

# Terms of Service

FOP Pivovarova Anastasia Konstantinivna, with its registered office at 04107, Ukraine, Kyiv, Pechenizka street, 4, office 10 entered in the Commercial Register of Ukraine, ID No.: 3019004203 (“Fitspex”, “us”, “we”, or “our”), operates the mobile application Fitspex and the website <https://fitspex.net> (collectively the “Services”).

Please read these Terms and Conditions (“Terms”, “Terms and Conditions”) and Privacy Policy carefully before using our Services.

Your access to and use of the Services is conditioned on your acceptance of and compliance with these Terms. These Terms apply to everyone who accesses or uses the Services. You accept the Terms during the registration process in the Services by clicking on the button “Register” on your device.

If you disagree with any part of the Terms and Conditions - you may neither access nor use the Services.

## **Fitspex Services**

Fitspex will make the Services available to customers based on these Terms and Conditions.

Upon your acceptance of these Terms, Fitspex grants you a non-exclusive, limited, non-assignable and non-sublicensable licence to use the Services only in accordance with the selected functionalities, i.e. functionalities that are free of charge or paid (the “Licence”). The Licence is granted for the duration of the contractual relationship between Fitspex and you under these Terms and applies to all general updates, maintenance or free of charge upgrades of the Services. The Licence automatically terminates when you stop using the Services and uninstall the respective mobile application from your device.

You must not, and will not permit others to:

- Sell, sub-licence, rent, lend or in any other manner distribute the Services or any intellectual property rights therein or otherwise make the Services available to other persons;
- Use or access the Services in violation of any applicable law or intellectual property and/or personality rights of third parties;

- Use or access the Services in a manner that threatens the security or functionality of the Services, or for any purpose or in any manner not expressly permitted in these Terms;
- Create, collect, transmit, store, use or process the Services in a manner that violates any law, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party including any moral right, privacy right or right of publicity;
- Reverse engineer, modify, decompile or disassemble the Services or any portion thereof or making any other attempt to ascertain the composition or the properties of the characteristics of the Services;
- Tamper with, breach, or attempt to probe, scan, or test for vulnerabilities in the Services;
- Upload into the Services malware or any files that contain corrupted files, viruses or any other programs that may damage or adversely affect the operation of the Services;
- Remove or obscure any proprietary notices or labels in the Services, including brand, copyright, trademark and patent or patent pending notices;
- Access or use the Services for the purpose of building a similar or competitive product or service or perform any vulnerability, penetration or similar testing of the Services.

You can use any content in the Services only for the duration of and in accordance with the Licence. You may neither change, reproduce, translate, distribute, publish, create, or use derivative works of, communicate to the public or otherwise use the Services and their content nor use the name or designation of the Services and their content in any way.

### **Suspension of Access; Scheduled Downtime; Modifications.**

Fitspex may, at its discretion, suspend your access to or use of the Services or any component thereof, in the following cases:

- scheduled maintenance;
- if you violate these Terms, especially conditions of the Licence or upload illegal content to the Services;
- if the information provided by you is false or inaccurate;

- if your conduct violates any relevant laws or regulations, such as those related to copyright and intellectual property;
- if your behavior towards Fitspex employees, partners, contractors, agents, or other users is deemed threatening, abusive, or harassing;
- addressing emergency security concerns by Fitspex;
- pending modification of the Services by Fitspex.

Fitspex reserves the right to release updates, patches, and bug fixes to the Services. All general updates, maintenance or upgrades will be generally available to you. You are not obliged to download and install any updates of the Services, but in such case, Fitspex cannot guarantee the functionality of the Services. Fitspex is also entitled to make any modifications or changes to the Services, including its complete inaccessibility, without any compensation, at its discretion and without prior notice.

## **User-Generated Content**

By uploading any content into the Services (e.g. content uploaded under your user account such as photos, reviews, comments and other materials), you grant to Fitspex a non-exclusive, worldwide, unlimited in quantity, royalty-free and fully paid up, freely assignable and sublicensable, perpetual (i.e. for the duration of the respective economic rights) licence to use such uploaded content for any known purpose.

- Fitspex is entitled to use your content in its original or altered form and to modify, reproduce, translate, distribute, publish, create and use derivative works of, communicate to the public or otherwise use your content in any extent and in any way necessary for the operation of the Services. Fitspex is also entitled to use your name and image in connection with your content without any restrictions.

You are solely responsible for the content that you upload to the Services. You are prohibited from advertising commercial websites or other products through your user account in the Services. You cannot create or share content that is pornographic, sexual, violent, racist, instigating, discriminatory, explicit, insulting and/or libelous in nature. You must and hereby undertake to ensure that you will hold and maintain all necessary rights to the content that you upload to the Services.

