



learning through movement

## TERMS AND CONDITIONS

This website [www.funky.fitness](http://www.funky.fitness) (referred to as the “**Website**”) is owned and operated by Funky.Fitness (ABN: 38955624421) T/A Funky.Fitness (referred to as '**Funky.Fitness**', '**we**', '**our**', '**us**'). Visitors to the Website, include, but are not limited to customers, companies, businesses, government organisations, charities, institutions, persons and other entities that purchase products or related services from us (referred to as '**Customer**', '**you**' or '**your**') (collectively, the **Parties**). These Terms and Conditions (**Terms**) are between you and Funky.Fitness. These Terms apply to all sales made by us.

**These Terms form the agreement under which we will supply products and related services to you. Please read these Terms carefully.** If you have any questions, please contact us using the contact information below, before you continue to use the Website or purchase a product or related services from us. By continuing to browse, shop, purchase, and view content on the Website, you indicate that you have had sufficient opportunity to access these Terms and contact us, that you have read, accepted and will comply with these Terms, and that you are 18 years or older, or have the consent of a legal guardian who is 18 years or older. You must not order products or services from us if you are under 18 years of age or do not have the consent of a legal guardian who is 18 years or older. If you do not agree to these Terms, you should not purchase from us or continue to access or use this Website.

### 1. Copyright and Intellectual Property Rights

The trademarks, names, logos and service marks (collectively “**Trademarks**”) displayed on this Website are registered and unregistered trademarks of Funky.Fitness.

Our Website and products contain material which is owned by or licensed to us and is protected by Australian and international laws, including but not limited to the text, images, logos, buttons, audio, video, software, content design, trademarks, trade names, graphics, appearance, layout and look of our Website and products (“**Materials**”). We own the intellectual property rights including copyright which subsists in all creative and literary works displayed on the Website and incorporated into our Materials unless specified and credited.

You agree that, as between you and us, we own all intellectual property rights in the Website, business, products and branding, and that nothing in these Terms constitutes a transfer of any intellectual property rights. Your use of the Website does not grant you a licence to, or act as a right to, use any of the intellectual property, whether registered or unregistered, displayed on the Website without prior written permission of Funky.Fitness or the owner.

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You must not breach any copyright or intellectual property rights connected with the Website. This includes but is not limited to:

- (a) altering or modifying any of the code or the material on the Website;
- (b) causing any of the material on the Website to be framed or embedded in another Website;
- (c) creating derivative works from the content of the Website; or
- (d) using the Website for commercial purposes.

You are prohibited from transmitting, broadcasting, editing, adapting, or making use of any intellectual property, Trademarks, logos or copyright material without the expressed written permission of Funky.Fitness.

## 2. Products and Orders

- (a) You may order from us as set out on the Website. We may at our discretion accept or reject an order depending on factors including availability of products and our ability to validate payment for the products.
- (b) It is your responsibility to check the order details, including product and pricing, before you complete your order on the Website.
- (c) We may provide you with order details, which may include an order number, an order ID, the shipping and billing addresses and a description of what was ordered, when you order and make your first or one-off payment (as applicable) on the Website and that payment has been validated.
- (d) A binding agreement comes into existence between you and us once we have given you an order number. No changes to these Terms will be effective unless we both agree to the changes in writing.
- (e) You cannot cancel your order once it has been despatched.
- (f) Please be aware that some of the products sold through the Website may not be suitable for children under a certain age, as specified by the manufacturer on the product or its packaging (**Age Limit**). Use of such products by children under the Age Limit is not advised.

## 3. Price and Payment

- (a) You agree to pay the purchase price specified on the Website, plus any applicable delivery and insurance charges based on the delivery options selected by you. All amounts are stated in Australian dollars within Australia. All purchase prices include Australian GST (where applicable). Any delivery and insurance charges will be separately shown. For purchases prices applicable outside Australia are stated in US\$ currency.
- (b) You must pay for the product by one of the methods set out on the Website. Your payment will be processed upon receipt of your order. Payment for goods purchased is not final until funds have cleared. This means that goods or services will not be provided until monies have been cleared by the relevant financial institutions, processed and approved by all parties concerned and all financial entities are satisfied that fraud, deceptive, or misleading conduct has not been carried out, and the full purchase amount is received by Funky.Fitness. If your payment is not able to be successfully processed then your order may be cancelled.

## 4. Availability and Cancellation

- (a) All purchases made with us are subject to availability. We do our best to keep in stock most products that are advertised by us, and to keep the Website up to date with availability of products.

