

## FREEMOTION FITNESS TERMS AND CONDITIONS

The goods listed on the face of this Customer Order have been sold to you ("Buyer") subject to the terms and conditions set forth herein, all of which you agree to by your acceptance of such goods. Additionally, all future orders placed by FreeMotion Fitness ("FMF") will be accepted only on the following terms and conditions, all of which you, as Buyer, accept and agree to by the placement of such orders.

1. **Prior Written Contract.** To the extent that these terms and conditions are covered by a prior written contract signed by FMF and Buyer, the terms and conditions in that contract are intended to govern, excepting terms of payment, which shall be governed by the installment sale provisions on the face of the Customer Order. To the extent that the order being supplied by this invoice is not expressly covered by a prior written contract, this invoice contains all of the terms and conditions with respect to the sale and purchase of the goods named herein. If any of the provisions of the Buyer's purchase order or other unsigned writings are in conflict with the terms and conditions of this invoice, the terms and conditions of this invoice shall govern.

2. **Buyer's Duty to Inspect and Claims for Loss or Damage in Shipping.** Buyer must immediately inspect all goods for shortages, conformity with order and defects. All goods claimed to be defective shall be held for inspection by FMF. Claims for shortage or deductions for erroneous charges must be presented within fifteen (15) days after receipt of the goods or they will be disallowed. No goods will be taken back and credited or replaced unless authorization for return has been given by FMF's Customer Service Department. Claims for goods damaged in shipment must be made directly with the carrier.

3. **Acceptance of Goods and Returns.** Buyer shall be deemed to have accepted all goods covered by this invoice if Buyer fails to reject and return the goods within fifteen (15) days of the receipt of goods. If Buyer chooses to reject any of the goods covered by this invoice, for whatever reason, Buyer must first notify FMF. No returns will be accepted after (15) days from receipt of goods or received by FMF over thirty (30) days after initial delivery to buyer. Buyer agrees to pay FMF (a) restocking fee of 20% of the sales price of the returned items, and (b) all shipping charges, including return shipping costs.

4. **Deliveries.** The acceptance of shipment by the Buyer when the goods are delivered by a common carrier, licensed public Driver, Buyer's own or leased carrier, or by FMF's own or leased carrier shall constitute a delivery.

(a) In the instance of goods held subject to the Buyer's instruction, or for which the Buyer has failed to supply shipping instructions, or in any case where FMF, in its sole discretion, determines that any part of the goods purchased by the Buyer should be held for Buyer's account, FMF may invoice the goods and Buyer agrees to make payment at the maturity of the invoice so rendered. Goods invoiced and held at any location for whatever reason shall be at Buyer's risk and FMF may charge for insurance and storage at prevailing rates.

(b) No freight, express or delivery charges shall be subject to discount.

(c) Delivery of a quantity which does not vary more than ten percent (10%) greater or less than the quantity ordered shall constitute compliance under the Customer's Purchase Order.

(d) Partial delivery shall be accepted by the Buyer and paid at contract terms and prices. All sample requirements furnished on this order shall be charged for by FMF and paid for by the Buyer. Delay in delivering samples or other sample requirements shall not constitute a breach of this invoice. Delivery or tender of delivery of any installment within fifteen (15) days after the time specified therefore shall be deemed timely delivery. Thereafter, shipment or tender of delivery prior to receipt of written cancellation shall constitute good delivery. Any defect in quality or delays in delivery shall not affect the balance of this invoice. Any delivery not in dispute shall be paid for on the due date, without offset, defense or counterclaims and regardless of controversies relating to other delivered and undelivered merchandise. Where the Buyer has declared or manifested an intention that it will not accept delivery in accordance with the provisions of this invoice, no tender shall be necessary but FMF may at its option give notice in writing to the Buyer that FMF is ready and willing to deliver in accordance with the provisions of the invoice and such notice shall constitute a valid tender of delivery.

5. **Time of the Essence.** FMF shall not be liable for default in delivery or delays in shipment for any cause beyond FMF's reasonable control. Buyer requested changes may result in additional charges. FMF will refund Must On Service charges if date requested cannot be met.

6. **Risk of Loss.** Buyer bears the risk of loss for any specialty items or goods ordered and not readily saleable by FMF to other parties from the time they leave FMF's facilities and are placed with a carrier for shipment to Buyer. Risk of loss as to other goods will be governed by applicable provisions of the Utah Uniform Commercial Code. If a shipment is made FOB shipping point or if, at Buyer's request, freight is prepaid by FMF and invoiced to Buyer, Buyer bears all risk of loss for all goods covered by this invoice from the time they are placed with the carrier by FMF.

