



STRENGTH & CONDITIONING EDUCATION

AFFILIATE PROGRAMME TERMS AND CONDITIONS

BACKGROUND:

These Terms and Conditions apply to participants in the Strength and Conditioning Education Affiliate Programme (“the Affiliate Programme”) operated by Athletes Unlimited Ltd a company registered in United Kingdom under number 07723337 whose registered office is at 71-75 Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ (“the Company”).

The Company operates the website at strengthandconditioningeducation.com (“the Company Website”) for the purposes of marketing its services to its users.

Affiliates (each an “Affiliate”) operate their own websites and social media profiles (each an “Affiliate Website”) for the purposes of marketing their goods and/or services to their users.

Affiliates participating in the Affiliate Programme shall include one or more Affiliate Link Pages on their Affiliate Websites/social media profiles which shall link to an Affiliate Landing Page on the Company Website.

By accepting these Terms and Conditions, the Affiliate hereby applies to become a member of the Affiliate Programme subject to these Terms and Conditions and shall enter into a contract with the Company on those terms upon the Company’s acceptance of the Affiliate’s application, as described in Clause 2.

These Terms and Conditions take effect from 12th August 2020 and supersede any previous version relating to the Affiliate Programme.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Affiliate Landing Page”	means a web page on the Company Website that the Company shall develop and that will be branded with the Company’s branding;
“Affiliate Link Page”	means a link provided by the Company which shall link directly to the Company Website;
“Affiliate Referred User”	means a user who has clicked through to the Company Website from an Affiliate Link Page;
“Affiliate Website”	means the website of an Affiliate enrolled in the Affiliate Programme;
“Agreement”	means the agreement entered into by the Company and the Affiliate incorporating these Terms and Conditions which shall govern the Affiliate Programme, as described in Clause 2;

“Commission”	means the commission payable by the Company to the Affiliate for Completed Sales, as set out in Clause 5;
“Completed Sale”	means the completed purchase of services offered for sale on the Company Website by an Affiliate Referred User who has clicked through directly to the Company Website from an Affiliate Link and that purchase has been completed during a single browser session;
“Confidential Information”	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
“Effective Date”	means the date of the Agreement, as described in sub-Clause 2.3;
“Net Revenue”	means, in respect of each Completed Sale, the gross revenue received by the Company, inclusive of VAT and any other tax, after the deduction of any rebate, allowance, credit, or other adjustment granted or allowed with respect to that Completed Sale, and any service fees or fulfilment or other charges (including credit card charges) paid or payable by the Company to any third party (other than the Affiliate) in relation to that Completed Sale.

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
 - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions; and
 - 1.2.5 a “Party” or the “Parties” refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include any other gender.
- 1.6 References to persons shall include corporations.

2. **Enrolment in the Affiliate Programme**

- 2.1 By enrolling in the Affiliate Programme, the Affiliate agrees that, at the time of

registration, they will provide accurate and complete registration data and that the registration data will be updated and amended as required in the event of future changes.

- 2.2 Acceptance of these Terms and Conditions and the Affiliate's indication that they wish to enrol in the Affiliate Programme constitutes an application to enrol in the Affiliate Programme which the Company may, at its sole discretion, accept.
- 2.3 Upon the Company's acceptance of the Affiliate's application to enrol in the Affiliate Programme, a contract shall be formed between the Company and the Affiliate, subject to and incorporating these Terms and Conditions ("the Agreement"). The Affiliate shall be notified forthwith and the date on which the Agreement is formed shall be referred to as the Effective Date.
- 2.4 The Agreement shall be non-exclusive and shall not restrict or prevent the Company from entering into similar or different arrangements with third parties.

3. The Company's Obligations

- 3.1 The Company shall be responsible for operating and maintaining the Company Website.
- 3.2 The Company shall provide to the Affiliate the required materials to link to the Company Website. These materials include the code for the link and image files to which such code should be applied.
- 3.3 Access to the Company Website shall be provided to all Affiliate Referred Users in accordance with the Company's standard website terms of use, terms of sale, terms of service, privacy policy, and other applicable terms and policies which may apply from time to time.
- 3.4 The Company reserves the right to change the name of the Company Website at any time without notice.

4. Affiliate's Obligations

- 4.1 The Affiliate shall use all commercially reasonable endeavours to market and promote the Company Website and the Company's services via the Affiliate Link and/or social media in order to generate the maximum number of Completed Sales.
- 4.2 The Affiliate shall provide the Company with all reasonable co-operation required in relation to the Company's performance of its obligations under the Agreement.
- 4.3 The Affiliate shall provide the Company with access to any and all information which may be reasonably required by the Company in relation to the Company's performance of its obligations under the Agreement.
- 4.4 The Affiliate shall comply with all applicable laws and regulations with respect to its business and to the Agreement.
- 4.5 In the event of any delay on the part of the Affiliate in the performance of its obligations under the Agreement, the Company shall have the right to proportionately adjust any dates for performance of its own obligations to the Affiliate as is reasonably necessary.
- 4.6 The Affiliate shall have no authority to legally bind the Company with respect to Affiliate Referred Users, other users, or any other party. The Affiliate shall not

be appointed an agent of the Company for any purposes. The Affiliate shall not make any representation or commitment about or on behalf of the Company, the Company Website, or the Company's services.

