

Terms of Sale

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(You can find the earlier version(s) in our archive.)

These Terms of Sale (“Terms”) apply to all orders placed by you through Fitbit’s mobile app, website, or via phone with Fitbit’s customer support (collectively the “Fitbit Store”). By placing any order through the Fitbit Store, you are agreeing to be bound by these Terms. You represent and warrant that you have the legal capacity to agree to these Terms. If you are under the age of thirteen, or any higher minimum age in your jurisdiction, you represent and warrant that you have obtained parental or guardian consent to enter into these Terms. If your order includes paid services, our Terms of Paid Services are hereby incorporated into these Terms. These Terms are between you and Fitbit LLC, and, if applicable, the reseller appointed by Fitbit LLC as identified in the Fitbit Store or in your order confirmation. In these Terms, “Fitbit” and “we” mean Fitbit LLC and/or its affiliates and, if applicable, any such reseller.

RETURN POLICY

If you are unsatisfied with your purchase of a Fitbit-branded device and/or accessory from the Fitbit Store for any reason, you are entitled to a full refund if you meet the conditions set forth below. This return right does not apply to the purchase or renewal of any Paid Services, as defined in and governed by our Terms of Paid Services. Delivery and handling charges, gift wrap fees, and taxes paid (such as state, customs or VAT) are not refundable. To qualify for a refund, you must meet all the following conditions:

- request a return authorisation within 45 days of your shipment date; provided, however, that for purchases made in November and December the deadline to request a return authorisation is 31st of January of the following year or 45 days from the date of shipment, whichever is longer;
- return the device and/or accessory, including all parts included in the original packaging, in good physical condition; and
- include the return authorisation number with your return.

If your return fails to meet any of the above conditions, we may, in our discretion, refuse to accept it or charge you a restocking fee of up to 15% of the original price.

LIMITED PRODUCT WARRANTY

Your use of Fitbit-branded devices and accessories is subject to Fitbit's applicable Limited Product Warranty. Fitbit's Limited Product Warranty does not apply to third-party products or accessories that may be sold on the Fitbit Store. For warranty issues related to those products, please contact that manufacturer.

Repair facilities or spare parts may not be available for your product or in your region, and goods presented for repair may be replaced by refurbished goods of equivalent type rather than being repaired. Repair of goods may result in the loss of any user-generated data, please back-up your data. Please review the Limited Product Warranty page for further information.

NOT FOR RESALE

The Fitbit Store sells and delivers products to end-user customers only, and we reserve the right to refuse or cancel your order if we suspect you are purchasing products for resale.

PRICING

Prices are stated in the applicable currency based on your selected location, and may not include delivery and handling charges or applicable taxes, which, if applicable, will be communicated to you before you place your order. Fitbit reserves the right to change the prices for any products or services in the Fitbit Store at any time without notice.

ORDERING, SHIPPING AND DELIVERY

Fitbit may refuse or cancel any order or limit any order quantity in our sole discretion, even after receiving your order. Fitbit may also require additional qualifying information prior to accepting or processing your order. While it is our practice to confirm orders by e-mail, your receipt of an e-mail confirmation does not constitute our acceptance of your order or our confirmation of an offer to sell a product or service.

If you wish to make a transaction through the Fitbit Store, you may be asked to supply certain relevant information, such as your payment and delivery information. YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT TO USE ANY PAYMENT METHOD THAT YOU CHOOSE TO USE TO COMPLETE ANY SUCH TRANSACTION. By submitting such information, you grant to us the right to provide such information to third parties for purposes of

facilitating transactions. Verification of information may be required prior to the acknowledgment or completion of any transaction.

The actual delivery of your order can be affected by many events beyond our control, and you agree we are not liable for late deliveries. Title to the products will pass to you upon delivery of the products to the carrier; however, risk of loss of, or damage to, the products will pass to you upon delivery of the products to you.

In certain regions, although we are the operator of the Fitbit Store, the products and services may be sold to you by our appointed reseller, as the seller of record, pursuant to contractual arrangements between us and the reseller. As described above, this means you have a contract with that appointed reseller for the supply of those products and services. In such case, the point of purchase or your order confirmation will include the appropriate contact information for any issues relating to your order. Fitbit, Inc. and its affiliates are express third-party beneficiaries of these Terms in cases where these Terms are between you and the appointed reseller.

PRODUCT AND SERVICE AVAILABILITY

Fitbit reserves the right to add or remove products and services from the Fitbit Store at any time for any reason. Fitbit also reserves the right to change quantities available for purchase at any time, even after you place an order.

Fitbit makes no representations as to the completeness, accuracy, reliability, validity or timeliness of any listings, descriptions or images (including, without limitation, any features and specifications such as weights and sizes) for any

products or services available through the Fitbit Store. Such information and the availability of any product or service (including, without limitation, the validity of any coupon or discount) are subject to change at any time without notice. Fitbit makes reasonable efforts to accurately display the attributes of products, including the applicable colours, however the actual colours you see will depend on your computer system, and we cannot guarantee that your computer will accurately display such colours. It is your responsibility to understand and comply with all applicable local, state, federal and foreign laws (including minimum age requirements) regarding the purchase, possession and use of any product or service.

COMPATIBILITY

You are solely responsible for determining the compatibility of the products and services with any required equipment (e.g. ensuring that you are using a compatible mobile device). You agree that lack of compatibility does not constitute a defect giving rise to a claim under our Limited Product Warranty.

