

Terms and Conditions

About the Terms

Access to and use of any of the BodyMedia® web sites (including, but not limited to, gowearfit.com, sensewear.com, bodymedia.com) both within the USA and internationally is provided by BodyMedia on the following terms:

By using this site you agree to be bound by these terms, which shall take effect immediately on your first use of the web site. If you do not agree to be bound by all of the following terms please do not access, use and/or contribute to the site.

BodyMedia may change these terms from time to time and so you should check these terms regularly. Your continued use of the site will be deemed acceptance of the updated or amended terms. If you do not agree to the changes, you should cease using this web site. If you do not agree to abide by any modified version of these terms of use then you are not authorized to use this web site. If there is any conflict between these terms and specific local terms appearing elsewhere on the site (including house rules) then the latter shall prevail.

Use of the Web Site

You agree to use the web site only for lawful purposes, and in a way that does not infringe the rights of, restrict or inhibit anyone else's use and enjoyment of the site. Prohibited behavior includes harassing or causing distress or inconvenience to any person, transmitting obscene or offensive content or disrupting the normal flow of dialogue within the site. Do not post any content that violates any applicable local, state, national, or international law.

Products

Orders

Subscriptions are priced depending on their commitment period, for example 1 month, 6 months, and 12 months. After the end of your commitment period BodyMedia will continue to charge you on a monthly basis at the same rate that you were paying (excluding any promotional rates). At any time you may choose to upgrade your subscription, starting a new commitment period at a new monthly subscription rate.

All orders placed through the web site are subject to BodyMedia's acceptance, which is in its sole discretion. Without limitation, this means that BodyMedia may refuse to accept or may cancel any order, whether or not the order has been confirmed, for any or no reason, in its sole discretion, and without liability to you or any third party. If your credit card has already been charged for an order that is subsequently cancelled, BodyMedia shall issue a credit to your credit card account.

BodyMedia will ship your order within 2 business days after the order has been placed assuming all ordered items are in stock. If you have ordered multiple items and some items are on backorder, we will hold the shipment until all items become available. This shipment will be delivered using the shipment method originally selected with the order.

Gift Certificates

Any purchase less than the value of a gift certificate causes the unused balance to be placed in the account of the gift certificate recipient for use in a future transaction up to expiration date.

Gift certificates are valid for 365 days from date of purchase and are only redeemable at the site where purchased.

Gift certificates cannot be used or redeemed without the authorized code, cannot be redeemed for cash, cannot be replaced if they are lost or stolen, cannot be used or redeemed toward previous purchases, cannot be used or redeemed to purchase other gift certificates, cannot be resold, and are not refundable.

Returns

If an item is returned within 30 days of purchase in original condition, BodyMedia will issue you a full refund based on your method of payment. Products must be packed in their original packaging including all accessories, manuals, and documentation. You must include the "customer return form" that came with your order. If you no longer have the customer return form please contact Customer Service prior to returning any product. You will be responsible for, and pre-pay, all return shipping charges and shall assume all risk of loss or damage to product while in transit to BodyMedia. We recommend that you use a traceable method of shipping for your protection.

Customer Service can cancel subscriptions. Subscriptions can be canceled and refunded in full during the first 30 days without paying a cancellation fee. If a subscription is canceled before the end of the commitment period then there is a cancellation fee of \$60. The cancellation fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the commitment period on which your subscription rate is based. After the end of your commitment period, BodyMedia will continue to charge you on a monthly basis at the same rate that you were paying (excluding any promotional rates) until either party gives notice, and no cancellation fee is due.

For example, if you choose a 6 month subscription and cancel in the first 30 days then you will receive a full refund and no cancellation fee is due. If

you cancel in month 4 then the cancellation fee is due. If you continue beyond the 6 month term and cancel after month 9 there is no cancellation fee due. Subscription and cancellation fees are set on the date of purchase.

