

General Terms and Conditions ClubJoy

(version 2016/1)

1. Identity entrepreneur

ClubJoy B.V., with registered office at the Linker Rottekade 320, 3031 WB Rotterdam (the Netherlands), hereinafter referred to as: ClubJoy.

2. Applicability

- a) These General Terms and Conditions are applicable to every business proposals made by ClubJoy, as well as to all agreements, either oral or written (licenses included), closed between ClubJoy and its contractor (hereinafter referred to as: the licensee).
- b) Every legal relationship between ClubJoy and its contracting party or other party shall be governed by these General Terms and Conditions, unless the parties have explicitly deviated from these General Terms and Conditions in writing.
- c) These General Terms and Conditions are filed at the office of the Chamber of Commerce and are registered under Chamber of Commerce number: 320 95 644.

3. If any term of these General Terms and Conditions is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability. All other terms hereof shall remain in full force and effect. In such event, the parties shall negotiate on replacing the invalid or unenforceable term by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.

4. Business proposals/ offers

- a) In the event the validity of any business proposal or offer is meant to be limited, or the proposal/offer is meant to be made under certain conditions, the validity and/ or the conditions applicable should explicitly be mentioned in the business proposal/offer.
- b) All business proposals or offers are non-binding on behalf of ClubJoy. ClubJoy reserves the right to revoke or amend the offer.
- c) Apparent errors or misprints and/or writing errors in the proposal or offer cannot bind ClubJoy in any way.

5. Products and services

- a) ClubJoy produces - and sells licenses on - a number of (group) fitness related programmes, which licensed programmes can be used in sports and fitness facilities. Besides (group) fitness workout programmes, ClubJoy has also developed management support modules on which a license can be obtained as well.
- b) Of each ClubJoy programme, a complete new group fitness routine will be made available for certified instructors quarterly. Certified Instructors can use the new routines in their group fitness classes at sports and fitness facilities.
- c) ClubJoy defines a certified instructor as:
 - an instructor who has attended the relevant ClubJoy instructor training course for the desired programme and has passed the "live" exam;
 - an instructor who has attended a training course or other type of education that has great similarities with the relevant ClubJoy instructor training course and which can be verified by presentation of a valid certificate.
- d) The ClubJoy workouts are designed by professional (freelance) trainers, who produce the workouts in accordance with proven scientific knowledge with respect to training techniques, training structure and coaching skills. New fitness trends are - if possible - taken into account during the production process.
- e) Besides the (group) fitness workouts, ClubJoy quarterly delivers an audio cd which contains suggested music that can be used during the fitness classes at fitness facilities. However, ClubJoy does not own the music rights (such as copyright and related rights) on these audio tracks. In other words, the licensee receives the audio cd from ClubJoy, but does obtain any music right on the selected audio tracks. ClubJoy pays contributions to music rights authorities (such as music labels, Stemra and Sena) for the legitimate use of the selected audio tracks. This very fact does not indemnify licensees from their own obligations to pay contributions to the appropriate music authorities (such as Buma/Stemra, Sena and other (international) sister organizations) for playing the music at their own sports facility. The above mentioned authorities charge sports and fitness facilities separately for playing music in their group fitness studio(s). The price rate for group fitness studios differs from the price rate for cafes and gym areas.

- f) Licensees will be granted access to the ClubJoy *Memberarea*. In this *Memberarea* a download is made available each quarter, which will lead to the latest ClubJoy masterclasses. This download is meant for instructors only and is developed for educational purposes. The latest ClubJoy workouts are also available in text format (outlines), which can be collected from the *Memberarea* as well.
- g) ClubJoy made several on- and offline promotion materials available for the promotion of the ClubJoy programmes. The offline promotional package for each programme consists of: one programme related banner, 100 threefold flyers and 100 free cards. ClubJoy delivers one offline promotional package to its licensees for each programme license that is purchased. Follow-up orders can be placed against payment. Online promotion materials can be downloaded from the ClubJoy *Memberarea* for the duration of the license agreement.
- h) Against payment of a fixed fee, ClubJoy can offer high-quality training courses for prospect instructors who wish to give (a) ClubJoy workout(s) at a fitness facility that is associated with ClubJoy. ClubJoy workouts should at all times be given by certified instructors as described in section c of this provision.
- i) Besides the regular basic instructor training, ClubJoy also organizes four annually continuing training days for instructors. These continuing training days can be divided in two quarterly days, which ClubJoy instructors can attend without additional costs, and two specialization days, in which instructors can participate against payment. ClubJoy strongly recommends licensees to send instructors to at least one quarterly day and one specialization day each year. It is advisable to include this as an employment condition in the labour agreement with the instructor.

