



PR FITNESS EQUIPMENT STANDARD TERMS AND CONDITIONS FOR SALE OF GOODS AND/OR SERVICES

PR Fitness Equipment Inc. Customer agrees and authorizes PR Fitness Equipment Inc., d/b/a PR Fitness Equipment ("PR Fitness Equipment") to perform service work, consulting, and to provide goods and materials, whether or not described (the "Work") under the following Standard Terms and Conditions, which are expressly made a part of the agreement between Customer and PR Fitness Equipment (the "Agreement"), without liability for interruption of service, or incidental, special, or consequential damages:

- 1. TERMS OF AGREEMENT** -- The Agreement between Customer and PR Fitness Equipment comprise these terms and conditions and any specifications, drawings, samples, quotes, or other written terms and conditions specifically incorporated in the Agreement. Any purchase order, acknowledgment ticket, invoice, audit report, supplemental agreement, or other PR Fitness Equipment approved instrument of Customer, or acceptance of the goods and services by Customer, shall be construed as an acceptance of this Agreement. Any attempt by Customer to insert or include any different or additional terms and conditions not in conformity with this Agreement shall be null and void. If conflict occurs between this Agreement and other provisions incorporated in writing in the Agreement by PR Fitness Equipment, this Agreement shall prevail. The Agreement shall not be modified or altered by any subsequent course of performance between Customer and PR Fitness Equipment, and this Agreement shall constitute an express waiver and variance from, amendment to, or modification of, any agreement submitted by Customer to PR Fitness Equipment Inc. In rendering any service or providing any product, PR Fitness Equipment shall be an independent contractor.
- 2. PAYMENT** -- Payment on all orders is due within thirty (30) days after date of invoice. Interest at the rate of eighteen percent (18%) per annum will be charged on all past due balances. Customer shall be liable for all costs and expenses, including reasonable attorney's fees and related costs, incurred by PR Fitness Equipment in attempting to collect any past due balance.
- 3. QUOTATIONS**- - All quotations are made for prompt acceptance and any term quoted is subject to change without notice, unless specifically stated otherwise in the quotation. Prices quoted by PR Fitness Equipment and accepted by Customer are subject to escalation as specified in PR Fitness Equipment quotation. All prices are exclusive of any federal, state, or special taxes imposed on the sale or use of goods and services sold.
- 4. CANCELLATION** -- Purchase orders once placed can be canceled only with PR Fitness Equipment's written consent, and then only without loss to PR Fitness Equipment, including compensation to PR Fitness Equipment for all completed work, work in progress, and work-related special materials, fabrication, assembly, engineering, general, and administrative expenses, subcontractor cancellation charges, and normal profits. No products may be returned for credit or adjustment without express written permission from PR Fitness Equipment. All customers will be charged a 30% re-stocking fee and freight charges incurred as a result of a canceled order. All canceled custom orders will be charged a 50% cancellation fee and freight charges incurred as a result of the canceled order.
- 5. MODIFICATIONS**- - PR Fitness Equipment reserves the right to change or modify the design and construction of any products or the procedures and methods for its services without incurring any obligation to furnish or install such changes or modifications on products previously or subsequently sold or to use such procedures or methods regarding services previously or subsequently provided.