Fitspex is entitled to, at its discretion or at the initiative of a third party or competent public authority, modify, delete or block content that inter alia is:

- false, unlawful, misleading, defamatory, abusive, obscene, pornographic, ambiguous, harassing, incriminating, infringing the rights of third parties, vulgar, fraudulent or otherwise inadmissible, racist or inciting religious fanaticism, hatred or physical harm of any kind;
- includes any mentions, indications, expressions, images or other graphics, sound or other medium that would constitute, incite, encourage or induce the commission of an illegal activity or crime, be capable of causing harm or infringing the rights of any third party; and/or violates any generally binding legal regulations;
- capable of damaging, in any way, the device on which the Services are provided, Fitspex's servers or the devices of other users of the mobile application;
- that conflicts with our Terms.

In cases where you would be the provider of such content, Fitspex reserves the right to suspend and, if necessary, delete your user account within the Services for the necessary period.

For the sake of clarity, you express your explicit consent to the conditions of this Section of the Terms by accepting the Terms during the registration process in the Services (i.e. by clicking on the button "Register" in your device).

## **Services and Prices**

### **Free Services**

If you use the Services free of charge, you only have access to some basic functions and information of the Services. More functionalities are available to you in the case you enable custom content modules separately in return for a one-time payment or for a subscription fee. Classification of the Services as free of charge or paid may change over time based on the current functionality of the Services at given time.

To use some of the Services to the greatest extent, some equipment or other stuff may be required (e.g., Kettlebell, Gym Ball, Medicine Ball, Food, Fitness gear, Fitness mat etc.). These are not part of the Services and need to be purchased by you at your own cost.

## **Paid Services**

Up to date types of subscriptions that you can choose from are always available in the Services (i.e. the mobile applications) and/or at the website of the respective marketplace.

## **Trials**

Fitspex may offer you free trials (the “Trial”) for certain paid Services (“Paid Services”) for a specified Trial period. To begin the Trial, we will require you to provide us with your payment details. By providing such details, you initiate the Trial period and consent that automatic charging of agreed payment may begin for the chosen subscription of Paid Services on the first day following the end of the Trial period on a recurring basis. If you do not want to accept this charge, you must cancel the applicable subscription of Paid Services before the Trial period ends.

## **Prices**

Fitspex may change the price for the Paid Services, the Trials (for periods not yet paid for), or Codes. Price changes for Paid Services will take effect at the start of the next subscription period on the following date of the price change. As permitted by local law, you accept the new price by continuing to use the Fitspex Services after the price change takes effect. If you do not agree with the price changes, you have the right to reject the change by unsubscribing from the Paid Services before the price change comes into effect. Please make sure you read notifications of price changes very carefully.

You can find more information about the applicable prices at the respective marketplace. In this regard, please see the websites that contain information on our individual Services.

## **Your Health**

Use of the Services is at your own risk. You must be in a good general state of health to use Fitspex. If are aware of any pre-existing medical conditions, we advise you to seek medical advice before you start using our Services.

Especially if you have any of these medical complaints/conditions/procedures: Cardiovascular disease, Lung or respiratory diseases, Spinal and/or joint problems, Neuromuscular disease, Surgical procedures and any other health issues.

In case of nutritional advising, you have the responsibility to verify that all foods and nutrients recommended by us do not contain anything to which you are allergic, or which may cause you a food intolerance.

Please note that children, pregnant women and breastfeeding mothers should not do the trainings and coaching offered by us.

Our Services and advice shall in no case be a substitute for medical advice, examination, or treatment.

We do not guarantee that the use of the Services will bring the results intended by you. We do not promise or guarantee any muscle gains, fat loss, etc. The actual training result depends on many factors, which cannot be influenced (genetics, physical disposition and medical preconditions, etc.).

You shall always consult the use of the Services with an expert (e.g. physician, medical expert or a certified trainer etc.). Fispex is not responsible for (i) the state of your health, and (ii) the suitability of our exercises or exercise plans for your health and body.

## **Data Protection**

We hereby agree to process any and all information, including personal data, received hereunder with due care.

We will not, in any manner whatsoever, collect, gather, retain, disseminate, disclose, process or use confidential information, including personal data, or consolidate it with any other information without a due legal ground.

We protect all personal data processed within the Services in compliance with the requirements set out in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (the “General Data Protection Regulation”) and other applicable legal regulations.