Limited Warranty and Disclaimer

Unless otherwise set forth in a separate limited warranty description included with the BodyMedia Hardware (including Armband, Display with Clip and Watch strap), BodyMedia warrants that BodyMedia Hardware is free of defects in materials and workmanship under normal use and service ("Limited Warranty") for 1 year from the date the product is purchased by the original retail purchaser (the "Limited Warranty Period"). This warranty is only valid for the original retail purchaser and only from the date of initial retail purchase, and the purchaser must provide proof of purchase. The purchaser will be responsible for, and pre-pay, all return shipping charges and shall assume all risk of loss or damage to product while in transit to BodyMedia. We recommend that you use a traceable method of shipping for your protection. If a defect covered by this Limited Warranty occurs during the Limited Warranty Period, BodyMedia will, at its option, repair or replace the entire unit or refund the original purchase price. The foregoing remedies are purchaser's sole and exclusive remedy and BodyMedia's sole and exclusive liability for breach of the Limited Warranty.

This Limited Warranty is subject to compliance with the applicable user guides for the BodyMedia Hardware and does not apply to normal wear and tear or damage caused by improper or incorrectly performed maintenance, negligence, accident, misuse or unreasonable use, modification, tampering, or any other causes not related to design, materials or workmanship. This Limited Warranty excludes replaceable batteries.

EXCEPT AS SPECIFIED IN THIS LIMITED WARRANTY SECTION, ALL EXPRESS OR IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUALITY, NON-INTERFERENCE, ACCURACY OR ARISING FROM A COURSE OF DEALING, PERFORMANCE, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY BODYMEDIA. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THESE WARRANTIES GIVE CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION.

SUBJECT TO APPLICABLE LAW, IN NO EVENT SHALL BODYMEDIA'S LIABILITY EXCEED THE PURCHASE PRICE OF THE BODYMEDIA HARDWARE.

This disclaimer and exclusion shall apply even if the Limited Warranty set forth above fails of its essential purpose.

Intellectual Property

All copyright, trade marks, design rights, patents and other intellectual property rights (registered and unregistered) in and on the web site and all content (including all applications) located on the site shall remain vested with BodyMedia or its licensors (which includes other users). You may not copy, reproduce, republish, disassemble, decompile, reverse engineer, download, post, broadcast, transmit, make available to the public, or otherwise use BodyMedia content in any way. You also agree not to adapt, alter or create a derivative work from any BodyMedia content. Any use of BodyMedia content requires the prior written permission of BodyMedia.

The names, images and logos identifying BodyMedia or third parties and their products and services are subject to copyright, design rights and trade marks of BodyMedia and/or third parties. Nothing contained in these terms shall be construed as conferring any license or right to use any trade mark, design right or copyright of BodyMedia or any other third party.

Contributions to BodyMedia Web Sites

Your User Generated Content is not confidential or proprietary. By sharing any contribution (including any text, photographs, graphics, video or audio) with BodyMedia you agree to grant to BodyMedia free of charge, non-revocable, permission to use the material in any manner (including modifying and adapting it), in any media worldwide (including BodyMedia sites accessed by international users), without limitation, including the right to sublicense, assign and commercialize.

Copyright in your contribution will remain with you and this permission is not exclusive, so you can continue to use the material in any way including allowing others to use it.

You are responsible for ensuring that any User Generated Content that you post does not, and will not violate the rights of any third party rights of any kind. You confirm that your contribution is your own original work, is not defamatory and does not infringe any USA laws, that you have the right to give BodyMedia permission to use it for the purposes specified here, and that you have the consent of anyone who is identifiable in your contribution or the consent of their parent / guardian if they are under 18.

We may show your name with your contribution.

Please do not endanger yourself or others, take any unnecessary risks or break any laws when creating content you may share with BodyMedia.

If you do not want to grant BodyMedia the permission set out in these terms, please do not submit or share your contribution to or with BodyMedia.

BodyMedia Communities

In order to participate in and contribute to any BodyMedia communities you may be required to register with BodyMedia.

