

Sales and Warranty Terms and Conditions of Sale (US)

These Terms and Conditions of Sale ("Terms and Conditions") shall be applicable to all agreements, purchase orders, quotations and sales of all POWER PLATE® Product and services ("Product") from Performance Health Systems, LLC, a Delaware limited liability company ("PHS") to you (sometimes referred to as, "Customer"). These terms are exclusive to products purchased in, delivered to, and used in the United States of America. Any terms and/or conditions different than, or in addition to, these Terms and Conditions that may appear on any purchase order or other document furnished to PHS at any time by Customer shall have no force and effect. By making a purchase, placing an order or otherwise shopping on the website at www.powerplate.com (us)(the "Website") or through PHS's telephone sales team, or otherwise accepting delivery of the Product, Customer is deemed to have accepted and agreed to be bound by these Terms and Conditions. Please read them carefully.

PHS's acceptance of any order is subject to Customer's assent to all of the terms and conditions set forth herein. Customer's submission of an order shall constitute Customer's full acceptance of these Terms and Conditions. Customer's assent to these Terms and Conditions shall otherwise be presumed from Customer's receipt of PHS's acknowledgment, or from Customer's acceptance of all or any part of the Product ordered. No additions or modifications to these Terms and Conditions by Customer shall be binding upon PHS, unless agreed to in writing by an authorized representative of PHS. If a purchase order or other correspondence submitted by Customer contains terms or conditions contrary or in addition to the terms and conditions contained herein or in PHS's acknowledgment, PHS's fulfillment of any such purchase order shall not be construed as assent to any of the terms and conditions proposed by Customer, and will not constitute a waiver by PHS of any of the terms and conditions contained herein or in PHS's acknowledgment.

NO OTHER TERMS APPLY. IF YOU ARE NOT WILLING TO ACCEPT THESE TERMS AND CONDITIONS, PHS ASKS THAT YOU DO NOT PURCHASE PHS's PRODUCT.

1. Introduction.

1. PHS is the manufacturer and an authorized distributor of Power Plate® Product in the United States. When Customer purchases a Power Plate® product from this Website, Customer is purchasing the

product from PHS. The purchase of Product from PHS, whether via the Website or telephone sales team, is only intended for Customers that are residents of the United States.

2. By making a purchase, placing an order through the Website or through PHS's telephone sales team or otherwise shopping on or browsing PHS's Website, Customer also accepts and is bound by PHS's [Privacy Policy](#), which is available at powerplate.com, and PHS's [Website Conditions of Use](#), which are available at powerplate.com. PHS's Website is regularly updated, and PHS's Website and/or these Terms and Conditions are subject to change without prior notice, except that the Terms and Conditions posted on PHS's Website or otherwise in force at the time Customer places an order will govern the order in question, unless otherwise agreed in writing by PHS. If these Terms and Conditions are translated into another language, the English language version will prevail in the event of any conflict between the translation and the English language version.
2. **Certain Defined Terms.** In addition to terms defined elsewhere in these Terms and Conditions, the following terms have the following meanings:
 - "Commercial Customer" means a Customer that is not a Consumer Customer.
 - "Consumer Customer" means a Customer that meets the definition of "consumer" as defined in the MMWA.
 - "MMWA" means the Magnuson-Moss Warranty Act of 1975, as in effect at any given time.
3. **Orders.** Customer's order constitutes an offer to PHS to buy the Product. PHS reserves the right to accept or reject any order. PHS reserves the right to limit the quantities on any order. All orders are subject to availability. PHS reserves the right not to accept an order if the Product in question is not in stock, if PHS is unable to authorize Customer's payment or if Customer does not meet any other eligibility criteria set out in these Terms and Conditions. If PHS accepts Customer's order, then PHS shall sell the Product to Customer in the quantities and at the price set forth at the time Customer places an order via this Website. Notwithstanding any order confirmation or other communications sent by PHS, Customer's order shall

not be deemed accepted by PHS until PHS's shipment of the Product ordered.