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(b) If there is a considerable delay in dispatching your order, or if for any reason we cannot supply a product you have ordered, we will contact you using the contact details provided by you when you placed the order. You can choose a refund, store credit or to put your order on backorder. If you choose a refund or store credit, any delivery costs you have paid for the product will be refunded to you. If you choose to put your order on backorder, we will contact you to arrange for delivery once the product is available.

(c) Where a product varies in style or colour and you have not selected a particular style or colour, Funky Fitness may choose, at its discretion, the style and colour of the product which is sent to you.

(d) If certain products are out of stock or discontinued, we may from time to time substitute a product with another product of similar appearance, value and size. Where an item is substantially different, we will obtain your permission to substitute the item.

## **5. Discounts, Special Offers & Coupon Redemptions**

(a) Discounts may be offered for a limited time or for a specified time or date. Funky Fitness reserves the right to withdraw discounts at any time without notice. Where a percentile rate (%) is offered, such discounts do not apply to taxes (GST) or shipping, delivery, insurance or other such charges. Unless otherwise stated, discounts do not apply to already discounted products.

(b) We may from time to time offer promotional discount codes, which may be applicable to goods on the Website. In the event where a discount is offered via a coupon code, such discounts must be redeemed at the time of purchase. Retrospective requests (to redeem discount coupons) cannot be accepted. The conditions of use relating to any discount code will be specified at the time that it is issued.

## **6. Disclaimer and Limitation of Liability**

To the fullest extent permitted by law, Funky.Fitness excludes all express or implied representations, conditions, guarantees and terms relating to the products and services, the Website and these Terms, except those set out in these Terms, including but not limited to:

(a) implied or expressed guarantees, representations or conditions of any kind, which are not stated in these Terms;

(b) the Website or the products being unavailable; and

(c) any loss, liability, costs including legal costs, damage or expense whether direct, indirect, incidental, special, consequential and/or incidental, including loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation, use of any indirect, remove, abnormal or unforeseeable loss, or any loss or damage relating to business interruption, loss of programs or other data on your information systems or cost of replacement of goods, or otherwise, suffered by you or any third party or claims made against you, arising out of or in connection with the Website, your inability to access or use of the Website, the products, the services, the late supply of products, or these Terms, even if we were expressly advised of the likelihood of such loss or damage.

Our total liability arising out of or in connection with the products, the services or these Terms, however arising, including under contract, tort (including negligence), in equity, under statute or otherwise, will not exceed the total price paid by you for the purchase of products and/or services under these terms.

This clause will survive termination of these Terms.

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## 7. Conflict of Terms

If there is a conflict or contradiction between the provisions of these Terms and any other relevant terms and conditions, policies or notices, these Terms will prevail.

## 8. Security

The integrity and security of information between you and our Website cannot be assured or guaranteed to the fullest extent. Likewise, we cannot and will not accept responsibility for the safe keeping, transmission, and the overall security of information sent to and from our Website. The Customer should take steps to ensure they are protected by relevant third-party software including, but not limited to, firewall software, anti-virus software, and other security protection software at all times and that such software is properly maintained and updated. The Customer acknowledges that any information accessed or downloaded from our Website is done so at their own risk.

## 9. Access & Restrictions

From time to time, access to our Website may be denied during irregular Website maintenance and/or scheduled repairs, upgrades and enhancements, during unexpected server downtime/failures and systems downtime/failures. Funky.Fitness is not responsible for any access restrictions, delays or interruptions to the Website whether scheduled or not. We do not warrant that the Website will be available at all times or at any given time. We may at any time and without notice to you, discontinue the Website in whole or in part. We are not responsible for any loss, cost, damage or liability that may result from our discontinuance of the Website.

Funky.Fitness may, at its discretion, prevent a Customer, or any other person from gaining access to our Website, for whatever reason it sees fit, through any means/technologies available at its disposal.

## 10. Shipping & Deliveries

(a) **Location:** Funky.Fitness can despatch orders to any address (physical or postal) that is deemed by Australia Post and/or local state authorities to be a registered or lawful address in Australia. Please refer to the delivery information on the Website to check that you are in our delivery area. If you are not in our delivery area please contact us to discuss delivery options.

(b) **Cost:** We offer free pickup option as set out on the Website. If you are unable to pick up your purchase from our premises, a delivery fee will apply, as set out on the Website.

