

Terms & Conditions

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING, OR OTHERWISE USING A PUMPONE TRAINER. PUMPONE LLC AGREES TO LICENSE THE PUMPONE TRAINER TO YOU ON THE TERMS AND CONDITIONS HEREIN PROVIDED THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS CONTAINED HEREIN. ACCORDINGLY, BY DOWNLOADING, INSTALLING, OR OTHERWISE USING A PUMPONE TRAINER (OR BY CLICKING ON A BUTTON SUCH AS “Buy Now”), **YOU ARE AGREEING TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS CONTAINED IN THIS LICENSE AGREEMENT**. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT DOWNLOAD, INSTALL OR OTHERWISE USE THE PUMPONE TRAINER. YOU SHOULD PRINT OUT A COPY OF THIS AGREEMENT FOR FUTURE REFERENCE.

WARNING: The images and text in PumpOne Trainers depict strenuous exercises performed by professionals. The exercises demonstrated may not be appropriate for all users. The information provided in PumpOne Trainers is designed to supplement the advice and counsel of your personal trainer, health care provider or other health professional. As with all strenuous physical endeavors, use common sense and caution while performing the exercises depicted in PumpOne Trainers.

The following describes the legal “Agreement” between you (an individual) and PumpOne LLC (“PumpOne”) regarding the use and storage of a PumpOne Trainer. This Agreement is only valid for individuals. For the licensing arrangements available for other entities desiring to license PumpOne Trainers, please contact PumpOne by email at info@PumpOne.com.

DEFINITIONS

The following terms used in this Agreement have the meanings set forth below:

Content, as used herein, means all of the materials provided to you as a PumpOne Trainer (whether by download, or as electronically stored information). The materials provided to you as a PumpOne Trainer may include one or more of the following: literary works, text, pictorial and graphical works, photographs, video and audio clips, motion pictures and other audio visual works, video games, music, soundtracks, button icons, streaming data, animation, images, compilations, or any other software files (in object code or source code format).

Electronically stored information, as used herein, means information that is stored in any electronically readable form, including magnetically stored information, information stored on solid state devices and information stored on optically readable media. Electronically stored information includes, without limitation, information stored on CD, DVD, diskette, hard disk, flash drives, memory cards, or other devices.

LICENSE

a. License

Subject to your acceptance of this Agreement, and subject to the terms and conditions of this Agreement, PumpOne hereby grants you a limited, non-transferable, non-assignable, worldwide, non-exclusive right to use the Content solely for your own non-commercial personal use. You may: (i) store the Content onto the hard drive of a single computer for your personal, non-commercial use; and (ii) store or synchronize the Content onto one or more of your handheld devices that are principally used by you (hereinafter, the “License”). The rights granted hereunder constitute a license, not a sale, of the applicable Content.

b. Restrictions on Use of Content

You agree that you will not, nor will you authorize or permit others to: (1) sell, rent, lease, license, sublicense, transfer, distribute, re-transmit, time-share, use or make available on a service

bureau, or otherwise assign to any third party the Content or any of your rights to use the Content; (2) modify the Content or create any derivative works based on the Content; (3) reverse engineer, decompile or disassemble the software elements of the Content, if any, or otherwise attempt to discover the source code of the software elements of the Content; or (4) circumvent any encryption or other security tools used anywhere in the Content, or on PumpOne's web site.

c. Ownership

As between the parties, the Content and all patents, copyrights, trademarks, service marks, know-how, trade secrets and any other proprietary rights therein or thereto, is the sole and exclusive property of PumpOne (or PumpOne's licensors), and you gain no right, title or interest in or to the Content by virtue of this Agreement or otherwise, except the License granted herein expressly in **Paragraph II (a)** above.

d. Notices

You shall include such proprietary rights and other notices on each copy of the Content as may be provided by Content Provider to you from time to time, or as may be generated automatically by the Content. You shall not remove or obscure any such notices.

e. Remedy for Breach of License

Violation of the licensing provisions of this Section II by you (or by any third party to whom you have properly or improperly provided access to the Content) shall constitute a material breach of this Agreement, and shall cause this Agreement, and the License granted hereunder to immediately and automatically terminate without notice. In addition to all other rights and remedies available to Content Provider, at law or in equity, and notwithstanding anything to the contrary herein, PumpOne shall be entitled to seek injunctive relief from a court of competent jurisdiction to avoid continued infringement of its intellectual property rights, including copyright. PumpOne, if it prevails, shall have the right to recover from you its attorney fees and other costs arising from your infringement of PumpOne's intellectual property rights, including copyright.