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6. **WARRANTY** -- (A) Any manufacturers' warranties pass through to Customer to the extent permitted by law, and PR Fitness Equipment shall use reasonable efforts to assist Customer in contacting the manufacturer to assert warranty claims. PR Fitness Equipment shall incur no other or further obligation to Customer, and nothing shall be construed as rendering PR Fitness Equipment as an agent of Customer; (B) **THE EXPRESS WARRANTY SET FORTH IN THIS SECTION IS EXCLUSIVE AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY. CUSTOMER'S SOLE REMEDY IS ADDRESSED IN SECTION 12 AND PR FITNESS EQUIPMENT'S SOLE OBLIGATION ARISING OUT OF OR IN CONNECTION WITH DEFECTS IN MATERIALS OR WORKMANSHIP OR SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE THOSE STATED IN THIS SECTION.**
7. **TIME OF PERFORMANCE** -- Promises of delivery of products or performance of services are given as accurately as conditions permit and every effort will be made to make deliveries and perform services as scheduled. PR Fitness Equipment assumes no liability for damages arising out of failure to deliver material or perform services as scheduled. If Customer requires additional work, inspection or testing, it shall be charged to Customer's account and will be considered as extending the performance dates accordingly.
8. **FAILURE TO DELIVER** -- PR Fitness Equipment shall not be liable for failure or delay in delivery services or products due to acts of God, war, civil commotion, labor disputes and strikes, including those involving employees of PR Fitness Equipment, fire, flood or other casualty, governmental action, priorities or regulations, lack of ability to obtain satisfactory raw materials, components, supplies, fuel, power or transportation, breakdown of equipment, supplier or sub-contractor delay or any other events or causes beyond PR Fitness Equipment's control whether foreseeable or of similar or dissimilar nature than those enumerated, PR Fitness Equipment shall have such additional time within which to perform as may be reasonably necessary under the circumstances and shall have the right to apportion its production and services among its customers in such manner as it may consider to be equitable. All claims regarding shortages must be made within thirty (30) days from receipt of shipment, and must be accompanied by the packing list(s) and appropriate documents covering the shipment.
9. **TRANSPORTATION COSTS** -- Unless otherwise specified in PR Fitness Equipment's invoice, Customer shall pay all transportation charges for products of or sold by PR Fitness Equipment based on point of shipment or manufacture, insurance charges and charges for stampings, bills of lading, or other documents.
10. **RISK OF LOSS** -- Unless otherwise expressly agreed by PR Fitness Equipment in writing, title and risk of loss, injury, or destruction shall pass to Customer at point of origin of the statement. Any such loss, injury, or destruction shall not release Customer from its obligation under the Agreement.
11. **CUSTOMER INDEMNIFICATION OF PR FITNESS EQUIPMENT** -- Customer agrees to indemnify, defend, and hold PR Fitness Equipment harmless from and against all claims, demands, actions whether civil or administrative, liability, fines, penalties and expense, including all attorney's fees and costs, whether based on warranty, contract, negligence, strict liability or otherwise:-
12. **NONCONFORMING GOODS, SERVICES, AND/OR DISPUTED INVOICES** -- Customer shall notify PR Fitness Equipment in writing of any alleged nonconformity of goods, services, and/or disputed invoices tendered by PR Fitness Equipment under this Agreement within ten (10) days after receipt of the goods, services, and/or invoices. Customer shall inspect the goods and services within this ten (10) day period. Such written notice shall provide a detailed explanation and description of the alleged nonconformity and/or dispute.

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If PR Fitness Equipment agrees with Customer's nonconformity in goods and/or services assessment(s), PR Fitness Equipment shall have the right, at its sole and exclusive option, to cure the improper tender or delivery by correcting the tender or substituting tender of conforming goods and/or services within a reasonable time after receipt of Customer's notice of nonconformity. Customer shall grant PR Fitness Equipment's reasonable requests for extension of time to cure any improper tender. PR Fitness Equipment and Customer will cooperate in good faith to resolve any such disputes regarding invoices within ten (10) days after the dispute is submitted to PR Fitness Equipment. If such resolution of the dispute favors Customer, PR Fitness Equipment shall credit Customer in the amount of the disputed amount. If such resolution favors PR Fitness Equipment, payment is due within ten (10) business days that Customer is notified of such resolution. Customer's failure to provide notice of nonconformity as above described shall be prima facie evidence of conformity of the goods, services, and invoices tendered by PR Fitness Equipment under the Agreement.

13. CUSTOMER'S DUTY TO PRESERVE NONCONFORMING GOODS -- Customer shall protect and preserve all allegedly nonconforming goods and shall strictly follow the reasonable instructions of PR Fitness Equipment. Customer shall incur only those expenses that are reasonable and necessary in fulfilling its obligation to protect and preserve all allegedly nonconforming goods.

14. LIMITATION OF LIABILITY -- The liability of PR Fitness Equipment, its agents, employees, subcontractors, and suppliers with respect to any and all claims arising out of the performance or non-performance of PR Fitness Equipment's obligations in connection with the design, manufacture, sale, delivery, storage, installation and/or use of the products sold under the Agreement, or for the Work, whether based on warranty, contract, negligence, strict liability or otherwise, shall not exceed, in the aggregate, the net purchase price (excluding taxes and freight) for such products or services, and shall in no event include damages for loss of profits or revenue; loss by reason of plant shut-down; increased expense of operation of plant or equipment; increased cost of purchasing or providing equipment, materials, supplies or services; cost of replacement power or capital; claims of Customer's customers; inventory or use charges; or incidental or consequential damages of any nature.