4. **Prices.** The price of a Product shall be as stated on this Website from time to time except in the case of obvious error. Prices stated are F.O.B. origin. Prices shown do not include shipping, handling, taxes, and/or duties, and are subject to correction or change without notice.
5. **Taxes; Duties.** All prices are F.O.B. origin. Other terms and conditions may apply for other than standard ground delivery ("Other Freight Services"), including without limitation, expedited same day delivery, air freight, freight collect, export orders, Customer's carrier, or other special handling by the carrier. Any charges incurred for Other Freight Services must be paid by Customer. Fuel surcharges may be applied. Title and risk of loss pass to Customer upon PHS's tender of shipment to the carrier; except that title to any software embedded in the Product will remain with the applicable licensor and is subject to any license agreement related to the software. If the Product is damaged in transit, Customer's only recourse is to file a claim with the carrier.
6. **Shipping and Handling; Risk of Loss.**
 1. PHS will only accept orders from this Website for delivery to the United States and Canada. PHS shall endeavor to deliver Product to Customer as soon as possible after Customer places Customer's order, usually within 4 weeks. However, all shipping dates are estimates only. PHS shall have no liability to Customer if PHS, for any reason, does not accept and fill any order submitted by Customer to PHS, or for delays associated with delivery.
 2. PHS will use its discretion in selecting a reputable carrier and appropriate means of shipment,
7. **Product and Model Changes.** PHS continually updates and revises its Product. PHS may revise and/or discontinue Product at any time. Changes in Product shipped and Product described on this Website and/or direct sales materials are possible. PHS Products are new unless specified as refurbished. The acceptance of Customer's order in no way obligates PHS to continue to furnish any particular model after delivery of the Product to Customer. Repairs and spare parts for discontinued Product will be provided by PHS for one year after discontinuation or any such longer

period as may be specified in any Product discontinuation notice. PHS may, at its option, offer upgrade packages or an opportunity to replace for a discontinued Product if spare parts are not available during any such period.

8. **Payment Terms.**

1. *General Payment Terms.* PHS does not accept cash, COD, purchase orders or personal checks unless specific arrangements have been made in writing with duly authorized PHS personnel. PHS's payment terms are subject to change without notice at PHS's sole discretion. In the unlikely event that a price stated on this Website is incorrect, then the following policy shall apply: If a Product's correct price is lower than PHS's stated price, PHS will charge the lower price, ship Customer the Product, and refund any overcharge. If a Product's correct price is higher than PHS's stated price, PHS will, at its discretion, either contact Customer for instructions before shipping, or cancel Customer's order and notify Customer of such cancellation. PHS shall not be liable for any billing errors unless Customer's advise PHS of such billing error within 60 days of its transaction date.
2. The purchase price of Product will be billed in full at the time the Product is ordered. PHS will charge credit cards upon ordering. PHS accepts MasterCard, Visa, American Express and Discover.

9. **Return Policy.** If for any reason Customer is not completely satisfied with a Power Plate®-branded Product purchased through this Website, then Customer may return the Product to PHS during the 30 calendar day period following the date of delivery of the Product to Customer (the "Return Period") and PHS will refund the purchase price of the Product, minus the shipping and 15% restocking fee in accordance with the following return policy:

1. Please email us at customercare@powerplate.com and we will help you with your return.

10. **Trademarks.** The terms of this Section apply only to Commercial Customers. PHS authorizes and grants to Commercial Customer the non-exclusive, revocable right to use the brand names, trademarks and other indicia of manufacturing origin and quality of the PHS Product (collectively, the "Trademarks"), and if the Product is sold for commercial use, to

advertise and promote the availability of PHS Product so long as Commercial Customer is using or selling the PHS Product in connection with Commercial Customer's business. Commercial Customer acknowledges and agrees that it has no right, title or interest in or to any of the Trademarks, other than as a purchaser and user of the PHS Product and that all use of the Trademarks inures to the benefit of PHS. Commercial Customer shall make no contrary representations and will not in any way contest PHS's rights to the Trademarks. Notwithstanding the foregoing, Commercial Customer shall have no right to use or incorporate any of the Trademarks in any domain names, and shall convey to PHS any domain names that Commercial Customer owns or controls that incorporates any of the Trademarks.

11. **Intellectual Property.** Except as expressly stated in these Terms and Conditions, Customer shall have no right, title, or interest in the trade names, trademarks, trade dress, copyrights, patents, domain names, product names, catalogs or any other intellectual property rights reserved by PHS, or any trademarks or service marks owned by suppliers to PHS. All materials contained on the Website are subject to the ownership rights of PHS and its suppliers. Customer shall have no right to copy or use any of the intellectual property of PHS or its suppliers without PHS's permission.

