility to ensure that, prior to installation, the site is free and clear of all other installers.
- 6.2 The Customer shall provide the Seller with clear and free access to the Site (including access to all necessary services and amenities) at all times and in all weather conditions to enable them to supply the Products. The Seller shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas), unless due to the negligence of the Seller. If the Seller is found to have damaged the Site (or property thereon) by not taking reasonable care, and the damage is reasonably foreseeable, the Seller will pay the costs of repairing the damage.
- 6.3 Prior to Delivery the Customer must advise the Seller of the precise location of all services on the Site and clearly mark the same. The mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the Site. Whilst the Seller will take all care to avoid damage to any services the Customer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this clause 6.3.
- 6.4 General and on-going maintenance (such as cleaning, physical/visual inspections and performance monitoring) are considered the responsibility of the Customer and are not, unless otherwise stated in writing by the Seller, included in this agreement.

## **7. Compliance with Laws**

- 7.1 The Customer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 7.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required.
- 7.3 The Seller:
- (a) carries relevant insurance policies and assumes all responsibility for loss, damage or failure of the Products during shipping, supply, installation and commissioning;
  - (b) procure all components of the Products as per their quotation, and ensure all components are new and meet relevant New Zealand Standards. The Products are designed to meet basic requirements for quality installation and to meet or exceed what is deemed as "industry best practice";
  - (c) will employ suitably qualified personnel to install the Products to meet all relevant New Zealand and local government regulations and standards.

## **8. Risk**

- 8.1 If the Seller retains ownership of the Products nonetheless, all risk for the Products passes to the Customer on Delivery.
- 8.2 If any of the Products are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Customer requests the Seller to leave Products outside the Seller's premises for collection, or deliver the Products to an unattended location, such Products shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges that the Seller is only responsible for parts that are replaced by the Seller, and in the event that other components/goods, subsequently fail, the Customer agrees to indemnify the Seller against any loss or damage to the goods, or caused by the goods, or any part thereof howsoever arising.

8.5 Where the Customer has supplied materials for the Seller to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in those materials. The Seller shall not be responsible for any defects in the materials, any loss or damage to the Services (or any part thereof), howsoever arising from the use of materials supplied by the Customer.

**9. Title**

9.1 The Seller and the Customer agree that the Customer's obligations to the Seller under this agreement shall not cease (and ownership of the Products shall not pass) until:

- (a) the Customer has paid the Seller all amounts owing to the Seller; and
- (b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.

9.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Products, and this agreement, shall continue.

9.3 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 10.1:

- (a) the Customer is only a bailee of the Products and must return the Products to the Seller on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (d) the Customer should not convert or process the Products or intermix them with other Products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
- (e) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Products are kept and recover possession of the Products.
- (f) the Seller may recover possession of any Products in transit whether or not Delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of the Seller.
- (h) the Seller may commence proceedings to recover the Price notwithstanding that ownership of the Products has not passed to the Customer.

**10. Personal Property Securities Act 1999 ("PPSA")**

10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Products previously supplied (if any) and that will be supplied in the future by the Seller to the Customer.

10.2 The Customer undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register a financing change statement or a change demand without the prior written consent of the Seller; and
- (d) immediately advise the Seller of any material change in its business practices of selling the Products which would result in a change in the nature of proceeds derived from such sales.

10.3 The Seller and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

10.4 The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.

10.5 Unless otherwise agreed to in writing by the Seller, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.

10.6 The Customer shall unconditionally ratify any actions taken by the Seller under clauses 11.1 to 11.5.

**11. Security and Charge**

11.1 In consideration of the Seller agreeing to supply Products, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

11.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

11.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

**12. Customer's Disclaimer**

12.1 The Customer hereby disclaims any right to rescind or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Products are bought relying solely upon the Customer's skill and judgment.