5) The agreement

- a) ClubJoy can only be bound by a contract after its acceptance of the agreement by means of a signature. ClubJoy cannot be bound by any contract that is concluded with a person who's not authorized to represent ClubJoy in any legal relationship.
- b) Formalization of the license agreement only occurs after signing and returning the ClubJoy registration form to ClubJoy, on which the licensee has indicated which ClubJoy programme(s) / modules he wishes to purchase.
- c) The licensee has the right to cancel the license agreement within eight days after signing the agreement, unless ClubJoy has already delivered materials at the moment of cancellation. In such event cancellation is no longer possible.
- d) Licenses are issued for a minimum period of one year, with effect from the signing date of the registration form/license agreement. The license agreement can be terminated after expiry of the agreement (four quarters). Without termination, the license agreement will be renewed tacitly for a period of three months (one quarter). Termination of the license agreement is possible at the end of the term of the agreement and will have effect after observance of one full calendar month period of written notice (including e-mail messages).
- e) Besides the monthly costs for obtaining the desired license, the licensee is bound to purchase at least one quarterly package for each programme license obtained at the price of € 39,- per quarter. The quarterly package contains one audio cd and two launching posters for each license programme obtained.
- f) Materials made available to the licensee by ClubJoy are solely intended for the licensee's own professional use. The licensee obtains a non-exclusive and non-transferable right to use the materials made available by ClubJoy. Copying or disclosing ClubJoy material, or making ClubJoy material available to third parties (which includes: reselling, encumbering or commercially exploiting the material) is strictly prohibited. In the event of a violation of this provision, that can be clearly demonstrated, the licensee shall become liable to ClubJoy for an immediate payable penalty of € 2.500,- for each demonstrable violation, to be increased with € 250,- for each day on which the violation continues, without prejudice to any claim for damages and interests.

6. Prices and payment

- a) By signing the license agreement and returning it to ClubJoy, the licensee confirms the purchase of the indicated licenses for a minimum duration of one year, at the monthly fee (per fitness facility) as shown in the ClubJoy Price Catalogue. By signing the license agreement, the licensee confirms to have acknowledged the content of the ClubJoy Pricing Catalogue.
- b) The amounts charged by ClubJoy for services and costs are subject to value added tax (VAT). Unless stated otherwise, all prices are exclusive of VAT.

- c) All prices are subject to printing and typesetting errors. ClubJoy accepts no liability for printing and typesetting errors.
- d) ClubJoy reserves the right to change prices for its products and services annually.
- e) ClubJoy's invoices are due for payment within 14 days of the invoice date. Payment of the invoiced amount can be done by electronic bank transfer to the bank account indicated on the invoice, or by Direct Debit. Payments in a different manner than the aforementioned will not release the licensee from its payment obligation, unless explicitly stated otherwise in writing.
- f) In event of licensee's default in respect of payment, the licensee shall be liable for all extrajudicial costs incurred for the purpose of obtaining satisfaction. The extrajudicial costs include collection expenses, possibly plus VAT and legal interest calculated from the first due date.
- g) ClubJoy remains the right to suspend its obligation to deliver materials or services until payment has been effected in the event:
 - the licensee's delay of payment of a monthly invoice exceeds a period of one month after due date;
 - the licensee is in default of payment for an invoice regarding instructor training courses, promotion material or other placed orders.

In the event ClubJoy utilizes the right to suspend its delivery obligations, a notice shall be sent to the licensee. The suspension period shall last as long as the default in respect of payment continues to exist. Ordered materials shall be sent immediately as soon as the payment arrear has stopped to exist.

7. Shipment

- a) ClubJoy aspires to deliver ordered materials and products in the second month of each quarter. However, no rights can be derived from the aforementioned delivery period. Consequently, exceeding the delivery period cannot constitute any liability on behalf of ClubJoy.
- b) Purchased materials shall be delivered at the address provided by the licensee.
- c) The risk of damaged or missing materials lies with ClubJoy up to the moment when the licensee receives the materials. If such an event of damage or loss may occur, ClubJoy shall redeliver the purchased materials without any additional costs, unless it appears that the licensee has nevertheless received the first shipment undamaged. In such an event, ClubJoy is entitled to charge the licensee for the materials redelivered. ClubJoy shall always contact the licensee when such an event may occur.

8. Force Majeure

- a) If a party under the agreement is unable to meet its obligations as set forth in the agreement, due to an event that lies beyond its reasonable control, that party is temporarily relieved of its duties under the agreement. However, in case the Force Majeure event prevents compliance within a reasonable amount of time, the other party obtains the right to rescind the agreement with immediate effect by written notice.
- b) Circumstances to be considered as a case of Force Majeure on behalf of ClubJoy include all exceptional circumstances, which will suspend ClubJoy from its obligations under the agreement. In case of non-compliance on behalf of ClubJoy due to a Force Majeure event, ClubJoy is entitled either to rescind the agreement, or to suspend its obligations under the agreement until the Force Majeure event has ceased to exist. In such an event, the licensee is not entitled to invoke set-off. In case of permanent Force Majeure, ClubJoy will be dismissed of its contractual obligations with the licensee, without being obliged to pay any damages.
- c) Exceptional circumstances are defined as, but is not limited to: every situation which prevents ClubJoy from meeting its obligations under the contract, as a result of strike by ClubJoy employees or third parties (either organized or unorganized), fire, natural disaster, superfluous water, and Force Majeure on behalf of ClubJoy's suppliers (or previous suppliers in the supply chain).
- d) In the unfortunate event that a music label or other entitled party summons ClubJoy to remove an audio track from a ClubJoy programme, ClubJoy has the right to replace that programme by a programme that comes closest to the original programme.