- 4.7 An Affiliate cannot refer themselves and will not receive a commission on their own accounts.
- 4.8 There is a limit of one commission per referral. If an Affiliate Referred User clicks the link on the Affiliate site and orders multiple accounts, the Affiliate will receive a commission on the first order only.

5. **Commission and Payment**

- 5.1 The Company shall pay to the Affiliate Commission at product specific commissions which are viewable in the Affiliate portal.
- 5.2 Commission shall be payable only on actual receipts, not on an accruals basis. If the Company does not receive revenue on a Completed Sale, no Commission shall be payable to the Affiliate.
- 5.3 All payments are inclusive of VAT not exclusive unless stated otherwise.
- 5.4 The Affiliate shall immediately notify the Company if its contact details or address details change during the term of the Agreement and shall complete any and all forms required by HM Revenue & Customs and any other applicable public authority with respect to its activities under the Agreement.
- 5.5 The Company shall pay commissions to the Affiliate by the end of the month following the date of the sale.
- 5.6 In the event of any refunds issued for any reason including, but not limited to fraud and where such refunds are not incurred through any fault of the Company's, the Affiliate may be contacted to arrange for the repayment of any related Commission. If the commission has not yet been paid, this will be removed from any balance owed. If the commission has already been paid to the Affiliate, Athletes Unlimited will deduct the value of the commission on the order subject to the chargeback from any commissions due. If there are insufficient commissions due to the Affiliate to cover the commission owed to the Company, the refund will be requested using the original payment method.
- 5.7 Payments will only be sent for transactions that have been successfully completed. Transactions that result in chargebacks or refunds will not be paid out.
 - 5.7.1 If the Affiliate earns commission on a sale where the Affiliate Referred User raises a chargeback, Athletes Unlimited will challenge the chargeback. If the challenge is unsuccessful, leading to the Affiliate Referred User being refunded, the commission is not due to the Affiliate. If the commission has not yet been paid, this will be removed from any balance owed. If the commission has already been paid to the Affiliate, Athletes Unlimited will deduct the value of the commission on the order subject to the chargeback from any commissions due. If there are insufficient commissions due to the Affiliate to cover the commission owed to the Company, the refund will be requested using the original payment method. The Company will contact the Affiliate if the chargeback is successful to arrange the reimbursement.

6. Intellectual Property Rights

- 6.1 Upon the Affiliate's enrolment into the Affiliate Programme, the Company shall grant to the Affiliate a non-exclusive, non-transferrable, royalty free licence to use the Company's trade marks and any and all other materials provided by the Company to the Affiliate to the extent required to establish links to the Company Website and to perform the Affiliate's obligations under the Agreement.
- 6.2 The Affiliate acknowledges and agrees that the Company (and its licensors, as applicable) own all intellectual property rights in the Company Website, any materials provided by the Company, and the Company's services. Except as expressly stated herein, the Agreement shall not grant the Affiliate any rights to or in any copyrights, patents, database rights, trade marks (registered or unregistered), trade names, trade secrets, or any other rights or licences belonging to the Company.
- 6.3 Acceptance as an Affiliate does not constitute that the Affiliate is certified or associated with The Company in any way other than as an Affiliate.
- 6.4 The Company may instruct removal of marketing, branding or any communication used by the Affiliate if The Company feels its core values and branding have not been met or adhered to.
- 6.5 In the event the Affiliate is instructed to remove the items as described in 6.4, these amends must be made within 24 hours.

7. Confidentiality

- 7.1 Except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Agreement and for one year after its expiry or termination:
 - 7.1.1 keep confidential all Confidential Information;
 - 7.1.2 not disclose any Confidential Information to any other party;
 - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions;
 - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4 above.
- 7.2 Either Party may:
 - 7.2.1 disclose any Confidential Information to:
 - a) any sub-contractor or supplier of that Party;
 - b) any governmental or other authority or regulatory body; or
 - c) any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;to such extent only as is necessary for the purposes contemplated by these Terms and Conditions, or as required by law. In each case that Party shall first inform the person, party, or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1(b) or any employee or officer of any such body) obtaining and submitting to the other Party a written

confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of this Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

7.3 The provisions of this Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination or expiry of the Agreement for any reason.

8. **Data Protection**

8.1 Each Party shall at all times, and at its own expense, ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time with respect to the use of personal data, and shall assist the other Party in complying with the same.

8.2 The legislation and regulatory requirements referred to in sub-Clause 10.1 include, but are not limited to, the Data Protection Act 2018 and any successor legislation, the EU General Data Protection Regulation (2016/679) ("GDPR") for as long as and to the extent that EU law has legal effect in the UK, any UK legislation enacted as a successor to the GDPR, and any other directly applicable EU legislation relating to privacy and data protection (including successor UK legislation).