**13. Defects and Warranties**

- 13.1 The Customer shall inspect the Products on Delivery and shall within three (3) days (time being of the essence) notify the Seller of any alleged defect, discrepancy in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Products within a reasonable time following such notification if the Customer believes the Products are defective in any way. If the Customer shall fail to comply with these provisions the Products shall be presumed to be free from any defect or damage. For defective Products, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Products or repairing the Products.
- 13.2 Products will not be accepted for return other than in accordance with 13.1 above.
- 13.3 Subject to the conditions of warranty set out in clause 13.4, the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller the specific periods stated in 13.9, of the date of Delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 13.4 The conditions applicable to the warranty given by clause 13.3 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the Customer to provide proper maintenance or storage; or
    - (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Seller; or
    - (iii) any use other than for any application specified on a quote or order form; or
    - (iv) the continued use after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (v) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease, and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
  - (c) in respect of all claims the Seller shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 13.5 **Manufacturer's Warranty.** For Products not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Products (the conditions applicable to which are contained on the Supplier website. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Products.
- 13.6 The conditions applicable to the warranty given on Products supplied by the Seller may be contained on a Supplier website.
- 13.7 In the case of second-hand Products, the Customer acknowledges that it has had full opportunity to inspect the same and that it accepts the same with all faults and that no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Seller shall not be responsible for any loss or damage to the Products, or caused by the Products, or any part thereof however arising.
- 13.8 **Barbells.** Specific to each Barbell. Warranty against bending does not cover any bar which has been damaged due to negligent or faulty use, alteration, maintenance, storage or handling by the user. Negligent or faulty use includes abusive dropping of the bar (i.e., dropping the bar on a box, bench, spotter arms or pins in a power rack, excessive dropping with insufficient or damaged bumpers, excessive dropping with iron plates, excessive dropping on concrete or similar surfaces, and similar usage). Any specific issues regarding a Industrial Athletic product with which a customer is not satisfied will be reviewed on a case-by-case basis. We have found that most problems with barbells are related to abusive, use rather than manufacturing or materials, issues. Warranty does not apply to barbells that need maintenance.\*
- 13.9 **General Warranty Specific Period**
- (a) Frames  
10 Year Warranty
  - (b) Structural Welds  
10 Year Warranty
  - (c) Bronze Bushings  
5 Year Warranty
  - (d) Cables, Guide Rods, Sealed Roller Bearings  
5 Year Warranty
  - (e) Sewn Items  
3 Year Warranty
  - (f) Medicine balls  
2 Year Warranty
  - (g) Slam Balls  
1 Year Warranty
  - (h) Upholstery and Grips  
90 Day Warranty
  - (i) Wheels  
90 Day Warranty
  - (j) Wood Items  
90 Day Warranty
  - (k) Climbing Ropes  
90 Day Warranty
- 13.10 The warranty applies only to the original purchaser of the product for so long as the original purchaser owns the product, and is non-transferable.

- 13.11 FOR ALL WARRANTIES \* Warranty may be voided for any product which has been damaged due to negligent or faulty use, alteration, maintenance, storage or handling by the user. Any specific issues regarding a Rogue product with which a customer is not satisfied will be reviewed on a case-by-case basis.

**14. Consumer Guarantees Act 1993**

- 14.1 If the Customer is acquiring Products for the purposes of a trade or business, the Customer acknowledges that the provisions of the Consumer Guarantees Act 1993 does not apply to the supply of Products by the Seller to the Customer.

**15. Intellectual Property**

- 15.1 Where the Seller has designed, drawn or developed Products for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller.
- 15.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 15.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Products which the Seller has created for the Customer.
- 15.4 The Customer agrees that the design of any Product created by Industrial Athletic, whether using a Customer's specific specifications or not, belong solely to Industrial Athletic, and shall not be copied, reproduced, reverse engineered, modified or otherwise exploited in any way without the express written permission of the Seller.

