

Asia Pacific (APAC) Addendum to Fitbit Health Solutions Client Terms

- The following sentence is deleted from section 5.2 (“Pricing, Taxes and Payment”)

“If Client provides to Fitbit a valid exemption documentation, Fitbit will not collect the Taxes covered by that certificate. Fitbit shall make the determination as to whether an exemption documentation is valid or able to accept in good faith in its reasonable discretion.”

and replaced with:

“Client must pay the invoiced amount in full without any deduction or withholding for Taxes.”

- Section 7.1 (“Delivery, Title and Risk”) is deleted and replaced with the following language:

“7.1 Unless otherwise agreed to by the parties in an Ordering Document:

- a) The pricing set forth in any applicable Ordering Document is exclusive of shipping costs.*
- b) Fitbit will deliver the Devices DDP(Incoterms, 2020) to the Delivery Location, unless otherwise specified in the applicable Ordering Documents.*
- c) Title in the Devices pass to Client upon delivery of the Devices to Client at the Delivery Location, unless otherwise specified in the applicable Ordering Documents.*
- d) Partial delivery of any order will be permitted unless otherwise agreed by the parties.”*

- Section 9.4 (“Representations and Warranties”) is deleted and replaced with the following language:

“(a) TO THE EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO (b) BELOW, THE WARRANTIES AND CONDITIONS STATED IN THESE CLIENT TERMS ARE IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS AS TO MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, ALL OF WHICH ARE EXPRESSLY EXCLUDED. (b) CERTAIN LAWS OF THE JURISDICTION IN WHICH CLIENT RESIDES, SUCH AS THE AUSTRALIAN CONSUMER LAW, MAY CONFER RIGHTS AND REMEDIES AND IMPLY TERMS INTO THESE TERMS THAT CANNOT BE EXCLUDED. THOSE RIGHTS, REMEDIES, AND IMPLIED TERMS ARE NOT EXCLUDED BY THESE TERMS. TO THE EXTENT THAT THE RELEVANT LAWS PERMIT FITBIT TO LIMIT THEIR OPERATION, FITBIT’S LIABILITY UNDER THOSE LAWS WILL BE LIMITED AT ITS OPTION, TO THE SUPPLY OF THE SERVICES AGAIN, OR PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.”

- Where Client’s address is in China, Taiwan, Hong Kong, India, Thailand, Indonesia, Vietnam, Myanmar, the Philippines or the Republic of Korea, section 24.4 (“Governing Law”) is deleted and replaced with the following:

“24.4 Governing Law

24.4.1 ALL CLAIMS ARISING OUT OR RELATING TO THESE CLIENT TERMS (“Dispute”) WILL BE GOVERNED BY CALIFORNIA LAW, EXCLUDING CALIFORNIA’S CONFLICTS OF LAWS RULES.

24.4.2 The parties will try in good faith to settle any Dispute within 30 days after the Dispute arises. If the Dispute is not resolved within 30 days, it must be resolved by arbitration by the American Arbitration Association's International Centre for Dispute Resolution in accordance with its Expedited Commercial Rules in force as of the date of this Agreement ("Rules").

24.4.3 The parties will mutually select one arbitrator. The arbitration will be conducted in English in Santa Clara County, California, USA.

24.4.4 Either party may apply to any competent court for injunctive relief necessary to protect its rights pending resolution of the arbitration. The arbitrator may order equitable or injunctive relief consistent with the remedies and limitations in this Agreement.

24.4.5 Subject to the confidentiality requirements in Subsection 24.4.7, either party may petition any competent court to issue any order necessary to protect that party's rights or property; this petition will not be considered a violation or waiver of this governing law and arbitration section and will not affect the arbitrator's powers, including the power to review the judicial decision. The parties stipulate that the courts of Santa Clara County, California, USA, are competent to grant any order under this Subsection 24.4.5.

24.4.6 The arbitral award will be final and binding on the parties and its execution may be presented in any competent court, including any court with jurisdiction over either party or any of its property.

24.4.7 Any arbitration proceeding conducted in accordance with this Section will be considered Confidential Information, including (i) the existence of, (ii) any information disclosed during, and (iii) any oral communications or documents related to the arbitration proceedings. The parties may also disclose the information described in this Subsection 24.4.7 to a competent court as may be necessary to file any order under Subsection 24.4.5 or execute any arbitral decision, but the parties must request that those judicial proceedings be conducted in camera (in private).

24.4.8 The parties will pay the arbitrator's fees, the arbitrator's appointed experts' fees and expenses, and the arbitration center's administrative expenses in accordance with the Rules. In its final decision, the arbitrator will determine the non-prevailing party's obligation to reimburse the amount paid in advance by the prevailing party for these fees.

24.4.9 Each party will bear its own lawyers' and experts' fees and expenses, regardless of the arbitrator's final decision regarding the Dispute."