You agree to use BodyMedia communities (including message boards) in accordance with the following rules. These apply across all BodyMedia community sites and services. You should, however, read the local house rules of the particular site or service you're using, as there may be some local variations to these Community Rules.

About your posts

- Be Constructive: post only constructive comments and questions.
- Be Courteous: flaming and insults are prohibited. Do not post content that is offensive, libelous, indecent, unlawful, harassing, defamatory, abusive, intimidating, threatening, harmful, obscene, vulgar, profane, pornographic, sexually explicit, or offensive in a sexual, racial, cultural, or ethnic context, this or otherwise objectionable material is not acceptable.
- Be Patient: users of all ages and abilities may be taking part in the BodyMedia community.
- Be Private: do not post personal information, including your email address, IM address, or phone number. Do not solicit personally identifiable information from other users.
- Be Personal: the forums are not to be used for any commercial purpose. Do not post any advertising or commercial content whatsoever. Do not post any content that involves the transmission of "junk mail," "chain letters," or unsolicited mass mailing or "spamming." Please don't re-submit your contribution to more than one discussion.
- Be Yourself: do not impersonate anyone else.
- Be Honest: do not post any content that includes information that is false, misleading, inaccurate, fraudulent, or deceptive, or that promotes illegal activities
- Contributions containing languages other than English may be removed unless allowed in the relevant local house rules.
- URLs (web site addresses) can only be posted if allowed under any relevant local house rules.
- Deliberate misuse of the complaints facility is not permitted. If you persist in doing this, action may be taken against your account.
- Customer Service does not receive copies of web site posts. Always contact Customer Service if you have a complaint.

Your Account

If you use multiple logins for the purpose of disrupting a community or annoying other users you may have action taken against all of your accounts.

All accounts must be registered with a valid personal email address that you access regularly so that BodyMedia can contact you. Accounts registered with someone else's email address, or with temporary email addresses may be closed without notice. We may require users to re-validate their account.

BodyMedia reserves the right to close accounts of any user seen to be using proxy IPs (Internet Protocol addresses) in order to attempt to hide the use of accounts, or to disrupt any of our services in any way.

At times we must decline user-IDs that may otherwise seem unobjectionable. A user-ID may be declined for a number of reasons, for example it might violate another party's trademark or other intellectual property rights. These may include words, phrases, and celebrity's names. It may contain profanity, inappropriate slang, might be considered insulting or discriminatory, might be construed to incite violence, or may simply contain material that we do not wish to place on our site. BodyMedia reserves the right to cancel any user-ID after it has been submitted.

Safety

We advise that you never reveal any personal information about yourself or anyone else (for example: telephone number, postal address, home address or email address or any other details that would allow you to be personally identified) in any BodyMedia community.

Legal requirements

- You may not submit or share any defamatory or illegal material of any nature in BodyMedia communities. This includes text, graphics, video, programs or audio.
- Contributing material to a BodyMedia community with the intention of committing or promoting an illegal act is strictly prohibited.
- You agree to submit to or share with BodyMedia communities only contributions which are your own original work. You must not violate, plagiarize, or infringe the rights of BodyMedia or third parties including copyright, trade mark, trade secrets, privacy, publicity, personal or proprietary rights.

If you are under 18

You must be at least 13 years of age to register with a BodyMedia web site.

If you are under 18 years old, or under the age of majority where you live:

- You must get a parent's or guardian's permission before taking part in any BodyMedia community.
- Never reveal any personal information about yourself or anyone else (for example, school, telephone number, your full name, home

address or email address).

User Generated Content

The majority of content posted in BodyMedia communities is created by members of the public. The views expressed are theirs and unless specifically stated are not those of BodyMedia.