**16. Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 16.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Products to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 16.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent or bankrupt, convene a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

**17. Cancellation**

- 17.1 The Seller may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Products have been delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any monies paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.2 In the event that the Customer cancels Delivery the Customer shall be liable for any and all losses incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits). Cancellation of orders for Products made to the Customer's specifications, or for non-stock list items, will definitely not be accepted once an order has been placed.

**18. Privacy Act 1993**

- 18.1 The Customer authorises the Seller or the Seller's agent to:
- (a) access, collect, retain and use any information about the Customer;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Customer's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Customer.
  - (b) disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Customer.
- 18.2 Where the Customer is an individual the authorities under clause 19.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 18.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.

**19. Construction Contracts Act 2002**

- 19.1 The Customer hereby expressly acknowledges that:
- (a) the Seller has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the Customer, and:
    - (i) the payment is not paid in full by the due date for payment and no payment schedule has been given by the Customer; or
    - (ii) a scheduled amount stated in a payment schedule issued by the Customer in relation to the payment claim is not paid in full by the due date for its payment; or
    - (iii) the Customer has not complied with an adjudicator's notice that the Customer must pay an amount to the Seller by a particular date; and
    - (iv) the Seller has given written notice to the Customer of its intention to suspend the carrying out of construction work under the construction contract.
  - (b) if the Seller suspends work, it:
    - (i) is not in breach of contract; and
    - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered by the Customer or by any person claiming through the Customer; and
    - (iii) is entitled to an extension of time to complete the contract; and
    - (iv) keeps its rights under the contract, including the right to terminate the contract; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
  - (c) if the Seller exercises the right to suspend work, the exercise of that right does not:
    - (i) affect any rights that would otherwise have been available to the Seller under the Contractual Remedies Act 1979; or
    - (ii) enable the Customer to exercise any rights that may otherwise have been available to the Customer under that Act as a direct consequence of the Seller suspending work under this provision.

**20. Website Specific Terms and Conditions for [www.industrialathletic.com](http://www.industrialathletic.com)**

**20.1 Product Descriptions and Pricing Information**

- (a) All website Prices are listed in New Zealand Dollars and are inclusive of New Zealand GST.
- (b) In the event a product is listed with incorrect information, or at an incorrect Price, due to an error in Pricing or Product information received from our Suppliers, the Seller shall have the right to refuse or cancel any orders placed for the Product with incorrect information or an incorrect Price.
- (c) The Seller reserves the right to cancel any order at any time prior to the dispatch of that order, whether or not your order has been confirmed and/or your payment has been received.
- (d) If your order is cancelled and the Seller has already received your payment, a credit will be processed to your nominated bank account within 7 (seven) days of bank account information being provided by the Customer. The Seller will contact the Customer on the email address provided with the Customer's order to advise of the cancellation and to request the bank account number. It is the responsibility of the Customer to provide their bank account information in a timely manner.
- (e) If the Product/s do not match the description on the Seller's website, the Customer should inform the Seller immediately so that the Seller may take the appropriate action.
- (f) The Seller reserves the right to change the content of the website at any time and without prior notice.

**20.2 Order Acceptance Policy**

- (a) The Customer's receipt of an electronic or other form of order confirmation from the Seller does not signify the Seller's acceptance of the order, nor does it constitute confirmation of the Seller's offer to sell. Order acceptance only occurs when the Product/s are dispatched to the Customer.
- (b) The Seller reserves the right at any time after the receipt of an order, to accept or decline an order for any reason.
- (c) The Seller reserves the right at any time after receipt of your order, without prior notice to you, to supply less than the quantity ordered of any Product.
- (d) The Seller may require additional verifications or information before accepting any order.

**20.3 Payment**

- (a) Payment is accepted in the form of Visa, Mastercard or bank deposit. No other form of payment is accepted for website orders.