## **User's Account**

In order to use our Services, you need to comply with all legal requirements of the country of your residence. If you are minor according to the law of your country of residence, you must use the Services only under strict supervision of your legal guardian. You represent that any registration information that you provide to Fitspex is and will be true, accurate, and complete. You agree to update information in your registration in case of any relevant change thereof.

To use the Services, you must download and install the application, register and open a user account. It is sufficient to open only one user account, even if you wish to use several Services. You can open a Fitspex user account on our website or via one of our mobile apps. Do not use domain names or web URLs in your username without prior written approval from us.

It is not possible to complete the registration without entering the data marked as mandatory. We will ask you to accept these Terms and Conditions and our Privacy Policy during the registration process.

After you register, for security reasons, we will first send you an e-mail in which we ask you to verify the registration by clicking on the “Confirm account” field. After you have clicked on this field you will be redirected to a website where we will finally confirm your registration. Only then will the registration process be complete.

Also, you can open a Fitspex user account by using your Facebook / Apple ID / Google account. In case of registration through an existing account, you are obliged to check the accuracy of the data transferred from your existing account, and in the event of their inaccuracy, correct them immediately. The registration process is completed once you have entered your Facebook / Apple / Google account details and confirmed to use them.

After the registration, Fitspex will allow you to maintain your account and to use the functionalities of the Services that are free of charge. However, some extended functionalities of the Services may be available only after paying the respective fee.

## **Conclusion of a contract**

When registering on our website or installing our mobile applications, the contract between you and us is formed when you click on the “Install” field and enter your password (if required) in the relevant app store. Kindly note that the contract

between you and Fitspex does not concern the relationship between you and the app store supplier (Apple, Google, Huawei, etc.).

Additional services can be purchased by you either by paying a one-time fee or as part of a subscription. If you purchase the additional service via your mobile app, the contract is formed when you click on the field “Buy now”, or a similar field, as part of an in-app purchase and, enter your password if required.

## **Payments**

We reserve the right to assert further claims for late payments.

If you purchase our Services for via in-app purchases, you will be billed by the app-store supplier. Please consult this supplier (Google Play, Apple App Store, Huawei AppGallery) to find out what payment methods are available.

If any costs and/or expenses incur to us because a payment is declined and this is your fault (e.g. because there are insufficient funds in the account or the credit card limit has already been exhausted), then we are entitled to bill you for the actual costs and/or expenses incurred.

In case of a legitimate reason, we reserve the right to refrain from offering certain payment methods and to specify alternative payment methods.

## **Refund and Cancellation Policy**

By completing your purchase of selected Paid Services, you grant your consent to receive the full functionality of the Paid Services immediately. You hereby acknowledge and agree that once you start to use the Paid Services, you are entitled to withdraw from the contract between us and you only for the reasons stated below and/or for a substantial breach of the contract by Fitspex.

You may cancel the Paid Services and request a refund of the paid Fees within 48 hours of signing up for the Paid Services (not guaranteed for purchases proceeded by Apple App Store - see “iOS Refund Request”), in which case the subscribed Services will immediately terminate as of the date that we provide such refund. While Fitspex is under no obligation to do so, in certain limited circumstances Fitspex may at its sole discretion provide you with a refund.

If you wish to cancel your Paid Services after the 48 hour period described above, cancellation of the Services will become effective as of your next payment period



and you will continue to receive the Fitspex Services paid for until such date. If your cancellation request will be made less than 24 hours prior to the scheduled payment period termination date, such request will become effective as of your next payment period, and you will continue to receive the Services paid for by until such date.

If you choose to cancel the Services, you must submit a cancellation request via the same method with which you signed up for Services (Google Play, Apple App Store, Huawei AppGallery).

For more information, see the refund and cancellation procedures for the respective app-stores below:

### **iOS Refund Request:**

Billing for iOS app purchases is processed directly through Apple. Due to this fact we cannot issue a refund, so you have to ask Apple for a refund by yourself (following these instructions):

- Open the Mail app from your Home screen.
- Find the e-mail called “Your receipt from Apple”
- Click on the receipt for the purchase you want refunded.
- Tap Report a Problem next to the purchase you want to report. You will be redirected to Apple's problem reports page.
- Enter your Apple ID and password when prompted.