(c) **Timing:** Funky.Fitness will endeavour to despatch orders within 21 days of receiving the order (excluding non-working days in Western Australia). Some delays of several days or more are to be expected during peak periods between October and December months. Funky.Fitness is not responsible for late deliveries. Funky.Fitness takes no responsibility for the delay of deliveries caused by any courier or other third party delivering the goods. Likewise, Funky.Fitness is not liable for any burden, stress, inconvenience, hardship or financial loss caused by any delays. Customers are advised to place orders well ahead of time to ensure sufficient time for delivery during peak periods to minimise risk of unexpected delays. We will deliver the product to the place of delivery you specify when making your order.

(d) **Change:** If you need to change a delivery date or the delivery address, please contact us as soon as possible to see if this is possible. If you are not available to take delivery on the agreed delivery date, you may be charged a delivery fee for each additional attempt for delivery.

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## 11. Consumer Law

(a) **ACL:** Certain legislation including the Australian Consumer Law ("**ACL**") in the Consumer and Competition Act 2010 (Cth), and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to the provision of goods or services to you by us via the Website which cannot be excluded, restricted or modified. Our liability is governed solely by the ACL and these Terms.

(b) **Goods:** If you are a consumer as defined in the ACL, the following notice applies to you: "Our goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (Consumer Guarantees). You are entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

(c) **Warranties:**

(i) To the extent permitted by law, we exclude all express and implied warranties, and all material and work is provided to you without warranties of any kind, either express or implied. We expressly disclaim all warranties including but not limited to implied warranties of merchantability and/or fitness for a particular purpose.

(ii) The product may come with a manufacturer's warranty. The manufacturer's warranty is in addition to but may overlap with any rights and remedies you may have under applicable law, including any Consumer Guarantees. If you are not considered a "consumer" within the meaning of the ACL, the manufacturer's warranty may be your sole remedy. You should check the manufacturer's warranty, as many manufacturers' warranties do not apply in a business or commercial setting. Please contact the manufacturer if you would like to make a claim under the manufacturer's warranty.

## 12. Product Returns & Exchanges

(a) Product returns cannot be made by the Customer without the prior knowledge and approval of Funky.Fitness. If you wish to seek repair, replacement or a refund for a product, please contact us and we will explain the requirements to you. This may include you providing proof of purchase and evidence of the faulty product to us. Customers may return unopened products sold and fulfilled by Funky.Fitness within 14 days of delivery for a refund (with any additional costs in respect of delivery/re-delivery being at your own expense unless Funky.Fitness determines that you have received an incorrect or defective item). The total refund amount will be the purchase price of the product less the actual shipping costs incurred by us in respect of such product, as determined by Australia Post, if such shipping costs are greater than our fixed rate delivery fee as set out on the Website or any invoice issued by us (it being acknowledged that the fixed rate delivery fee is not a true reflection of the actual shipping costs which we incur in despatching products to our customers). If the actual shipping costs incurred by us in shipping a Product to you do not exceed the fixed rate delivery fee set out on the Website or any invoice issued by us, the total refund amount will be the purchase price of the product less the fixed rate delivery fee. Any refund we make will be by the same payment method used to purchase the product. If a product is found not to be defective, we will return the product to you.

(b) Upon receipt of your request to return a purchase, Funky.Fitness will issue a Return Merchandise Authority number ("**RMA number**") to help Funky.Fitness identify and process approved returns. Products returned without an RMA number visibly or clearly marked on packaging will be rejected and returned to

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you. Returns received in a damaged state will not be accepted. Unless a product is faulty or defective under the manufacturer's warranty, it will not be accepted by Funky.Fitness in an opened or used state. This includes the removal of any product seals, shrink wrapping, protective materials, stickers or product attachments and/or accessories.

(c) Special or custom-made orders placed by Customers may not be returned for refund or exchanged.

(d) Products that have been returned under warranty and are deemed by Funky.Fitness to be misused, abused, or subject to inappropriate handling will not be accepted for refund or exchange. Battery operated products will not be accepted for return unless all reasonable measures have been taken to ensure the product is not defective as a result of a battery related issue.

(e) Funky.Fitness may, at its discretion, charge a 10% re-stocking fee on returned products due to change of mind. All returned products must arrive undamaged and in 'sale-able' condition, including being sealed, unopened and unused.

(f) You have a duty of care for the product while it is in your possession. If you damage products then subsequently return the products, you may be liable to pay to repair the product to its original condition. In these circumstances, where a repair is not economically viable, no refund will be made.

