

STRETCH -N- GROW LIMITED – TERMS OF BUSINESS

1. Definitions

1.1 In this Agreement, unless the context requires otherwise:

“**Agreement**” means these terms together with any Order accepted by us in writing; “**Attendee**” means any Child or Guardian who attends any Class; “**Child**” means any child who uses the Services or any part of them with your consent or as a result of your Order, whether or not the child is your child and whether or not you are the Child’s Guardian; “**Class**” means a physical fitness and health awareness class children; “**Guardian**” means you or any replacement carer for your Child that you nominate; “**Order**” means any booking or order for Services from us; “**Price**” means the price for the Services set out in the Order; “**Services**” means the provision of Classes or related services by us; “**Unacceptable Behaviour**” means being violent, aggressive or a danger or potential danger to himself or any other person; “**We / us / our**” refers to Stretch -n- Grow Limited, a company registered in England (no. 4812765) whose registered office is at 6 George Street, Alderley Edge, Cheshire SK9 7EJ; “**writing**” includes any written paper document, any fax and any email correspondence; “**You / Your**” refers to you, the person, company or other legal entity who orders Services from us or makes a Order.

1.2 In this Agreement, except where the context requires otherwise words denoting any gender include all genders and words denoting the singular include the plural and vice versa.

2. Orders and Cancellations

2.1 We may cancel any Class or course of Classes unless we have received payment for at least 10 Children to attend (but will refund any Price paid to those who had already placed an Order).

2.2 There will be no discount or refund for Classes at which your Child does not attend for any reason. However, we may at our discretion consent to transfer your Child’s place at any prebooked Classes to another Child on a permanent basis.

3. Performance

3.1 We aim to perform our Services to a high standard. Please contact us if you have any complaints or suggestions.

3.2 We will use reasonable endeavours to commence Classes and Services at any agreed or stated time but time is expressly not of the essence under this Agreement.

3.3 We reserve the right to vary the time, date or venue of a Class or to cancel a Class due to circumstances, but in such a situation we will refund to you the Price for that Class or offer you a credit for a future Class, at your option.

4. Personal Property and Belongings

4.1 All property and belongings of Attendees remain at all times the responsibility of the Attendees. We accept no responsibility or liability for any loss or damage, no matter how caused, to your property or belongings or those of Attendees.

5. Behaviour

5.1 You are expressly responsible for ensuring that your Attendees are sufficiently healthy, fit and medically capable to undertake any Classes or other Services. You are also responsible for ensuring that your Attendees comply with all reasonable instructions from the leader of the class.

5.2 You are responsible for the behaviour of your Attendees at Classes and during the provision of Services.

5.3 In the event that any Attendee is or appears in the opinion of the person performing the Services to be carrying out or attempting to carry out any Unacceptable Behaviour, then we or the person performing the Services may ask that Attendee to leave or may terminate the Agreement for that Order or may cease the performance of the Services even if they are not completed. In such circumstances, without prejudice to our other rights and remedies, you must still pay to us the full Price for the Order and we will have no responsibility or liability for any losses or costs to you or any Attendee for incomplete performance of the Services.

5.4 You accept responsibility and will indemnify us for any losses, costs, expenses or for damage to or loss of our (or the venue

owner’s) equipment, products or property caused or incited by you or any of your Attendees no matter how the damage is caused.

5.5 You acknowledge that you or the Guardian is responsible at all times for the safety and behaviour of your Child.

5.6 You are responsible for the suitability of premises at which private Services are performed and for any liability relating to the use of those premises.

6. Price and Payment

6.1 The Price for the Services is as set out in the Order.

6.2 You must pay for all Services in advance at the time of the Order. We may charge interest on any late payment at the rate of 3% above the base lending rate of Royal Bank of Scotland plc from time to time and / or may refuse to permit a Child to attend Classes until full payment has been received for that Child.

6.3 Unless agreed otherwise in writing, you must pay any unpaid parts of the Price to us within 21 days of the receipt by you of a proper invoice for the Services.

7. Warranties and Liability

7.1 We warrant that any Services will be performed by appropriately trained personnel using reasonable care and skill.

7.2 We agree to resolve free of charge any breach of the warranty above at our expense.

7.3 Our liability to you in respect of death or personal injury resulting from our negligence shall not be limited. Other than in those respects, our total liability to you shall not exceed the lesser of the Price or the money actually received from you for the Services in respect of which a claim has been made.

7.4 We shall have no liability to you for any indirect or consequential loss, damage or expense, loss of profits, goodwill, revenue, production, anticipated savings, use or contracts.

7.5 The exclusions and limitations of liability set out in these terms exclude and limit all of our liability to you for all matters arising in connection with this Agreement whether in contract, tort (including negligence), for breach of statutory duty or otherwise.

8. Situations Beyond Reasonable Control

8.1 Neither party shall be liable for any delay or failure to meet its obligations under this Agreement (other than a payment obligation) due to any actual cause or situation (or one which the party reasonably believes is imminent) outside its reasonable control, which it must notify to the other party as soon as possible.

9. Confidentiality

9.1 You and we will treat all information received from or created for each other marked “confidential” or reasonably obvious to be confidential as we would treat our own confidential information.

10. Miscellaneous

10.1 This Agreement applies to the exclusion of any other terms or subject to which the Order is made or purported to be made by you. No variation to these terms is binding unless agreed in writing between authorised representatives of you and us.

10.2 We may subcontract, assign or transfer this Agreement, our obligations or rights to a competent third party or associated company in whole or in part. You may not assign or transfer any of your rights or obligations without our written consent.

10.3 This Agreement set out the entire understanding of the parties with respect to their subject matter and replace any prior agreements or understandings or representations (unless fraudulent). All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.4 This Agreement does not confer benefit on any third party and excludes the Contracts (Rights of Third Parties) Act 1999.

10.5 If any provision of this Agreement is illegal, invalid or unenforceable, the validity or enforceability of any other provision of this Agreement shall not be affected.

10.6 This Agreement is governed by English Law and are subject to the exclusive jurisdiction of the English courts. © EXB Legal 2003