12. **Limited Warranties; Disclaimer of Warranties.**

1. *Limited Warranty.* With respect to Power Plate®-branded Products, all such Products are subject to a limited warranty (the "Limited Warranty") against defects in material and workmanship under normal use for a period of one year after the date of purchase from PHS, unless otherwise stated in the limited warranty terms as included with such Product, as published in product guides or related literature and/or as made available on this Website or, in the case of optional extended warranties issued by PHS, such extended warranty documentation. With respect to Commercial Customers, the Limited Warranty extends only to Products sold to such Commercial Customer for either resale by Commercial Customer or use in Commercial Customer's business.
2. *PHS's Obligation Under Limited Warranty.* PHS's sole obligation under the Limited Warranty shall be, in PHS's sole discretion, either to repair or replace Products or to refund the purchase price, during the

limited warranty period when it has been determined by PHS that Product was defective as a result of manufacturing and not as a result of (i) improper use, storage or handling, (ii) the failure to maintain the Product with reasonable care, or (iii) abnormal conditions, including, without limitation, abuse, neglect, or catastrophe. PHS does not assume responsibility for delays in replacement of products subject to this Limited Warranty. PHS'S REPAIR, REPLACEMENT, OR REFUND OF AMOUNTS PAID BY CUSTOMER FOR THE PRODUCT, SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY.

3. NO WARRANTY OR AFFIRMATION OF FACT, EXPRESS OR IMPLIED, OTHER THAN AS EXPRESSLY STATED IN THE LIMITED WARRANTY STATEMENTS ABOVE, IS MADE OR AUTHORIZED BY PHS. PHS DISCLAIMS ANY LIABILITY FOR CLAIMS ARISING OUT OF PRODUCT MISUSE, IMPROPER PRODUCT SELECTION, IMPROPER INSTALLATION, PRODUCT MODIFICATION, MISREPAIR OR MISAPPLICATION. PHS EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE PRODUCT: (i) ARE MERCHANTABLE; (ii) FIT FOR A PARTICULAR PURPOSE; OR (iii) DO NOT AND WILL NOT INFRINGE UPON OTHER'S INTELLECTUAL PROPERTY RIGHTS.
4. With respect to third party (i.e., non-Power Plate®-branded) Product that may be available for purchase through this Website, such Product are sold by PHS AS IS. However, the third party manufacturer or supplier of such Product may offer its own warranties, and Customer agrees to look solely to such manufacturer or supplier for any warranty-related claims. Product purchased by end-users should be registered at www.powerplate.com.
5. While PHS's desire is to be responsive to Customer's specific needs and questions, PHS does not assume responsibility for any specific use or application of any Product, including, but not limited to, compatibility with other equipment and fitness programs or regimens used by Customer or recommended to or by Customer. All statements, technical information or recommendations relating to PHS Product are based upon information believed to be reliable, but do not constitute a guaranty or warranty.

13. LIMITATION OF LIABILITY. PHS DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING, BUT NOT LIMITED TO, ANY LIABILITY FOR PRODUCT NOT BEING AVAILABLE, LOSS OF USE, INJURY OR DEATH OF ANY PERSON OR DAMAGE TO PROPERTY AS A RESULT OF OR ARISING OUT OF THE USE OF THE PRODUCT, OR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY. CUSTOMER ASSUMES ALL RISK ASSOCIATED WITH THE USE OF THE PRODUCT. CUSTOMER AGREES THAT FOR ANY LIABILITY RELATED TO THE PURCHASE OF A PRODUCT, PHS IS NOT RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AMOUNT INVOICED FOR THE PRODUCT. THE REMEDIES SET FORTH IN THESE TERMS AND CONDITIONS SHALL APPLY EVEN IF THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.

14. Consumers. With respect to Consumer Customers, the following statements are made:

1. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to Consumer Customer. IF ANY IMPLIED WARRANTY IS PROVIDED UNDER THE MMWA, IT IS LIMITED TO THE DURATION OF THE LIMITED WARRANTY STATED IN SECTION 16(a) ABOVE.
2. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to Consumer Customer.
3. The limited warranty stated in these Terms and Conditions gives Consumer Customer specific legal rights and Consumer Customer may also have other rights that vary from state to state.
4. If applicable law limits the application of any of the provisions of these Terms and Conditions, then PHS's liability will be limited to the maximum extent possible.

15. Caution.

1. YOU SHOULD CONSULT A PHYSICIAN BEFORE BEGINNING ANY EXERCISE PROGRAM, INCLUDING A PROGRAM INVOLVING THE USE OF THE POWER PLATE® MACHINE.

