

Terms and Conditions

THIS AGREEMENT is dated 2004 and is made BETWEEN:

- (1) Ms N Nother t/a Kalma Fitness of 510a Finchley Road, London, NW11 8DE ('the Organiser'); and
- (2)('the Customer').

WHEREAS:

- (A) The Organiser arranges and pays for suitable holiday accommodation and provides activities to be undertaken by the Customer.
- (B) The Customer pays for the services provided by the Organiser.

NOW IT IS AGREED as follows:

1. Definitions and interpretation

1.1 The following expressions, which are frequently used in this Agreement, shall have the meanings attributed to them below. Other less frequently used expressions are defined in the body of this Agreement.

'Accommodation'	means the accommodation as stated on the Booking Form
'Activities'	means those activities as stated on the Booking Form
'Agreement'	means these terms and conditions and the Booking Form including all variations agreed and confirmed in writing by the Organiser
'Alternative Activities'	means those alternative activities as stated on the Booking Form
'Booking Form'	means the Booking Form on the preface of these terms and conditions
'Departure Date'	means the date of departure stated on the Booking Form
'Deposit'	means the sum as stated on the Booking Form
'Facilities'	means such facilities and equipment as are necessary to carry out the Activities
'Insured Activities'	means the Activities and the Alternative Activities
'Minimum Number'	means the minimum number of Customers required for the holiday to take place and is stated on the Booking Form
'Organiser's Address'	means 10a Finchley Road, London, NW11 8DE
'VAT'	means value added tax or any other sales tax
'Price'	means the sum as stated on the Booking Form and shall be the total price to be paid under this Agreement less the Deposit

1.2 The headings in this Agreement are for convenience only and do not affect its interpretation.

1.3 In this Agreement, the words 'include', 'includes', 'including' and 'such as' are to be construed as if they were immediately followed by the words 'without limitation'.

- 1.4 In this Agreement, unless the context clearly indicates another intention:
- 1.4.1 reference to one gender includes all other genders,
 - 1.4.2 reference to the singular includes the plural and vice versa,
 - 1.4.3 reference to a clause, schedule or party is a reference to a clause of or a schedule or party to this Agreement,
 - 1.4.4 reference to a document is a reference to that document as from time to time supplemented or varied,
 - 1.4.5 reference to writing includes fax, e-mail and similar means of communication,
 - 1.4.6 a number of days shall exclude the first day and include the last day unless the last day falls on a day that is not a normal working day in the Territory in which case the last day shall be the next succeeding day that is a normal working day in the Territory
 - 1.4.7 any reference to a person includes natural persons and partnerships, firms and other such incorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted.
- 1.5 The schedules and appendix form part of this Agreement and any reference to 'this Agreement' includes the schedules and appendix.

2. **Formation of Contract**

- 2.1 All quotations and estimates made by the Organiser are without commitment and are not deemed to constitute an offer. The Customer shall be deemed to make an offer by signing and returning this Agreement to the Organiser and the Organiser shall accept the offer by sending or giving written confirmation of acceptance.
- 2.2 This Agreement shall override any different or additional terms or conditions contained on or referred to in any correspondence or other document from the Customer and no addition, alteration or substitution to the terms of this Agreement will form part of any contract between Organiser and Customer unless expressly accepted in writing and signed by the Organiser.

3. **Booking and Deposit**

- 3.1 The Customer shall complete, sign and return the Booking Form in confirmation of the booking. All bookings are subject to availability. The Organiser shall accept the booking by sending written confirmation of acceptance.
- 3.2 The Customer shall pay the Deposit by no later than 8 weeks prior to the Departure Date.

4. **Payment of the Price**

4.1 The Customer shall pay the Price and provide adequate proof of insurance to the Organiser by no later than 6 weeks prior to the Departure Date.

4.2 The Price shall include Accommodation including meals where applicable as stated on the Booking Form, the requisite Facilities and instruction and assistance to undertake the Activities.