### **13. Lost or Damaged Goods**

If your products are damaged upon receipt of delivery, you are required to notify Funky.Fitness of any claims, regarding replacement, within seven (7) days of receipt. Funky.Fitness will provide assistance with respect of the return, costs and the dispatch of any replacement products. In the event that replacement products are unavailable or out of stock, at the discretion of Funky.Fitness we may permit substitute products or issue a refund. Funky.Fitness accepts no responsibility for any delays that may arise from the return of the damaged product to our location or the subsequent delivery of replacement products to the Customer.

A product can only be deemed as lost or stolen during delivery by the carrier/courier responsible for the delivery of such product. Funky.Fitness cannot provide any remedial action until a proper investigation by the carrier/courier is concluded and the product is deemed by them to be lost or stolen. Such investigations can take as long as 10 to 14 days. Funky.Fitness will not accept any claims for lost or stolen products which are made more than 30 days after the order date of such products..

### **14. Customer Profile**

We will provide a confirmation of profile registration when you register on the Website ('**Profile**'). The Customer is responsible for the accuracy of its Profile details. Where a Customer's contact information is inaccurate, Funky.Fitness may decline, refuse, cancel, delay or postpone the processing of the Customer's order without notice. Failure by the Customer to update or provide accurate Profile details may result in the loss/delay of deliveries by our courier and/or risk having the Customer's payment declined by its financial institution. Funky.Fitness is not responsible for any matters arising as a result of inaccurate information provided by the Customer.

It is the Customer's responsibility to keep its Profile details confidential. The Customer is liable for all activity using its Profile, including purchases made when using their Profile details.

Funky.Fitness is committed to ensuring that your information is secure. In order to prevent unauthorised access or disclosure, we have put in place suitable physical, electronic and managerial procedures to safeguard and secure your information and protect it from misuse, interference, loss and unauthorised access, modification and disclosure. However no information transmitted over the internet can be

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guaranteed to be secure. The transmission and exchange of information is carried out at your own risk. Although we take measures to safeguard against unauthorised disclosures of information, we cannot assure you that your information will not be disclosed. For more information on how we protect your information, please see our Privacy Policy which is available on the Website.

## **15. Information and correspondence submitted by Customers**

Whilst Customers are encouraged and permitted to post reviews, comments, suggestions, questions, ideas, relevant information and other content (collectively '**Reviews**'), Customers must not post Reviews which are obscene, threatening, or inappropriate, illegal, political or religiously motivated, of poor taste, false or misleading. We reserve the right to amend or delete any and all of your Reviews, and to block you if we believe that there is a violation of these Terms or for any other reason, at our sole discretion.

By making available any Reviews on or through the Website you:

- (a) grant to Funky.Fitness a perpetual, non-exclusive, royalty-free, irrevocable, worldwide and transferable licence to use your Reviews in any way including but not limited to, use, view, copy, adapt, licence, distribute, sell, transfer, reproduce, change, communicate the content to the public, broadcast, access, and otherwise exploit such Reviews on, through, or by means of the Website; and
- (b) consent to any act or omission which would otherwise constitute an infringement of your moral rights, and if you add any content in which any third party has moral rights, you must ensure that the third party consents in the same manner.

Reviews posted or uploaded to the Website are the views and opinions of our Customers. Funky.Fitness does not accept responsibility for the accuracy, or otherwise, of any Reviews by the Customer, and shall not be held legally liable for the content provided. Reviews posted on the Website are not the views of us, the store, management or our employees.

You agree you are solely responsible for all contents including Reviews you make available through the Website. If you choose to add any content on the Website, you represent and warrant that:

- (a) you are the sole and exclusive owner of all Reviews you make available through the Website or you have all necessary rights, licences, consents and releases that are necessary to grant to Funky.Fitness the rights in such comments, as contemplated under these Terms; and
- (b) neither the Reviews, nor the posting, uploading, publication, submission or transmittal of the Reviews or our use of the Reviews (or any portion thereof) on, through or by means of the Website will infringe, misappropriate or violate a third party's patent, copyright, trademark, trade secret, moral rights or other proprietary or intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

## **16. Indemnity**

You indemnify us from and against all claims, suits, demands, actions, liabilities, costs and expenses (including legal costs and expenses on a full indemnity basis) resulting from your breach of these Terms. You agree to co-operate with us (at your own expense) in the handling of disputes, complaints, investigations or litigation that arise as a result of your use of our products and/or Website including but not limited to disputes, complaints, investigations or litigation that arises out of or relates to incorrect information you have given us. The obligations under this clause will survive termination of these Terms.

## **17. Changes and amendments to the Terms and Conditions**

Funky.Fitness reserves the right to make changes and amendments to these Terms and Conditions from time to time without prior notice. Your use, access or purchase from us following any such amendments will

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be deemed to be confirmation that you accept those amendments. We recommend you check the Terms regularly to ensure you are aware of any changes, and only proceed to use the Website if you accept and will comply with the new Terms.