9. Liability

- a) Everyone who participates in (pre-choreographed) fitness classes and trainings made possible by a given license by ClubJoy, must recognize that there is an inherent risk of injury when choosing to participate.

By offering such fitness classes or trainings, the licensee assumes full risk of any and all injuries or damages that participants may sustain while, or as a result of participating in any such (standardized group) fitness class. The licensee shall indemnify ClubJoy from any claim for damages by third parties, as a result of participating in any ClubJoy (group) fitness class. ClubJoy does not assume any liability or responsibility for sustained injuries or damages.

- b) ClubJoy's liability towards the licensee can only arise in case of an attributable failure on behalf of ClubJoy, to meet its obligations under the agreement, assuming that this attributable failure is the result of a failure to observe the care and expertise that may be expected from ClubJoy by the licensee at the moment of purchasing the license(s).
- c) ClubJoy cannot be held responsible for any possible damages, either direct or indirect, that may be suffered after consulting ClubJoy or after other services provided by ClubJoy or third parties called in by ClubJoy
- d) ClubJoy also excludes liability for any damages that may occur in the event that ClubJoy cannot perform its services on the agreed date.
- e) If ClubJoy can be held responsible for damages, its liability shall at all times be limited to a maximum equalling the amount of payment being made by its insurer in the occurring event. If in any event the insurer does not proceed to pay, or if the damages are not covered by the insurer, ClubJoy's liability is limited to the invoiced amount for the license(s) or service(s) where the harmful event has occurred.
- f) The licensee takes full responsibility for the professional supervision on participants of ClubJoy's group fitness classes.
- g) The licensee takes full responsibility for the correct use of the delivered materials and the proper use of the presented music, supplementary to the workout classes (including the purchase of the rights to play the music in public as referred to in Article 5, section e). ClubJoy cannot be held responsible for any claim or liability in this respect. The licensee shall indemnify ClubJoy from any claims by third parties regarding the improper use of the materials and the presented music.

10. Intellectual property

- a) ClubJoy reserves all rights, including intellectual property rights, relating to the delivered materials. The content of the delivered materials remains - without prejudice to existing intellectual property rights or other rights of third parties - inalienable property of ClubJoy.
Rights of third parties: music rights (such as copyright or related rights) which are connected with the tracks on the audio cd's delivered by ClubJoy. These inalienable rights belong to third parties. ClubJoy does not own these rights and pays contributions for the legit use of the music.
- b) The intellectual property rights on ClubJoy's trade name and brand names of the ClubJoy programmes and modules remain property of ClubJoy at all times. By purchasing a license, the licensee is permitted to use the ClubJoy brand names only for the duration of the license agreement. The licensee guarantees that the use of the ClubJoy brand names will not bring ClubJoy any harm.
- c) The licensee is bound to remove all manifestations of ClubJoy brand names in and around its facility (online and offline) with immediate effect, in the event the license agreement is terminated.
- d) It is strictly prohibited to offer ClubJoy workouts at fitness and sports facilities, with or without using the brand name, without having purchased the proper license for using the ClubJoy material (the music and the exercises).
- e) In the event of a clear violation of the preceding provision, or any other unwarranted infringement of ClubJoy's intellectual property rights by or on behalf of the licensee, the licensee shall become liable to ClubJoy for an immediate payable penalty of € 2.500,- for each demonstrable violation, to be increased with € 250,- for each day on which the violation continues, without prejudice to any claim for damages and interests.

11. Complaints, disputes and applicable law

- a) ClubJoy aspires to process complaints within fourteen days after receipt. If an incoming complaint requires a longer time to process, ClubJoy will contact the licensee within fourteen days after receiving the complaint filed by the licensee.
- b) Filing a complaint shall not suspend the obligations under the license agreement.
- c) ClubJoy will handle incoming complaints with the greatest possible care and will always endeavor to reach a fitting solution.

- d) In the unexpected event that a complaint results in a dispute, ClubJoy first and foremost endeavors to find an extralegal solution.
- e) If dispute settlement outside the scope of the regular judicial process should fail, the dispute shall be submitted to the competent court of Rotterdam (the Netherlands).
- f) These General Terms and Conditions, as well as any legal relationship with ClubJoy, shall exclusively be governed by Dutch law.
- g) Any complaint or claim shall expire after twelve months from the date of the incident to which the complaint/claim relates (or from the date the licensee became aware of the incident, or could - in all reasonableness have become aware of it).