7. **Purchase Money Security Interest.** If the goods described on this invoice are delivered to Buyer without full payment therefore or through the extension of any credit by FMF to Buyer, FMF retains and Buyer hereby grants FMF a purchase money security interest in and to all the goods covered by this invoice to secure the payment of all amounts due hereunder, including principal, interest, freight charges and other expenses incurred by FMF in connection with the sale of the goods and collection of the amount due hereunder. The purchase money security interest granted herein shall be automatically perfected without filing pursuant to the Utah Uniform Commercial Code. Upon any default by Buyer under this invoice, FMF may declare immediately due and payable all amounts secured hereby.

8. **Future Orders Placed with FMF.** Future orders placed by Buyer with FMF shall be placed by Buyer and accepted by FMF subject to the terms and conditions contained herein, irrespective of any provisions contained in buyer's purchase orders. Upon FMF's acceptance of an order by Buyer, such order shall be non-cancelable.

9. **Credit and Default.** FMF may, at any time and from time to time, in its sole discretion modify or cancel the credit of Buyer as to time and amount, and as a consequence may require and demand payment in cash before delivery of any unfilled portion of an invoice. Buyer shall be in default hereunder upon the occurrence of any of the following:

(a) Buyer fails to make payments when due;

(b) Buyer fails to perform any other obligations as required hereunder or under the invoice;

(c) Buyer becomes insolvent or makes any assignment for the benefit of creditors or a proceeding is initiated against Buyer alleging that Buyer is insolvent or is unable to pay Buyer's debts as they mature.

(d) The issuance of an attachment or garnishment or the filing of a lien against any of the goods subject hereof; or

(e) FMF shall deem itself insecure and Buyer fails to provide FMF with adequate assurance of Buyer's ability to perform.

10. **Remedies.** FMF shall be entitled to all the remedies of a secured party and seller under the Utah Uniform Commercial Code. Additionally, FMF shall be authorized and Buyer hereby grants FMF permission to enter upon any premises, leased or owned by Buyer, to recover possession of any goods received by Buyer from FMF for which FMF has not received payment.

11. **DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.** IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT FMF MAKES NO EXPRESS OR IMPLIED WARRANTIES OF FITNESS OR OF MERCHANTABILITY OR OF ANY OTHER KIND WHATSOEVER EXCEPT AS TO THOSE EXPRESS WARRANTIES GOVERNING THE PRODUCT SOLD. BUYER ASSUMES ALL THE RISK OF LIABILITY WHATSOEVER RESULTING FROM THE USE OF SUCH GOODS WHETHER USED INDIVIDUALLY OR IN COMBINATION WITH OTHER GOODS OR SUBSTANCES. FMF'S LIABILITY FOR BREACH OF EXPRESS WARRANTY OR NONCONFORMING GOODS IS EXCLUSIVELY LIMITED, AT FMF'S OPTION, TO REPLACEMENT OF THE DEFECTIVE GOODS OR RETURN OF THE PURCHASE PRICE OF SUCH GOODS AND UNDER NO CIRCUMSTANCES SHALL FMF BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

12. **Limitation on Actions.** Any action initiated against FMF by Buyer for breach of any alleged contract of sale must be commenced within one (1) year after the accrual of the cause of action.

13. **Shortages.** When in the opinion of FMF there is a period of shortages of supply or transportation for any reason, FMF may allocate its available supply among any and all of its various customers upon such basis as it shall deem fair and practical, with no liability on its part for failure to deliver the quantity or any portion therein specified.

14. **Attorney's Fees and Costs of Collection.** In the event Buyer fails to pay the invoice amount within the time specified or materially breaches any other provision of this invoice, Buyer shall be liable to pay all reasonable attorney's fees, court costs and other related collection costs and expenses incurred by FMF prosecuting its rights hereunder.

15. **Governing Law and Jurisdiction.** This invoice, and all other matters relation hereto, including any matter or dispute arising out of the sale of the goods subject hereto, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and Buyer hereby consents to the exclusive jurisdiction of the First Judicial District Court in and for Cache County, State of Utah, to resolve any such disputes.

16. **Amendments.** This invoice may be amended at any time upon agreement of the parties hereto, which amendment(s) must be reduced to writing and signed by all parties in order to become effective. No waiver by FMF of any default or provision hereof shall be deemed a waiver of any other default or provision.

17. **Taxes.** All taxes and excises of any nature whatsoever now or hereafter levied by any governmental authority, whether federal, state or local, either directly or indirectly, upon the sale, use or transportation of any goods sold hereunder shall be paid and borne by Buyer.

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\* Quote valid until date listed above. Please sign and return to the contact listed above to place your order.

\* The FreeMotion Cable Cross, Chest & Shoulder are ADA compliant/wheelchair accessible. A maximum tax credit of \$5,000 per year may be applicable. Reference Section 44 of the IRS tax code.