SOFTWARE LICENSE

To the extent the products ordered by you contain, consist of, or make available Fitbit software in any form, such software is licensed to you and not sold, in accordance with our Terms of Service.

LIMITATIONS ON LIABILITY

NEITHER FITBIT, ITS SUPPLIERS, DISTRIBUTORS, OR LICENSORS, NOR ANY OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING FITBIT PRODUCTS AND SERVICES WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOSS OF DATA OR GOODWILL, SERVICE INTERRUPTION, COMPUTER DAMAGE, OR SYSTEM FAILURE OR THE COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE FITBIT PRODUCTS OR SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT FITBIT OR ITS SUPPLIER, DISTRIBUTOR, RESELLER, OR LICENSOR, OR OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING FITBIT PRODUCTS AND SERVICES HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, EVEN IF A LIMITED REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

IN NO EVENT WILL THE AGGREGATE, TOTAL LIABILITY OF FITBIT, OR ITS SUPPLIER, DISTRIBUTOR, RESELLER, OR LICENSOR, OR OTHER PARTY INVOLVED IN CREATING, PRODUCING, OR DELIVERING FITBIT PRODUCTS AND SERVICES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE USE OF OR INABILITY TO USE THE FITBIT PRODUCTS OR SERVICE EXCEED THE AMOUNTS YOU HAVE PAID FOR YOUR APPLICABLE PURCHASE.

THE EXCLUSIONS AND LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN FITBIT AND YOU.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

DISPUTE RESOLUTION

PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US.

You agree that any dispute between us arising out of or relating to your order via the Fitbit Store (collectively, “Disputes”) will be governed by the arbitration procedure outlined below.

GOVERNING LAW

Except as otherwise required by applicable law, the Terms and the resolution of any Disputes shall be governed by and construed in accordance with the laws of the State of California without regard to its conflict of laws principles.

INFORMAL DISPUTE RESOLUTION

We want to address your concerns without needing a formal legal case. Before filing a claim against Fitbit, you agree to try to resolve the Dispute informally by contacting support@fitbit.com. We'll try to resolve the Dispute informally by contacting you through email. If a dispute is not resolved within 15 days after submission, you or Fitbit may bring a formal proceeding.

WE BOTH AGREE TO ARBITRATE

We each agree to resolve any Disputes through final and binding arbitration, except as set forth under Exceptions to Agreement to Arbitrate below.

OPT-OUT OF AGREEMENT TO ARBITRATE

You can decline this agreement to arbitrate by contacting optout@fitbit.com within 30 days of first accepting these Terms and stating that you (include your first and last name) decline this arbitration agreement.

ARBITRATION PROCEDURES

The American Arbitration Association (AAA) will administer the arbitration under its Consumer Arbitration Rules. The arbitration will be held in the United States county where you live or work, San Francisco, California, or any other location we agree to.

ARBITRATION FEES

The AAA rules will govern payment of all arbitration fees. Fitbit will pay all arbitration fees for claims of less than US\$75,000. Fitbit will not seek its legal fees and costs in arbitration unless the arbitrator determines that your claim is frivolous.

EXCEPTIONS TO AGREEMENT TO ARBITRATE

Fitbit may bring a lawsuit solely for injunctive relief to stop unauthorised use or abuse of the Fitbit products or services, or infringement of Fitbit's intellectual property rights (for example, trademark, trade secret, copyright or patent rights) without first engaging in arbitration or the informal dispute-resolution process described above.

NO CLASS ACTIONS

You may only resolve Disputes with us on an individual basis, and may not bring a claim as a plaintiff or a class member in a class, consolidated or representative action. Class arbitrations, class (collective) action lawsuits, private general lawsuits through a solicitor, and consolidation with other arbitrations are not allowed under our agreement.

JUDICIAL FORUM FOR DISPUTES

Except as otherwise required by applicable law, in the event that the agreement to arbitrate is found not to apply to you or your claim, you and Fitbit agree that any judicial proceeding (other than small claims actions) will be brought in the federal or state courts of San Francisco County, California, USA. Both you and Fitbit consent to the venue and personal jurisdiction there. We both agree to waive our right to a jury trial.

LIMITATION ON CLAIMS

Regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to your order from the Fitbit Store must be filed within one (1) year after such claim or cause of action arose, or else that claim or cause of action will be barred forever.

GENERAL PROVISIONS

The parties disclaim application of the United Nations Convention on Contracts for the International Sale of Goods.

Except as otherwise stated herein, these Terms constitute the entire and exclusive understanding and agreement between us regarding any orders you

make on the Fitbit Store, and these Terms supersede and replace any and all prior oral or written understandings or agreements between us relating thereto.

If for any reason a court of competent jurisdiction finds any provision of these Terms invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign, delegate or transfer these Terms, by operation of law or otherwise, without Fitbit's prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and void. Fitbit may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and permitted assigns.

Any notices or other communications provided by Fitbit under these Terms, including those regarding modifications to these Terms, will be given: (i) via email to any address you have provided to Fitbit; or (ii) by posting to the Fitbit Store. For notices made by e-mail, the date on which the message is sent will be deemed the date on which such notice is transmitted.

Fitbit's failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorised representative of Fitbit. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

You will not export or re-export, directly or indirectly, the products or services, or any technical information related thereto, to any destination or person prohibited or restricted by applicable law, including, without limitation, US export control laws and regulations.

ADDITIONAL TERMS MAY APPLY

Additional terms may apply to certain products or services. In the event that there is a conflict between these Terms and any additional terms, the additional terms will control.