**20.4 Dispatch Warehouses and Order Delivery**

- (a) Products will be freighted from our third-party logistics warehouse in Auckland, depending on availability. Pick-ups are not available from our Auckland warehouse unless by prior written agreement with the Seller.
- (b) Any quotations of delivery times by the Seller are made in good faith but are estimates only. The Seller shall not be bound by such quotation.
  - (i) Orders confirmed and paid for prior to 1:00pm on a normal business day will aim to be dispatched on the same business day.
  - (ii) Orders confirmed and paid for after 1:00pm on a normal business day, or on any weekend or New Zealand public holiday, will be dispatched on the next normal business day.
  - (iii) Paid for means either by credit card using the Sellers real time payment processing portal, or when funds deposited to the Sellers bank account are cleared by the Sellers bank.
  - (iv) Delivery of fitness equipment is estimated between two and four normal business days. Delivery to rural addresses is estimated to take an additional one to three normal business days. Where delays are anticipated the Seller will endeavour to advise the Customer via the email address provided at the time of order.
  - (v) Products are delivered securely to the Customer's physical address as provided at the time of order during normal business hours on normal business days, by either courier or freight transport. Delivery is made only to ground level, and requires easy access by delivery personnel.

- (vi) Additional costs may be incurred for deliveries requiring special instruction, including where delivery outside of standard times is required. These costs will be advised to the Customer by the Seller, in advance and must be paid prior to dispatch. Special instruction must be provided at the time of ordering.
- (vii) All deliveries must be inspected for exterior damage and for completeness prior to signing the delivery docket. Any damage or incomplete consignment not noted on the delivery docket becomes the sole responsibility of the Customer. No liability for Product/s damaged or lost in transit shall be accepted by the Seller. Details of any claim for damage or incomplete consignment should be made immediately to both the Seller and the Carrier so that a remedy can be provided. Claims for damage should be advised to the Seller via email at [team@industrialathletic.com](mailto:team@industrialathletic.com).
- (viii) Assembly of Product/s is not included.

#### 20.5 Return of Products

- (a) Products cannot be returned if the Customer simply changes their mind after 14 days from purchase date.
- (b) Products can only be returned under our "100 Day Return Policy" rules:
  - (i) Products must have been purchased online from the Sellers website – [www.industrialathletic.com](http://www.industrialathletic.com)
  - (ii) All Products returned must be in as new condition with all packaging (internal and external), accessories and manuals complete and in as new condition, and accompanied by the original sales invoice, from your [www.industrialathletic.com](http://www.industrialathletic.com) account.
  - (iii) The Customer must notify the Seller through the Seller's online returns section of the [www.industrialathletic.com](http://www.industrialathletic.com) website, within 100 days from the date of purchase specified on the relevant invoice. The Seller will email the Customer returns document with all the necessary instructions.
  - (iv) The Customer must package the Product/s in a manner that will prevent damage to the Product/s and return the package to the address supplied. Costs of returning Product/s are at the Customers expense.
  - (v) Product/s returned without following the steps listed in 20.4(b)(i) through (iv) will not be accepted.
  - (vi) At the Seller's sole discretion Product/s will either be replaced or a store credit provided to the value of the Product/s, excluding all freight costs.
  - (vii) The Industrial Athletic 100 Day Return Policy does not apply to faulty or damaged Products. Faulty or damaged Products come under clause 13, Defects and Warranties.
  - (viii) Sale and/or clearance Products are excluded from the Industrial Athletic 100 Day Return Policy. Sale and/or clearance Products sales are final, except in circumstances where your statutory rights are affected.

