

## STANDARD TERMS & CONDITIONS (No redlining)

The undersigned (Customer) agrees to Primo Fitness Solutions LLC (Primo) terms and conditions set out below.

### 1. Payment for Goods

a. "Goods" mean goods sold by Primo to Customer described in its invoice. Customer agrees to pay all sums as due. Unless otherwise agreed in writing, orders must be paid in advance F.O.B. Texas or Ex-Works from Primo's place of business. Customer agrees that if it fails to pay any agreed amount when due, such unpaid sum shall incur interest at 1% per month or the highest rate allowed by law, whichever is higher. All sales are final upon receipt of the purchase price.

b. Primo may accept Customer credit card payments via Authorize.net or on-site with a terminal. C.O.D. shipments are not accepted. Primo reserves the right to hold orders on any account with a balance due, and place that account on a credit hold until paid in full.

c. Any returned check will place Customer's account on "cash or wire only" status. Accounts must be cleared in full before Primo will, in its sole discretion, evaluate whether account may return to company check status. In addition to all other remedies available, Primo will assess and Customer agrees to pay a \$50 fee for any returned check.

d. Primo reserves the right to change its prices at any time.

**2. Change Orders; Cancellations.** The Customer must execute a written change order request that will be effective once signed by Customer and counter-signed by Primo. Additional costs may incur for the equipment change. For cancellations, customer shall pay Primo a fee of 30% on any sales order amount plus any and all expenses for changes/modifications/alterations relating to Goods as part of the purchase price, regardless if the equipment is in stock, on the way or on order.

**3. Shipment.** All Goods are shipped F.O.B. or Ex-Works from Primo's place of business, unless otherwise specified. Unless Customer pays additional charges to have Primo deliver and install Goods (see "Installation" below), Goods will be shipped via independent common carrier. Customer is responsible for any loss or damage to shipments after leaving the point of origin, as well as recording any shortages, damages or losses on delivery receipt at time of delivery. A copy of such delivery receipt must be forwarded to Primo's customer service department if damage or losses are claimed. All concealed damage, or damage not apparent until Goods are unpacked and examined, must be reported to such customer service department (address or telephone number identified in Primo invoice) within 24-hours of delivery. All concealed damage claims must be made within 3-days from delivery date. Customer is responsible for notifying carrier to perform an inspection of the damages on or after delivery. Packaging materials must be kept available by Customer for inspection. Failure to report a concealed damage claim as outlined above will affect Customer's ability to fully recover damages and result in Customer assuming costs incurred for replacing or repairing damage.

**4. Installation.** Unless otherwise agreed in writing, Customer shall accept delivery of Goods curbside at its shipping address without installation and installation of Goods shall be Customer's sole responsibility, obligation and expense (including unpacking, assembly and locating Goods in their final use location). Installation shall be arranged in advance prior to shipment and shall be performed by Primo subject to separate, additional charge not included in price of the Goods. If Primo agrees in writing to install Goods, under no circumstances shall installation include anchoring or fastening to floor or adjacent structures; Customer is responsible for all anchoring. Installation shall not include relocation or removal of existing Goods or removal of packing material off-site. Shipping and handling charges cover trucking and drop-off curbside at Customer's shipping address only. Customer shall assume all costs and expenses for delivery of Goods beyond the curb to the closest accessible point. There shall be an additional charge for Goods that need to be taken upstairs or downstairs and/or disassembled and reassembled for placement in final use location. Customer shall assume all costs and expenses regarding transportation, storage, manpower, and waiting time for Goods delivered to requested location if delivery cannot be accepted for any reason.

### 5. Refusals, Returns & Costs

a. Any returns that are acceptable to Primo are subject to restocking fee of 30% on sales price of specific item and related shipping charges; Goods returned more than 21-days from delivery will not be accepted. Primo will also charge a 30% restocking fee, plus all shipping charges, for all refusals; Primo may place Customer's account "on hold" until paid in full, and will not be responsible or liable for any damages that may occur to Goods during shipment. Customer agrees that if Primo is charged for non-qualification or related credit card fee on any credit card payment or any fees relating to Goods, Primo may immediately charge or debit Customer's credit card or other account in such amount.

b. All returned Goods must have a Return Authorization Number (RAN) from Primo. A copy of the invoice must accompany any return and the RAN must appear prominently on the outside of the packaging. Customer must ship all returned Goods "freight prepaid." Authorized returns will result in Primo issuing a refund check, account credit, repair, or replacement at its discretion.