9. **Indemnity**

9.1 Subject to sub-Clause 9.2, the Affiliate shall indemnify the Company against all liabilities, costs, expenses, damages, and losses (including, but not limited to, direct or consequential loss, loss of profit, loss of reputation, and any and all interest, penalties, and legal costs (calculated on a full indemnity basis) and all other reasonable costs and expenses) suffered or incurred by the Company arising out of or in connection with the marketing or sale of goods or services by the Affiliate.

9.2 The indemnities set out in sub-Clauses 9.1 shall apply provided that:

9.2.1 The indemnifying Party is given prompt notice of any such claim;

9.2.2 The indemnified Party provides reasonable co-operation to the indemnifying Party in the conduct of such claim at the indemnified Party's expense; and

9.2.3 The Indemnifying Party is given the sole authority to defend or settle the claim.

10. **Liability**

10.1 Subject to sub-Clause 10.4, neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, revenue, goodwill, or anticipated savings.

- 10.2 Subject to sub-Clause 10.4, Neither Party shall be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:
- 10.2.1 Any loss arising out of the lawful termination of the Agreement or any decision not to renew its Term; or
 - 10.2.2 Any loss that is an indirect or secondary consequence of any act or omission of the Party in question.
- 10.3 Subject to sub-Clause 10.4, the total liability of either Party to the other in respect of all other loss or damage arising under or in connection with these Terms and Conditions or the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed £1,000,000 for the entire Term of the Agreement (including renewals).
- 10.4 Nothing in these Terms and Conditions or the Agreement shall limit or exclude the liability of either Party for death or personal injury caused by its negligence or the negligence of its directors, officers, employees, agents, sub-contractors or advisers; fraud or fraudulent misrepresentation; liability under the indemnity provisions set out above in Clause 9; or for any other matter in respect of which it would be unlawful to exclude or restrict liability.

11. Term and Termination

- 11.1 The Agreement shall come into force on the Effective Date and shall continue for an agreed Term from that date, subject to the provisions of this Clause 11.
- 11.2 The Company shall have the right, exercisable by giving immediate written notice to the Affiliate at any time prior to the expiry of the Term specified in sub-Clause 11.1 (or any further period for which the Agreement has been extended) to extend the Agreement for a further period.
- 11.3 The Company may terminate the Agreement with immediate effect at any time if it discontinues or withdraws (in whole or in part) the Affiliate Programme or for any other reason. Such termination shall be without any liability to the Affiliate.
- 11.4 The Affiliate may terminate the Agreement with immediate effect by giving notice to The Company in writing.
- 11.5 Without prejudice to any other rights or remedies to which either Party may be entitled, either Party may terminate the Agreement (without liability to the other) if:
- 11.5.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 60 days of the due date for payment;
 - 11.5.2 the other Party commits any other material breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within one month after being given written notice giving full particulars of the breach and requiring it to be remedied;
 - 11.5.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
 - 11.5.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

- 11.5.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
 - 11.5.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party;
 - 11.5.7 the other Party ceases, or threatens to cease, to carry on business; or
 - 11.5.8 control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purposes of this Clause 11, “control” and “connected persons” shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 11.6 For the purposes of sub-Clause 11.5.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 11.7 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

12. **Effects of Termination**

Upon the termination of the Agreement for any reason:

- 12.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 12.2 all licences and benefits granted under the Agreement shall terminate immediately;
- 12.3 each Party shall return to the other Party (or destroy or otherwise dispose of, as requested) and make no further use of any materials, property, or other items (and any and all copies thereof) belonging to the other Party;
- 12.4 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information;
- 12.5 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect; and
- 12.6 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination.

13. **Force Majeure**

- 13.1 Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party.

14. **No Waiver**

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

15. **Further Assurance**

Each Party shall execute and do all such further deeds, documents, and things as may be necessary to carry the provisions of the Agreement into full force and effect.

16. **Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution, and carrying into effect of the Agreement.

17. **Assignment and Other Dealings**

17.1 The Affiliate shall not assign, mortgage, charge (otherwise than by floating charge), declare a trust over, or sub-licence or otherwise delegate any of its rights under the Agreement, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the Company, such consent not to be unreasonably withheld.

17.2 The Company may assign, mortgage, charge, declare a trust over, or sub-licence or otherwise delegate any of its rights under the Agreement, or sub-contract or otherwise delegate any of its obligations thereunder.

18. **Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

19. **Third Party Rights**

No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

20. **Notices**

20.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

20.2 Notices shall be deemed to have been duly given:

20.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

20.2.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

20.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

20.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

21. **Entire Agreement**

21.1 The Agreement, incorporating these Terms and Conditions, constitutes the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

21.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

22. **Severance**

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid, or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

23. **Law and Jurisdiction**

23.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

23.2 Any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.