III. FEES

a. Fees

If you are downloading the Content, you agree to pay PumpOne LLC the then-current fees required for the download, as provided as part of the download or installation process, or otherwise as part of your membership to the web site (as applicable). All payments shall be in United States Dollars. If you are installing the Content from media upon which it is electronically stored, you agree to ensure that the purchase price has been paid for the Content prior to such installation.

b. Taxes

All fees and other charges set forth in the download and installation process do not include any federal, state, or local sales, use, value-added, property, excise, withholding or other taxes, customs or duties now or hereafter levied which shall be for your account. Any taxes or amounts in lieu thereof paid or payable by Content Provider in respect of any such taxes on such fees or charges (excepting only taxes on net income) shall be added to your obligations as an additional charge, which shall be due within thirty (30) days after invoice therefore.

IV. ASSUMPTION OF RISK, LIMITED WARRANTY, NO OTHER REPRESENTATIONS OR WARRANTIES

YOU EXPRESSLY AGREE THAT YOUR USE OF THE CONTENT IS AT YOUR DISCRETION AND AT YOUR OWN AND SOLE RISK.

PumpOne provides the following limited warranty: the PumpOne Trainer will be free from defects in material and workmanship for a period of one year from your date of purchase. PumpOne's entire obligation, and **your exclusive remedy**, for breach of the foregoing warranty is as follows: if you notify PumpOne during the warranty period of the defect and provide proof of purchase

showing the date and amount of your purchase, PumpOne shall, at PumpOne's sole option, replace the PumpOne Trainer with one that is not defective or refund to you the amount you paid for the PumpOne Trainer. EXCEPT AS STATED ABOVE, THE CONTENT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT. PUMPONE MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE CONTENT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES PUMPONE MAKE ANY REPRESENTATIONS OR WARRANTIES AS TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF THE CONTENT. PUMPONE MAKES NO REPRESENTATIONS ABOUT THE RESULTS TO BE OBTAINED FROM USING THE SITE OR THE CONTENT. PUMPONE MAKES NO WARRANTY REGARDING ANY GOODS OR SERVICES PURCHASED OR OBTAINED THROUGH THE CONTENT OR ANY TRANSACTION ENTERED INTO THROUGH THE CONTENT AND IS NOT RESPONSIBLE FOR ANY USE OF CONFIDENTIAL OR PRIVATE INFORMATION BY THIRD PARTIES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

Your remedies under this Agreement are exclusive and are limited to those expressly provided for herein.

V. INDEMNITY

You agree to indemnify PumpOne against any and all claims, liabilities, and costs, including reasonable attorneys' fees, reasonably incurred in connection with the alleged or actual: (i) material breach of this Agreement by you; or (ii) breach of your warranties or representations herein. PumpOne shall promptly notify you in writing of any such claim or suit, and cooperate fully (at your expense) in the defense of such claim or suit. PumpOne may participate in the defense of such claim or defense at its own expense.