2. IF YOU HAVE ANY KNOWN MEDICAL CONDITION, OR ANY PHYSICAL LIMITATIONS ON YOUR ABILITY TO EXERCISE, POWER PLATE STRONGLY RECOMMENDS THAT YOU SEEK THE ADVICE OF A PHYSICIAN BEFORE USING THE POWER PLATE® MACHINE.
 3. IF, WHILE USING THE POWER PLATE® MACHINE, YOU FEEL DIZZY, FAINT, SHORT OF BREATH, OR ANY PAIN, STOP USING THE POWER PLATE® MACHINE IMMEDIATELY, AND CONSULT A PHYSICIAN.
16. **PHS's Performance of Services.** In conjunction with Customer's purchase of Product, PHS or its designated agents may perform certain services for Customer on Customer premises such as delivering, ordering, training, installing Product, or putting-away Product (collectively, the "Services"). Customer will hold harmless, defend and indemnify PHS, its officers, directors, employees, agents, subcontractors or representatives from and against any and all claims, including bodily injury, death, or damage to personal property, and all other losses, liabilities, obligations, demands, actions and expenses, whether direct or indirect, known or unknown, absolute or contingent, incurred by PHS or its designated agents related to the performance of Services for Customer (including without limitation, settlement costs, attorneys' fees, and any and all other expenses for defending any actions or threatened actions) arising out of, in whole or in part, any act or omission of Customer, its employees, agents, subcontractors or representatives.
17. **Independent Contractors.** PHS and Customer are independent contractors and not principal and agent. Nothing contained in these Terms and Conditions shall be construed to create a partnership, dealership, reseller, agency, employment or joint venture relationship. Customer will not have the right to bind or otherwise obligate PHS in any manner, nor will Customer represent to anyone that it has the right to do so.
18. **Force Majeure.** PHS shall not be liable for any delay in, or impairment of, performance resulting in whole or in part from any force majeure event, including but not limited to, acts of God, labor disruptions, acts of war, acts of terrorism (whether actual or threatened), governmental decrees or controls, insurrections, epidemics, quarantines, shortages, communication or power failures, fire, accident, explosion, inability to procure or ship product or obtain permits and licenses, inability to procure supplies or raw materials, severe weather conditions, catastrophic events, or any other

circumstance or cause beyond the reasonable control of PHS in the conduct of its business. PHS shall not be liable for any such failure or delay in manufacture or delivery of Product as a result of any such matter or occurrence wholly or partially beyond its control. Quantities are subject to availability. In the event of shortage, PHS may allocate sales and deliveries in its sole discretion.

19. Indemnification.

1. Customer shall defend, indemnify and hold harmless PHS, its successors, assigns, affiliates, agents and contractors, and the officers, managers, directors and employees of each of them (each a "PHS Indemnified Party"), from and against any damage, loss, claim, judgment or other liability or expense (including but not limited to reasonable attorneys' fees) that may in any way relate to or arise out of any act or omission in connection with (i) Customer's use of this Website and, (ii) except to the extent caused by PHS, the purchase, resale, use or misuse of Product by Customer, any third party or Customer's successors, assigns, affiliates, agents and contractors, or the officers, managers, directors or employees of any of them. PHS reserves the right, without being required to do so, and without waiver of any indemnity hereunder, to defend any claim, action or lawsuit coming within the scope of this indemnity provision.
2. PHS will not be liable for personal injury or property damage arising out of (i) neglect, alteration or improper use, including failure to follow installation, operating and maintenance conditions prescribed in the Product's installation manual; (ii) repairs performed by anyone other than authorized PHS service representatives; or (iii) use of supplies or parts that do not meet PHS's specifications. Customer shall indemnify, defend and hold harmless each PHS Indemnified Party against any damage, loss, claims, liabilities, costs, expenses, legal fees arising out of any or all of (i), (ii) or (iii) in the preceding sentence.
3. To the extent any claim is asserted against Customer as the buyer of a PHS product by any third party claiming that the PHS product infringes any patent, copyright or other intellectual property right of that third party, PHS agrees that it will protect and defend Customer from any such claim. As a condition to PHS's obligation, Customer is

required to promptly notify PHS of any such actual or threatened proceeding or claim against Customer and Customer agrees that PHS will have full authority and discretion to defend against such claim as PHS determines in its sole discretion. As to any such asserted claim, PHS shall have the right, in its sole discretion, to do any of the following: (i) obtain the right for Customer to use such infringing PHS product, (ii) replace the infringing PHS product with a non-infringing PHS product, (iii) modify the infringing PHS product so that it no longer is infringing, or (iv) requires Customer to return the infringing PHS product and reimburse Customer for the price which Customer paid therefore together with Customer's costs of transportation.