BodyMedia does not, and you agree that BodyMedia has no obligation to, review the communications, materials, information, opinions, and other content posted and/or submitted by users accessing the web site (including, without limitation, in or on bulletin boards, chat rooms, community pages or other forums on this web site) (collectively, "User Generated Content"), that BodyMedia is not in any manner responsible for User Generated Content, that BodyMedia does not guarantee the accuracy, integrity or quality of User Generated Content, and that BodyMedia cannot assure that harmful, inaccurate, deceptive, offensive, threatening, defamatory, unlawful or otherwise objectionable User Generated Content will not appear on the web site.

You acknowledge that by providing you with the ability to access and view User Generated Content on the web site, BodyMedia is merely acting as a passive conduit for such distribution and is not undertaking any obligation or liability relating to any User Generated Content or activities of users on the web site. Without limiting the generality of the foregoing, you acknowledge and agree that the information, materials and opinions expressed or included in any User Generated Content are not necessarily those of BodyMedia or its affiliated or related entities or content providers. You acknowledge and agree that BodyMedia has the absolute right to monitor User Generated Content posted to the web site in its sole discretion. In addition, BodyMedia reserves the right to alter, edit, refuse to post or remove any such User Generated Content, in whole or in part, for any reason or for no reason, and to disclose such User Generated Content and the circumstances surrounding their transmission to any third party. You agree that BodyMedia does not have any obligation to use or respond to any User Generated Content.

Reporting Abuse

You agree that you shall immediately notify BodyMedia of any objectionable content appearing on the web site. BodyMedia will make good faith efforts to investigate allegations that any User Generated Content violates these Terms but (a) makes no warranty to you that it will edit, remove, or continue to permit the display of any specific User Generated Content, whether or not subject to such allegations, and (b) will have no liability whatsoever for editing, removing, or continuing to permit the display of any User Generated Content whatsoever.

Third Party Content and Services

BodyMedia may make third-party content and services available through its web sites and services (for example, ProConnect). BodyMedia is not responsible for such content or the privacy practices of such third Parties. In order to use a specific service, you may choose to allow the third-party service provider to retrieve, provide, and/or modify personal and other information in your account or otherwise share your information with the service provider. Once you enable a specific third-party service provider to access your account, the service provider may continue to access your account until you affirmatively disable access. Third-party service providers include fitness and health professionals and other entities. It is your sole responsibility to review and approve each such third-party service before sharing your information through or otherwise accessing it.

BodyMedia is not responsible for third party services or the privacy practices of such service providers. Third party content and services contain information created, published, maintained, or otherwise posted by third parties independent of BodyMedia. BodyMedia does not endorse, approve, certify, or control these parties and does not guarantee the accuracy, completeness, efficacy, or timeliness of the information in such content. BodyMedia further does not endorse any third-party service providers, products, services, opinions, or web sites accessed through BodyMedia. Any opinions, advice, services, or other information made available by third parties either via third party links or contributed content are those of the respective authors or providers of such content and not of BodyMedia.

USE OF THIRD PARTY SERVICES OR CONTENT IS SOLELY AT YOUR OWN RISK. BODYMEDIA MAY NOT BE HELD LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO YOUR USE OF ANY THIRD-PARTY SERVICE OR CONTENT.

Medical Content

Any use of any content on this web site, including, without limitation, User Generated Content will be at your own risk. Without limiting the generality of the foregoing, you acknowledge and agree that BodyMedia is not responsible for any user generated or 3rd party content that purports to give medical advice or advice regarding fitness training, exercise, or diet. Always seek the advice of a physician or other qualified health provider with any questions you may have regarding a medical condition and prior to starting a diet or physical fitness program.

Violation of These Terms and Community Rules

If you fail to abide by these terms or community rules (and/or any variations in relevant local house rules) when using the web site or taking part in a BodyMedia community, action may be taken against your account or accounts.

This action may include any content posted by you being checked before allowed to go on the site or a temporary or permanent suspension of your ability to participate in any or all of BodyMedia community areas.