VI. LIMITATION OF LIABILITY

IN NO EVENT SHALL PUMPONE (OR ITS LICENSORS) BE LIABLE TO YOU, OR ANY OTHER THIRD PARTY, **IN EXCESS OF THE PRICE BY YOU PAID FOR YOUR LICENSE**, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFITS OR GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF PUMPONE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATES DO NOT ALLOW THESE LIMITATIONS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

YOU EXPRESSLY AGREE THAT PUMPONE SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY THEORY FOR ANY LOSS OR DAMAGE TO YOUR COMPUTER SYSTEM, HANDHELD DEVICE OR ANY OTHER STORAGE/PLAYBACK DEVICE USED BY YOU TO STORE OR DISPLAY THE CONTENT. YOU AGREE THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ANY SUCH LOSS OR DAMAGE. YOU FURTHER UNDERSTAND AND AGREE THAT PUMPONE SHALL NOT BE LIABLE UNDER ANY THEORY FOR ANY LOSS OR DAMAGE TO ANY DATA ON YOUR PERSONAL COMPUTER, HANDHELD DEVICE OR ANY OTHER STORAGE/PLAYBACK DEVICE USED BY YOU TO STORE OR DISPLAY THE CONTENT WHICH DAMAGE OR LOSS RESULTS FROM THE DOWNLOAD OF THE CONTENT. YOU AGREE THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ANY SUCH LOSS OR DAMAGE.

PUMPONE EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR ANY INJURY YOU SUFFER AS A RESULT OF USING THE CONTENT. BY ACCEPTING THE TERMS OF THIS AGREEMENT, YOU EXPRESSLY AGREE TO ASSUME ALL RISKS ASSOCIATED WITH AND WHICH MAY ARISE FROM YOUR USE OF THE CONTENT.

VII. TERM AND TERMINATION

a. Term

The term of this Agreement shall begin on the date that you first download/install the Content and shall continue in effect until such time as either party terminates the Agreement, with or without cause. PumpOne reserves the right to change or discontinue at any time any aspect or feature of this Site or the Content

b. Effect of Termination

Upon termination of this Agreement for any reason, (1) all licenses granted hereunder shall terminate immediately, (2) you shall erase and destroy all copies of the Content (including, without limitation deleting the Content from any cached files on the hard drive of your computer); and (3) PUMPONE shall immediately cease providing access to the Content to you.

c. Survival

The parties' rights and obligations under Sections II(b), II(c), II(e), III, IV, V, VI, VII(b), and VIII shall survive any expiration or earlier termination of this Agreement.

VIII. GENERAL TERMS

a. Governing Law

This Agreement and all matters arising out of or otherwise relating to this Agreement, shall be governed by the laws of the State of New York, excluding its conflict of law provisions. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The parties hereby submit to the personal jurisdiction of the state and federal courts in the State of New York. Exclusive venue for any litigation permitted under this Agreement shall be with the state and federal courts located in Borough of Manhattan, City of New York.

b. Rights to Injunctive Relief

Both parties acknowledge that remedies at law may be inadequate to provide an aggrieved party with full compensation in the event of the other party's breach of Section II (a), (b) or (d), and that, notwithstanding the agreement regarding arbitration, an aggrieved party shall be entitled to seek injunctive relief from a court of competent jurisdiction in the event of any such breach. Such injunction shall be in addition to, and not in lieu of other remedies available at law or in equity. Each party expressly agrees that it shall not seek a bond in excess of \$200 in connection with the issuance of any such injunction.

c. Arbitration

Except as otherwise provided herein, either party may submit any dispute arising out of or relating to this Agreement to binding arbitration in accordance with the then-existing Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted in borough of Manhattan, City of New York, and conducted by a single arbitrator, knowledgeable in software, the Internet and e-Commerce. The party bringing the action shall be responsible for paying all costs for arbitration, including the arbitrator's fees, unless attorney's fees may be awarded to the prevailing party under this Agreement or as a matter of substantive law. The arbitrator shall have no authority to award any punitive or exemplary damages, certify a class action, add any parties, or to vary or ignore the terms of this Agreement and shall be bound by governing and applicable law. This Section shall not apply to any breach (or any allegation which if true would constitute a breach) of Section II (a), (b) or (d).

d. Assignment

The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective assignees, successors, executors, and administrators, as the case may be. Neither this

Agreement nor any rights granted hereunder may be sold, leased, assigned or otherwise transferred, in whole or in part by you.