#### 20.6 Warranty

- (a) Full Product Warranty terms and conditions are detailed in section 13 Industrial Athletic Full Terms of Trade.
- (b) Any Product found to be faulty within its warranty period will be repaired or exchanged at the expense of the Seller. Individual warranty terms are detailed in the description of each Product on the Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com))
- (c) Original Product return costs will be at the expense of the Customer. Replacement or repaired return freight costs will be at the expense of the Seller.
- (d) The Seller will endeavour to resolve any issues as quickly as possible. In many cases any action required can be instructed via email. The Customer should contact the Seller at [team@industrialathletic.com](mailto:team@industrialathletic.com) in the first instance.
- (e) Products outside the warranty period are still able to be assessed for repair by the Seller, however all repair and freight costs will be the sole responsibility of the Customer.
- (f) The Seller will always meet their obligations under the Consumer Guarantees Act 1993 ("the Act").
- (g) Unless otherwise stated in writing, warranties apply to use in a "normal" domestic environment only.
- (h) All warranty claims must be accompanied by an original invoice.
- (i) The Seller warranty is only provided to the original Customer and is not transferable to any other party.
- (j) To make a warranty claim the Customer should contact the Seller via email at [team@industrialathletic.com](mailto:team@industrialathletic.com) in the first instance, and further information will be requested, and instruction provided.

#### 20.7 Assumption of Responsibility

- (a) The Customer understands that exercise may be a risk to physical health and safety if not undertaken correctly.
- (b) The Customer understands that it is the Sellers recommendation that the Customer consult a physician or sports professional prior to using any equipment or engaging in any exercise programme or activity.
- (c) The Seller shall not be responsible for damages arising from the Customers recklessness, negligence, misuse of exercise/fitness equipment, improper execution of generally acceptable exercise techniques, or for any damage or injury that occurs pursuant to any information received from the Seller on the internet, or by any other means now known or later developed.

#### 20.8 Copyright and Intellectual Property

- (a) Materials on the Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)) or any portion of it may not be reproduced, distributed, displayed, soled, leased, transmitted, have derivative works created from, adapted, translated, modified, reverse-engineered, disassembled, decompiled or otherwise exploited unless expressly permitted by the Seller in writing.
- (b) The trademarks, logos, Product and Service marks ("Marks") displayed on the Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)) are the property of Industrial Athletic Limited, or other third-parties and are subject to, but not limited to the Copyright Act 1994 (New Zealand) and international copyrights, trademarks or other intellectual property rights and laws. Use or re-use of these Marks is strictly prohibited without the Seller's prior written consent, or the written consent of such third-party that owns the Mark.

#### 20.9 Third-Party Websites

- (a) The Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)) may contain hyperlinks to websites operated by third parties. The Customer accepts that the Seller has no control over, and is not responsible for, any material contained on any third-party website. Links to third party websites are provided for the Customers convenience, and do not constitute an endorsement of that third-party, or any products or services referred to on any third-party website unless expressly stated otherwise in writing by the Seller.

(b) Links to the Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)) require the Seller's prior written consent. No third-party may link in a way that frames the Sellers website or that tends to imply that another website is associated with the Sellers website.

#### 20.10 Applicable Law

(a) The Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)) is intended to be accessed by New Zealand residents. The Seller makes no representations about the compliance of this website within the laws of any other country. Therefore, if a third-party access the Sellers website from outside of New Zealand it is done so at the sole risk of said third-party, and said third-party is responsible for complying with any laws where the website is accessed, or where information published or uploaded can be accessed.

#### 20.11 Privacy Policy

(a) The Seller will not pass on the Customers personal information to any other party without the Customers prior written permission. The Customers personal information will be used only for the purpose for which the Customer provided it to the Seller.

(b) Google Analytics for Display and Remarketing Advertising is used for past visitors to the Sellers website ([www.industrialathletic.com](http://www.industrialathletic.com)). If a Customer wishes to opt-out they can do so by visiting [www.tools.google.com/dlpage/gaoptout/](http://www.tools.google.com/dlpage/gaoptout/). If a Customer would like their account to be removed from the Sellers website, they can arrange so by contacting [admin@industrialathletic.com](mailto:admin@industrialathletic.com).