If you submit or share offensive or inappropriate content to or with any BodyMedia communities or anywhere else on a BodyMedia web site or otherwise engage in any disruptive behavior, and BodyMedia considers such behavior to be serious and/or repeated, BodyMedia may use

whatever information that is available to it about you to stop any further such infringements. This may include informing relevant third parties such as law enforcement, your employer, school, internet or email provider about the infringement(s).

BodyMedia retains the rights but not the responsibility to edit or remove any User Generated Content or terminate any account at any time for any reason at its sole discretion.

The failure or delay of BodyMedia to insist upon, exercise or enforce any right in these terms does not waive BodyMedia's right to enforce that right.

Disclaimers and Limitation of Liability

BodyMedia does not accept liability for any errors and omissions and reserves the right to change information, prices, specifications and descriptions of listed goods, products and services. If an error is discovered in the price of the goods that you have ordered, we will inform you as soon as possible. In the event that you order an item and the price published on the Site is incorrect for any reason, we will contact you to let you know the correct price and ask you whether you still wish us to fulfill your order at this price. We shall be under no obligation to fulfill an order for a product which was advertised at an incorrect price. We shall give you the option of confirming the order at the correct price or if you so choose, to cancel the order altogether. If you cancel and have already paid for the goods in the circumstances described in this clause, we shall refund the full amount in accordance with these terms.

BodyMedia content, including the information, names, images, pictures, logos and icons regarding or relating to BodyMedia, its products and services (or to third party products and services), is provided "AS IS" and on an "AS AVAILABLE" basis. To the extent permitted by law, BodyMedia excludes all representations and warranties (whether express or implied by law), including the implied warranties of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy. BodyMedia does not guarantee the timeliness, completeness or performance of the web site or any of the content. While we try to ensure that all content provided by BodyMedia is correct at the time of publication no responsibility is accepted by or on behalf of BodyMedia for any errors, omissions or inaccurate content on the web site.

BodyMedia shall not be liable for any of the following losses or damage (whether such damage or losses were foreseen, foreseeable, known or otherwise): (a) loss of data; (b) loss of revenue or anticipated profits; (c) loss of business; (d) loss of opportunity; (e) loss of goodwill or injury to reputation; (f) losses suffered by third parties; or (g) any indirect, consequential, special or exemplary damages arising from the use of BodyMedia sites and services regardless of the form of action.

BodyMedia does not warrant that functions available on BodyMedia sites will be uninterrupted or error free, that defects will be corrected, or that BodyMedia or the server that makes it available are free of viruses or bugs. You acknowledge that it is your responsibility to implement sufficient procedures and virus checks (including anti-virus and other security checks) to satisfy your particular requirements for the accuracy of data input and output.

If, notwithstanding the other provisions of these terms, BodyMedia is found to be liable to you for any damage or loss which arises out of or is in any way connected with your use of this web site or any content, BodyMedia's liability shall in no event exceed US\$100.00.

Indemnity

You agree to indemnify, defend, and hold harmless BodyMedia, its officers, directors, employees, agents, licensors and suppliers from and against all claims, losses, expenses, damages and costs, including, without limitation, reasonable attorneys' fees, arising from or relating in any way to your use of this web site.

Privacy

The terms of use regarding the handling of personally identifiable information and other information provided by you in connection with our web sites is described in our [Privacy Policy](#).

General

You agree that any notice, agreement, disclosure or other communication that BodyMedia sends you electronically will satisfy any legal communication requirements, including that such communications be in writing.

If any of these terms are determined to be illegal, invalid or otherwise unenforceable by reason of the laws of any state or country in which these terms are intended to be effective, then to the extent and within the jurisdiction in which that term is illegal, invalid or unenforceable, it shall be severed and deleted from these terms and the remaining terms shall survive and continue to be binding and enforceable.

These terms shall be governed by and interpreted in accordance with the laws of the state and federal courts located in the Commonwealth of Pennsylvania, County of Allegheny, which shall have exclusive jurisdiction over any disputes.

Last updated: June 18, 2010