e. Severability

If for any reason a court of competent jurisdiction or arbitrator finds any provision of this Agreement or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible and the remainder of this Agreement will continue in full force and effect.

f. No Waiver

Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision, and no waiver of one breach will constitute a waiver of subsequent breaches of the same or of a different nature.

g. Complete Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing and signed by a duly authorized representative of both parties.

h. Headings

Section and subsection headings of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

i. Force Majeure

PumpOne shall not be responsible for any failure to perform due to unforeseen circumstances or to causes beyond its reasonable control, including but not limited to: acts of God; war, riot, embargoes, acts of civil or military authority, or terrorism; fire, flood, earthquakes, hurricanes, tropical storms or other natural disasters; fiber cuts; strikes, or shortages in transportation, facilities, fuel, energy, labor or materials; failure of the telecommunications or information services infrastructure; hacking, SPAM, or any failure of a computer, server or software, for so long as such event continues to delay PumpOne's performance.

j. Transmission of Data

You acknowledge that if you are accessing or downloading from PumpOne's website, information will be transmitted over local exchange, inter-exchange and Internet backbone carrier lines and through routers, switches and other devices owned, maintained and serviced by third party local exchange and long distance carriers, utilities, Internet service providers and others, all of which are beyond the control and jurisdiction of PumpOne and their suppliers. Accordingly, PumpOne assumes no liability for or relating to the delay, failure, interruption or corruption of any data or other information transmitted in connection with use of PumpOne's website.

k. Rights

All information provided by PumpOne on its website pages and in the Content is owned by or licensed to PumpOne except where noted. PumpOne and its licensors retain all proprietary rights to the information contained on its website pages to the fullest extent of their rights. The information contained on PumpOne's website pages may not be downloaded or reproduced except for use by PumpOne's customers as part of their activity in licensing, using or evaluating the purchase of a PumpOne Trainer. You acknowledge that any health or exercise related information on the PumpOne website is general in nature and may not apply to you. You represent and warrant that you will not rely upon any health or exercise related information on PumpOne's website pages, and that you will consult, as appropriate, with your trainer or health care provider in connection with your health and exercise routines.

l. Updates and Health

Users of the Site and PumpOne Trainers are advised that health advice is often subject to updating and refining due to medical research and developments. PumpOne attempts to update its website pages frequently. However, no assurance can be given that the advice contained in the Content will include the most recent findings or developments with respect to the particular material. You should consult with your health care provider with any questions or concerns you may have regarding any health condition that you may have.

m. Health Warranty

You represent and warrant that prior to use of your PumpOne Trainer, you will consult with your health care professional, and that your health care professional has agreed that you are in sufficient health and have no disability, impairment, injury disease or ailment that would prevent you from engaging in the exercises reflected in your PumpOne Trainer. If your healthcare provider is of the opinion that, at the time of your purchase, you were not in sufficient health to engage in the exercises in your PumpOne Trainer, and you so inform PumpOne within 30 days of your purchase (and provide PumpOne with your healthcare provider's written opinion to that effect), PumpOne will refund your purchase price for the PumpOne Trainer.

n. Access to Site and Additional Fees

You are responsible to determine if your mobile phone and carrier are compatible with the Content. Your phone must be capable of receiving text messages and color graphics and images. In addition, your cell phone account needs to be Internet-enabled to download color graphics. PumpOne will not give refunds if you download or attempt to PumpOne Trainers to incompatible phones or carriers or if your cell phone account is not Internet enabled. PumpOne does not guarantee the accuracy, integrity or quality of any PumpOne Trainer. You acknowledge and agree that you must evaluate, and bear all risks associated with, the download of any PumpOne Trainer, including the completeness or usefulness of the PumpOne Trainer.

SERVICE FEES ARE NON-REFUNDABLE. Fees are subject to change at any time without notice. You are liable for any Fees incurred by you up to and until termination of the Service including any additional costs charged by your carrier. Standard usage charges for SMS, MMS and other charges, including third party charges and/or taxes may apply (please check with your carrier). All charges will be billed on your wireless service bill and/or deducted from your prepaid balance.