## 18. Your Privacy

Funky.Fitness is a responsible and ethical commercial business and we agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines. We value your privacy and will ensure, to a level reasonably expected, your personal information is handled appropriately and protected at all times. Please read our Privacy Policy which is available [here](#). By agreeing to these Terms, you agree to accept our Privacy Policy.

## 19. Third Party Links and Information

This Website may contain third party information, including but not limited to Reviews, guest articles and advertisements (**Third Party Information**). We do not control, recommend, endorse, sponsor or approve Third Party Information. You should make your own investigations with respect to the suitability of Third Party Information for you.

This Website may contain links to websites owned by third parties (**Third Party Sites**). Third Party Sites provided for your convenience only. We do not control, recommend, endorse, sponsor or approve Third Party Sites, including any information, products or services mentioned in Third Party Sites. Use or reliance on any Third Party Sites and their content is at your own risk. You should make your own investigations with respect to the suitability of Third Party Sites for you.

## 20. Omissions, Errors, and Accuracy

While the information and material contained on the Website is believed to be accurate and current and we endeavour to keep it up to date and correct, it is provided by us in good faith on an 'as is' basis, and we and our directors, officers, employees, contractors and agents accept no responsibility for and make no representations, warranties or guarantees, express or implied, to you or to any other person as to the reliability, accuracy, suitability, availability or completeness of such information or material for any particular purpose.

Customers are encouraged to use the content on the Website as a guide only. Pricing, weight, size, dimensions and product features and functions may be incorrect from time to time. Funky.Fitness reserves the right to amend, change or modify such content at any time without notice. Funky.Fitness may, as an option, cancel or remove any product on any order that it deems to contain errors or omissions when purchased. You hereby acknowledge that such information and materials may contain mistakes, inaccuracies or errors and we expressly exclude any liability for such to the fullest extent permitted by law. You read, use and act on information on the Website, Third Party Information and/or Third Party Sites at your own risk.

## 21. Dispute

(a) Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about our products, please contact us. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:

(b) The complainant must tell the respondent in writing the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to

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meet in good faith to seek to resolve the dispute by agreement between them (**Initial Meeting**).

(a) If the Parties cannot agree how to resolve the dispute at the Initial Meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complainant will ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute.

(a) Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

## **22. Termination**

We reserve the right to refuse supply of the products ordered by you, terminate your Profile, terminate our contract with you and remove or edit content on the Website at our sole discretion without incurring any liability to you.

## **23. GST**

If and when applicable, GST payable on our services or products will be set out in our invoices. By accepting these Terms you agree to pay us an amount equivalent to the GST imposed on these charges.

## **24. Relationship of the Parties**

These Terms are not intended to create a relationship between the Parties of partnership, joint venture, or employer-employee.

## **25. Force Majeure**

We will not be liable for any delay or failure to perform our obligations under these Terms if such delay is due to any circumstances beyond our reasonable control. If we are delayed from performing our obligations due to such a circumstance for a period of at least 2 months, we may terminate our agreement and return all funds to you by giving you 10 business days' notice in writing.

## **26. Notice**

Any notice in connection with these Terms will be deemed to have been duly given when made in writing and delivered or sent by email or post to the Party to whom such notice is intended to be given or to such other address, email address as may from time to time be notified in writing to the other Party.

## **27. Waiver**

Any failure by a Party to insist upon strict performance by the other of any provision in these Terms will not be taken to be a waiver of any existing or future rights in relation to the provision. No waiver by us of any of these Terms shall be effective unless we expressly state it is a waiver and we communicate to you in writing.

## **28. Assignment**

You must not assign any rights and obligations under these Terms, whether in whole or in part, without our prior written consent.

## **29. Severability**

If any of these Terms are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

## **30. Entire Agreement**

These Terms and any document expressly referred to in them represent the entire agreement between

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you and us and supersede any prior agreement, understanding or arrangement between you and us, whether oral or in writing.

### **31. Jurisdiction and Applicable Law**

Your use of the Website and any dispute arising out of your use of it is subject to the laws of Western Australia and the Commonwealth of Australia. These Terms are governed by the laws of Western Australia and the Commonwealth of Australia and subject to the exclusive jurisdiction of the courts operating in Western Australia. We make no representation that the Website complies with the laws (including intellectual property laws) of any country outside Australia. If you access the Website from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place where you access the Website.



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