### **Android Refund Request:**

- Launch the Google Play app
- Click Menu
- My Apps
- Subscriptions and tap on the app (Fitspex) you'd like to get a refund for

### **Huawei Refund Request**

- Launch AppGallery
- Click Me

- Click Account center
- Click Payment and Purchases
- Click Purchase history (take a screenshot)
- Choose your region and contact HUAWEI
- Provide them with your HUAWEI ID, App name (Fitspex), Refund amount, Problem Description, Country/Region and Contact information

If you were not able to get a refund after following these steps, contact us at [mobile@fitspex.net](mailto:mobile@fitspex.net)

### **iOS Cancellation:**

- Launch the Settings app
- Click iTunes & App Store
- Click Apple ID
- Click View Apple ID
- Click Apple ID
- Under Subscriptions click Manage
- Click Fitspex
- Click Cancel Subscription
- Click Confirm

### **Android Cancellation**

- Launch the Google Play app
- Click Menu
- My Apps
- Subscriptions and tap on the app (Fitspex) you'd like to cancel the subscription for

### **Huawei Cancellation**

- Launch the AppGallery app
- Click Me
- Click Account center
- Click Payment and Purchases
- Click Subscriptions and choose Fitspex

## **Special deals and promotions**

Fitspex is offering deals, sales and promotions such as reward programs. You can stay informed of these deals via our newsletter only if you provide the necessary consent to receive such deals. The sales are normally only offered for a limited time. There are separate conditions for these deals which are provided for purposes of information and participation.

## **Liability and Guarantees**

Fitspex makes no representations or warranties of any kind, express or implied, with respect to the Services, the Licence or any related content provided thereunder, and all such materials, content and services are provided “as is”. We also make no representation, warranties of any kind, express or implied, nor do we guarantee that access to the Services will be uninterrupted or error free. For correct functioning and full utilization of the Services, you must use the Services on hardware and software that fulfill the minimum configuration requirements available on the Appstore and Google Play listing of the service.

Statutory provisions apply to claims due to defective services. Your consumer rights remain unaffected in any case.

By agreeing to these Terms you also acknowledge, that:

- Fitspex is the provider of the hosting and does not preventively control the user content published or disseminated through the Services by its users and in no case is responsible for such content;
- Some user content in the Services may be taken over from third parties and Fitspex is not responsible for the correctness, timeliness, completeness or any other informative value of such third party content;

- User content does not represent the opinions, statements or other attitudes of Fitspex and therefore cannot be associated with Fitspex or its business name;
- Fitspex does not provide, to the extent permitted by generally binding legal regulations, any quality guarantee or other guarantees for the Services.
- Uses of the Services is at your own risk and Fitspex is not liable for any damage, injury, loss of income, profits, damage to reputation, data or business opportunities that may arise for you while using or in connection with the provided Services, or delay or denial of access to them.
- If you infringe the conditions mentioned in these Terms, you are obliged to indemnify Fitspex against any third-party claims arising from such infringement. You are obliged to provide assistance in clarifying the disputed situation. Fitspex reserves the right to assert claims for damages and other claims.

## **Changes To These Terms**

These Terms may be changed at the sole discretion of Fitspex. You will be notified of any changes in the Terms via e-mail or within our Services at least 14 days prior to the effect of such changes. If you do not agree with the proposed changes in the Terms, you are entitled to withdraw from the contract hereunder within 14 days of receiving notification of the Changes to the Terms and to unsubscribe from the Paid Services but no later than upon the effective date of the change in the Terms. If you continue to use the Services after the effective date of the updated Terms, you will be deemed to have accepted the revised Terms.

## **Governing Law and Dispute Resolution**

These Terms shall be governed and construed in accordance with the laws of the Ukraine, with the exclusion of conflict-of-law rules.

All disputes between us and you arising out of or in connection with these Terms shall be settled primarily by mutual agreement and without undue delay. If the mutual agreement cannot be reached according to the previous paragraph within 30 days, you may at any time turn to the competent general court, the Ukrainian Trade Inspection Authority or your competent local administrative public body.

The Ukrainian Trade Inspection Authority is entitled to out-of-court settlement of consumer disputes in the event the consumer is a party to the contract from which the dispute is based. However, the Ukrainian Trade Inspection Authority is not entitled to make a binding decision in the matter. The general courts of the Ukraine are competent to resolve all disputes in a binding manner. Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us and you regarding our Services and supersede and replace any prior agreements we might have between us and you regarding the Services.

## **Severability and Survival**

Any provisions of these Terms found by a tribunal or court of competent jurisdiction to be illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.

Notwithstanding any cancellation, expiry or termination of these Terms, the provisions contained herein relating to confidentiality, liability, compensation for damages, licence to User Generated Content and governing law and dispute resolution shall continue to apply without limit in time as well as any other the provisions which, by their nature, remain in force after the termination hereof.

## **Contacting Us**

If there are any questions regarding these Terms, you may contact us using the information below.

**FOP Pivovarova Anastasia Konstantinivna**

<https://fitspex.net/>

mobile@fitspex.net

04107, Ukraine, Kyiv, Pechenizka street, 4, office 10

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