5. **Minimum Number**

5.1 A Minimum Number of Customers is required for the holiday to take place.

5.2 In the event that the Minimum Number is not reached then the Organiser shall provide not less than 2 weeks written notice of cancellation and shall refund the Deposit and Price where paid by the Customer.

6. **Accommodation**

6.1 The Organiser shall arrange, book and pay for Accommodation.

6.2 The Organiser shall have the absolute right to change the Accommodation for any reason to accommodation of the same or similar standard, which will be at the reasonable determination of the Organiser.

7. **Activities**

7.1 The Organiser shall arrange and provide the Activities and Facilities at its sole discretion. The Organiser shall provide such instruction, assistance and supervision necessary to carry out the Activities. All Activities are subject to availability and are weather permitting. Activities may change on short notice and the Organiser makes no warranty or representation that any of the Activities shall be provided by the Organiser.

7.2 If the Organiser cannot provide the Activities for any reason then the Organiser shall arrange and provide one or more of the Alternative Activities at its discretion.

7.3 The Activities and Alternative Activities are subject to the Customer having taken adequate insurance against the risk of personal injury or other loss.

8. **Insurance**

8.1 The Customer shall obtain adequate travel and personal insurance to cover the risk of injury or loss arising out of or in connection with any accidents, illnesses or injuries suffered by the Customer during the duration of the holiday. Any such policy must specifically cover the Insured Activities and cover loss or damage to baggage, medical expenses and the cost of repatriation should the Customer become too ill to continue with the holiday and the cost of cancellation of the holiday by the Customer.

9. **Cancellation by the Organiser**

- 9.1 The Organiser reserves the right to cancel this Agreement under any circumstances prior to the Departure Date. The Organiser shall provide written notice of cancellation.
- 9.2 Provided that the Customer has complied with all its obligations under this Agreement, the Customer shall be entitled to a refund of the Deposit and/or Price where already paid by the Customer.
- 9.3 Where the Customer fails to pay the Price in compliance with clause 4.1 then the Organiser will be entitled to cancel this Agreement forthwith by written notice to the Customer and retain the Deposit.
- 9.4 Where the Customer fails to provide adequate proof of the required insurance in compliance with clauses 4.1 and 8.1 then the Organiser shall be entitled to cancel this Agreement forthwith by written notice to the Customer and retain the Deposit and the Price.
- 9.5 Any waiver by the Organiser of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision thereof.
- 9.6 The rights to cancel this Agreement given by this clause shall be without prejudice to any other right or remedy of the Organiser in respect of the breach concerned, if any, or any other breach.

10. **Cancellation by the Customer**

The Customer shall be entitled to cancel this Agreement up to 4 weeks prior to the Departure Date subject to the Organiser being entitled to retain the Deposit. After that time the Customer shall have no right to cancel this Agreement.

11. **Complaints**

- 11.1 If you feel that any services provided have not met your expectations during your holiday, please inform the Organiser and the provider of the services concerned immediately upon the problem arising. The Organiser will endeavour to resolve matters. If your complaint is not resolved, you must provide a written report detailing the nature and specific points of complaint, including times, places and dates and send the report to the Organiser's Address within 14 days of the date of return home from the holiday by the Customer.
- 11.2 If the Customer fails to follow the above procedure then it will affect the Organiser's ability to investigate the complaint and may affect the Customer's entitlement to any refund.

12. Passport, Visa and Health Requirements and Unaccompanied Minors

- 12.1 The Customer shall ensure that he has a valid passport, visa(s) and complies with any health requirements for the duration of the holiday. Visa requirements and conditions vary by country and nationality and are subject to change.
- 12.2 The Customer must obtain all necessary vaccinations prior to the Departure Date.
- 12.3 The Customer shall obtain confirmation from their doctor that they are medically fit to undertake the Activities.
- 12.4 Unaccompanied minors are not permitted.