15. INTELLECTUAL PROPERTY RIGHTS-- PR Fitness Equipment shall retain copyright in all documentation, reports, and other material which PR Fitness Equipment creates. Customer will not acquire any intellectual property rights in that publication or material, and Customer will not be entitled to use it in any other form or in any other media without PR Fitness Equipment's prior written consent. It is acknowledged by Customer that there is no warranty, either express or implied, that Customer can make use of the Work free from any infringement of the intellectual property rights of third parties. All Work developed by PR Fitness Equipment specifically for Customer shall be the property of Customer. Customer acknowledges and agrees that to the extent PR Fitness Equipment uses generalized or pre-existing work product (e.g., surveys or computer programs) in the course of performing the Work, PR Fitness Equipment shall retain all ownership and title in and to all such work products.

16. CONFIDENTIALITY-- Unless otherwise required by law, PR Fitness Equipment and Customer each expressly undertake to retain in confidence and to require their respective employees and contractors to retain in confidence all information, materials, and know-how exchanged in connection with the Work and identified as being proprietary, privileged, and/or confidential, or which, by the nature of the particular disclosure, ought in good faith to be treated as proprietary, privileged, and/or confidential (the "Confidential Information"). PR Fitness Equipment and Customer each further agree that they will make no use of such Confidential Information except as consistent with the terms and purpose of the Work or with the specific prior written consent of each

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other. Notwithstanding the foregoing, PR Fitness Equipment and Customer may disclose Confidential Information on a need-to-know basis to its respective legal counsel, accountants, financial advisors, and contractors.

17. **CUSTOMER WARRANTIES**-- The Customer represents and warrants: (a) Customer is an entity, duly organized, validly existing, and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms, (b) neither Customer's equipment nor facilities will pose a hazard to PR Fitness Equipment's equipment, facilities, Customer's personnel, the public, or PR Fitness Equipment's personnel or contractors (c) Customer's use of PR Fitness Equipment's Work will comply and conform with all applicable federal, state and local laws, administrative, and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and Customer will be responsible for applying for, obtaining, and maintaining all registrations and certifications which may be required by such authorities, and (d) Customer will not resell all or a portion of the Work provided by PR Fitness Equipment under this Agreement without the express written consent of PR Fitness Equipment.

18. **ASSIGNMENT**- - This Agreement may not be assigned or transferred, whether by operation of law or otherwise by Customer without the prior written consent of PR Fitness Equipment.

15. **GOVERNING LAW AND VENUE**-- PR Fitness Equipment and Customer agree that all disputes, controversies, or claims relating to the Agreement and/or PR Fitness Equipment's Work rendered to, or expenses incurred for Customer, including but not limited to the validity and enforceability of this Agreement, and any issue relating to the arbitrability of this Agreement, shall be promptly resolved exclusively by binding arbitration, pursuant to the Commercial Rules of the American Arbitration Association, by a single, licensed attorney arbitrator, appointed in accordance with those rules at, and in Oklahoma County, Oklahoma, and which all costs, expenses, and fees of same, including but not limited to all attorney fees and statutory costs, shall be borne by the non-prevailing party. The laws of the State of Oklahoma shall govern the validity, construction, enforcement, and interpretation of this Agreement without regard to conflicts of laws. This Section shall not preclude PR Fitness Equipment from seeking provisional remedies in aid of arbitration from the District Court of Oklahoma County, Oklahoma, which shall have jurisdiction and venue over PR Fitness Equipment and Customer under this Agreement. This Agreement contains the entire agreement between the PR Fitness Equipment and Customer regarding the matters described, and the fees charged, and expenses to be paid, and supersedes all prior oral or written statements.

16. **SEVERABILITY** -- If any provision is deemed illegal, unenforceable, or unconscionable, the remainder of the Agreement shall not be affected.

17. **WAIVER** -- Any waiver of any right or provision of these Terms and Conditions by PR Fitness Equipment shall not be construed as a waiver or bar of any such right or provision at any future time, unless expressly stated by PR Fitness Equipment in writing.

18. **SIGNATURES** -- The Parties to this Agreement agree to accept each other's electronic and telefax signatures as if they were originals.

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