### 21. Installation Specific Terms and Conditions

#### 21.1 Delivery

(a) Unless otherwise arranged, all deliveries will be made via 3rd party freight company, and unloading will be the responsibility of the recipient

(b) Forklifts, and or unloading manpower, can be arranged at the customers expense

(c) Delivery will be required 2 days before the installation can begin

(d) Adequate storage will be available for delivery

(e) Back-order stock may be applicable for the order - full details can be obtained by emailing [team@industrialathletic.com](mailto:team@industrialathletic.com)

(f) All deliveries must be checked and signed for immediately upon delivery

(g) Any discrepancies should be immediately noted and reported to Industrial Athletic within 24 hours of receipt of delivery

(h) Photographic records should be made of any damaged items and reported to Industrial Athletic within 24 hours of receipt of delivery

(i) Undocumented damage and loss is the sole responsibility of the customer

(j) As per carrier terms and conditions, delivery times and dates cannot not be guaranteed

#### 21.2 Building Construction

Required building construction and materials to qualify for standard installation charges are:

(a) Solid Concrete floor - 125mm or more - Cured for at least 6 weeks

(b) Solid Concrete walls - 150mm or more - Cured for at least 6 weeks

(c) Additional time and materials may be required upon appraisal of construction and will be the financial responsibility of the customer

(d) Wooden, cavity, and suspended style flooring is not appropriate for Industrial Athletic products and will not be installed upon by Industrial Athletic, as the loading is too great.

#### 21.3 Preparation

All installation and access areas will be cleared of all construction materials, will not be used for storage, and cleaned as per Industrial Athletic standards and recommendations. All practicable steps will be taken to ensure that the site is safe and prepared for installation including:

(a) New buildings are complete of all construction

(b) All building/plumbing/electrical/plaster/painter etc contractors have completed all work, and are clear of the site

(c) Any and all floors are clear, swept and mopped clean

(d) The installation and access areas are not being used for storage of any kind

#### 21.4 Scheduling

Extra time cost will be calculated at the quoted hourly rate. Materials costs will be the customers responsibility. Causes of increased costs can include but are not limited to:

(a) Incomplete site preparation

(b) Other contractors

(c) Building construction inadequacies/or issues.

#### 21.5 Prior to Travel

The customer agrees to bear any costs incurred due to delays caused by action, or inaction, of the customer. The costs include but are not limited to the above conditions,,and may be inclusive of, but not limited to:

(a) Extra accommodation for installation staff

(b) Extra staffing to address increased workload or meet installation deadlines

(c) Delays causing extra work hours, including lost opportunity

(d) Incidentals and consumables.

#### 21.6 Health and Safety

All practicable steps must be taken by the customer to ensure the site is free from hazards that may cause harm to any Industrial Athletic staff or contractors. Industrial Athletic staff and contractors will supply their own personal protective equipment, and will comply with our obligations under the Health and Safety Act 2015.

The customer is responsible for ensuring the site has:

(a) A safe, secure, cordoned area to complete all work

(b) Access restricted to Industrial Athletic workers or Industrial Athletic authorised parties only at all times

(c) Electricity supply for power tools



- (d) Electricity isolated to work area, if necessary
- (e) Adequate lighting is available at all times
- (f) All persons on or near the site have been notified the installation and access areas are classed as hazardous areas

**21.7 Payment**

- (a) Custom fabrications require 100% payment in full before manufacturing can begin
- (b) All electronic machines/equipment such as bikes, rowers, skiers, treadmills, require 100% payment in full prior to shipping
- (c) All other invoice payments are required on delivery
- (d) Back ordered stock will be invoiced upon dispatch

**22. Liability**

**22.1 Limitation of Liability**

**22.2** To the full extent permitted by the laws of New Zealand, the Seller shall not in any event be liable for any indirect, special, incidental or consequential damages including but not limited to loss of use, loss of data, loss of business or profits. If Products or materials are purchased from the Seller for business purposes, as defined by the Act, the provisions of the Act shall not apply to the Products or materials so purchased.

**23. General**

- 23.1** The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2** These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 23.3** The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 23.4** The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5** The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.6** The Customer agrees that the Seller may amend these terms and conditions at any time. If the Seller makes a change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Seller to supply Products to the Customer.
- 23.7** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8** The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.