13. Organiser's Warranties and Liability

- 13.1 Subject as provided in this Agreement, the Organiser warrants to the Customer that all assistance, instruction and supervision provided by the Organiser or its agents will be carried out with reasonable care and skill and all Facilities supplied under this Agreement will be of satisfactory quality and will comply with any legal or other specification agreed for them.
- 13.2 In the event of any breach of the Organiser's obligations under this Agreement, the Organiser's liability to compensate the Customer shall be limited to refund of the Deposit and Price where paid by the Customer.
- 13.3 The Organiser shall have no liability for any loss or damage howsoever arising due to or arising through any failure to perform the obligations under this Agreement where those failures are attributable to the Customer.
- 13.4 The Organiser shall have no liability for any loss or damage howsoever arising due to or arising through any failure to perform the obligations under this Agreement where those failures are due to unusual and unforeseeable circumstances beyond the Organiser's control or where the failure is due to an event which the Organiser could not, even with all due care, have been foreseen or forestalled.
- 13.5 The Organiser shall have no liability for any loss or damage howsoever arising due to or arising through any failure to perform the obligations under this Agreement where those failures are attributable to a third party unconnected with the provision of the services provided by the Organiser and is unforeseeable or unavoidable.

14. Nature and assignment of Agreement

- 14.1 The Organiser may assign, transfer or novate this Agreement and the rights and obligations under it to any other party at any time, and must inform the Customer of any such transaction in writing within a reasonable time after it.
- 14.2 The Customer must not assign, transfer or novate this Agreement and the rights and obligations under it to any other party at any time.

15. **Entire Agreement**

15.1 This Agreement expresses the entire Agreement between the Organiser and the Customer and supersedes any negotiations or prior Agreements on its subject matter.

15.2 Both parties confirm that the whole of their negotiations and intentions have been included in this Agreement within the context of this Agreement and express clearly their requirements.

15.3 This Agreement shall not be modified in any way except by a written instrument signed by both parties.

16. **Severability**

If any item or provision contained in this Agreement or any part of it ('an offending provision') is declared to be or becomes unenforceable, invalid or illegal for any reason whatsoever (including inter alia, a decision by the competent domestic or European courts, an Act of Parliament, European Union legislation or any statutory or other bye-laws or regulations or any other requirements having the force of law) the other terms and provisions of this Agreement shall remain in full force and effect as if it had been executed without the offending provision appearing in it.

17. **Force majeure**

17.1 This Agreement shall be suspended for any period during which either party reasonably believes the parties are prevented or hindered from complying with their obligations under any part of this Agreement, by any cause beyond their reasonable control including but not restricted to strikes, war, civil disorder, and natural disasters.

17.2 If such period of suspension exceeds 180 days or the Departure Date, then either party may upon giving written notice to the other require that this Agreement be terminated forthwith. The Organiser shall be entitled to retain the Deposit in any event.

18. **Third party rights**

The parties to this Agreement do not intend that any term of it shall be enforceable by a third party as defined in the Contracts (Rights of Third Parties) Act 1999 under the provisions of that Act.

19. **Notices**

Any notice required to be given for the purposes of this Agreement must be given by sending it by pre-paid first class post or fax, or by delivery by hand at the relevant address shown in this Agreement or such other address as

has been notified in accordance with this clause by the party concerned as being its address for the purposes of this clause. Any notice sent by post shall be deemed to have been served 2 days after posting. In proving service it shall be sufficient to prove that a notice was properly addressed and stamped and put into the post. Any notice sent by fax shall be deemed to have been served on the next business day following the date of despatch of it. Any notice delivered by hand shall be deemed to have been served when physically delivered at the relevant address.

20. **Choice of law and jurisdiction**

This Agreement shall be governed by and construed according to English law by the High Court in London. Any dispute or difference between the parties in connection with this Agreement must be referred to the English courts.

SIGNED by Ms N Nother

.....

SIGNED by

.....

SIGNED by

.....