**6. Warranties. PRIMO WARRANTS NEW GOODS SHALL BE FREE FROM DEFECT IN MATERIAL & WORKMANSHIP AS DETERMINED FROM THE SALES AGREEMENT AND FOLLOWS THE MANUFACTURER'S WARRANTY GUIDELINES. GOODS SOLD AS-IS DO NOT INCLUDE A WARRANTY. PRIMO MAY AT ITS SOLE DISCRETION FIX, REPLACE OR REPAIR FAULTY COMPONENTS, PARTS OR WORKMANSHIP IN GOODS TO THE AGREED UPON CONDITION, WHICH SHALL BE COVERED FOR REMAINDER OF WARRANTY PERIOD. HOWEVER, THIS WARRANTY SHALL NOT COVER DAMAGES DUE TO FORCE MAJEURE, ABUSE/MISUSE BY USER, ACCIDENT, UNAUTHORIZED MODIFICATION, FAILURE TO FOLLOW INSTRUCTIONS SUPPLIED WITH GOODS, REPAIRS/ATTEMPTED REPAIRS BY ANYONE NOT AUTHORIZED BY PRIMO, SHIPMENT, INSTALLATION OR REMOVAL, ELECTRIC POWER FLUCTUATIONS, SUPPLIES OR PARTS NOT MEETING PRIMO SPECIFICATIONS, NORMAL WEAR & TEAR, FAILURE TO PERFORM REQUIRED MAINTENANCE, OR ANY OTHER CAUSE NOT RELATED TO PRODUCT DEFECT.**

**PRIMO MAKES NO OTHER WARRANTY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, REGARDING GOODS AND DISCLAIMS ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL PRIMO BE LIABLE TO CUSTOMER OR 3<sup>RD</sup> PARTY FOR DAMAGES INCLUDING BUT NOT LIMITED TO BODILY INJURY, PROPERTY DAMAGE, LOST PROFITS/SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF SALE, USE OR INABILITY TO USE GOODS OR REMOVAL, INSTALLATION OR SET-UP CHARGES.**

**7. Title.** If Customer fails to pay for Goods, Primo shall not release Goods to the Customer. Title to Goods shall not pass until Customer has paid the purchase price to Primo, without setoff or deduction. As it would be difficult or impractical to assess actual damages if Customer fails to pay for Goods and fails to cure as set out herein, Customer agrees that in addition to any other remedies Primo may have, Primo shall be entitled to retain any deposit or down payment as liquidated damages.

**8. Liability Disclaimer.** Except for the warranty above, no language in any Primo catalog, manual or other document relating to Goods shall be construed as an admission of fault or liability by Primo if any mechanical or other defect results in injury to property or person.

**9. Use of Goods; Indemnity.** Primo has no control over Customer's use or operation of Goods. Customer assumes all responsibility & risk associated with the use and operation of Goods and agrees to indemnify, defend and hold Primo harmless from all claims, losses, damages or injuries (including court costs & attorney's fees) arising out of or associated with Customer's or any 3<sup>rd</sup> party use or inability to use Goods.

**10. Notice.** Any notice, request, demand or communication under these Terms and Conditions shall be in writing to address listed on invoice and shall be effective immediately on personal delivery, fax or e-mail; 2-days later if sent by express mail; and 5-days later if sent by U.S. mail.

**11. Governing Law, Arbitration & Attorney's Fees.** These terms and conditions, and all sales of Goods shall be governed by Texas law without regard to its choice of law rules. Any dispute relating to the sale of Goods shall be resolved by final binding arbitration by a single retired judge or justice at JAMS (under its commercial arbitration rules). The parties stipulate to exclusive jurisdiction and venue in Fort Bend County, Texas. The prevailing party shall be entitled to recover their attorney's fees and costs. If the parties cannot resolve a dispute pursuant, then any party may initiate an action or proceeding in court for the resolution of such dispute. In any action brought or arising out of the written contract agreement(s), the parties hereby consent to the jurisdiction of, and acknowledge and agree that venue therefor shall be proper only in, the District Court in Fresno County, Texas, or nearest to, or the United States District Court for the District which covers Fresno Texas, if a federal question is the matter in dispute or a diversity standing exists, and that no other venue shall be allowed. Choice of law shall be Texas.

### 12. Miscellaneous.

a. The Terms and Conditions are binding on the parties, their successors & assigns and may only be modified in a writing signed by both parties.

b. The Terms and Conditions constitute the entire agreement between the parties as to the subject matter hereof & supersede all prior oral or written representations or agreements that may have been made by either party.

c. No waiver of full performance by either party shall be construed or operate as a waiver of any present or future default or breach of any provisions of these Terms and Conditions. If a provision is held invalid or unenforceable, it shall not affect the remaining provisions herein.