20. **Miscellaneous.**

1. *Assignment.* Customer shall not assign any order, or any interest therein or in these Terms and Conditions, without the prior written consent of PHS. Any actual or attempted assignment without PHS's prior written consent shall be void and shall entitle PHS to cancel such order upon notice to Customer.
2. *Amendments.* These Terms and Conditions may not be altered, supplemented or amended by the use of any other document unless otherwise agreed in writing by both PHS and Customer.
3. *No Third Party Benefit.* The provisions stated herein are for the sole benefit of the parties hereto, and confer no rights, benefits or claims upon any person or entity other than PHS, Customer and each PHS Indemnified Party.
4. *Waivers.* No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under these Terms and Conditions, and no act, omission or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other party.
5. *Severability.* If any provision of these Terms and Conditions is determined to be invalid, illegal or unenforceable, but if the essential terms and conditions of these Terms and Conditions for each party

remain valid, binding and enforceable, then the remaining provisions of these Terms and Conditions remain in full force.

6. *Reformation.* If, at any time of enforcement of any provisions contained in these Terms and Conditions, an arbitrator, court or any similar judicial body determines that any such provision is unreasonable or unenforceable, or both, under circumstances then existing, the parties authorize and instruct such arbitrator, court or other judicial body to revise such covenant, right or remedy to cover the maximum extent, scope, duration and geographic area permitted by applicable law. If such arbitrator, court or judicial body refuses to do so, the parties agree that such provisions shall not be rendered null and void, but rather shall be deemed amended to provide for the maximum restrictions (not greater than those contained herein) reasonable or enforceable, or both as the case may be, under applicable law.
7. *Complete Agreement.* The terms and conditions in: (i) PHS's forms; (ii) acknowledgments, (iii) quotations; (iv) invoices; (v) websites; (vi) catalogs or brochures; and (vii) extension of credit are incorporated herein by reference, and constitute the final, entire and exclusive agreement between Customer and PHS. Any attempt to supplement or amend these Terms and Conditions or to enter an order for Product pursuant to terms that are subject to additional or altered terms and conditions shall be null and void. The provisions of these Terms and Conditions may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings.
8. *Headings.* The section headings used herein are for convenience or reference only and do not form a part of these Terms and Conditions, and no construction or inference shall be derived from them.
9. *Rights and Remedies Cumulative.* Any enumeration of PHS's rights and remedies set forth in these Terms and Conditions is not intended to be exhaustive. PHS's exercise of any right or remedy under these Terms and Conditions does not preclude the exercise of any other right or remedy. All of PHS's rights and remedies are cumulative and are in addition to any other right or remedy stated in these Terms and

Conditions or that may now or subsequently exist at law or in equity, by statute or otherwise.

10. *Attorneys' Fees.* If PHS takes legal action against Customer for non-payment, or any other breach of these Terms and Conditions, and a court makes an award in PHS's favor, PHS shall be entitled to recover from Customer PHS's reasonable attorneys' fees and costs incurred in the action.
11. *GOVERNING LAW.* THE LAWS OF THE STATE OF DELAWARE (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES) GOVERN ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IT CONTEMPLATES, INCLUDING, WITHOUT LIMITATION, ITS INTERPRETATION, CONSTRUCTION, PERFORMANCE AND ENFORCEMENT.
12. *DISPUTE RESOLUTION.* ANY CLAIM OR CONTROVERSY BETWEEN THE PARTIES SHALL BE RESOLVED BY ARBITRATION, EXCEPT TO THE EXTENT THAT AN INJUNCTIVE ACTION IS REQUIRED BY EITHER PARTY TO PROTECT ITS CONFIDENTIAL INFORMATION OR INTELLECTUAL PROPERTY. A SINGLE ARBITRATOR ENGAGED IN THE PRACTICE OF LAW SHALL CONDUCT THE ARBITRATION IN CHICAGO, ILLINOIS UNDER THE THEN CURRENT COMMERCIAL ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION. THE ARBITRATOR SHALL HAVE AUTHORITY TO AWARD COMPENSATORY DAMAGES ONLY. THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING AND MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. EACH PARTY SHALL BEAR ITS OWN COSTS AND ATTORNEYS' FEES.

<https://powerplate.com/pages/sales-and-warranty-terms-and-conditions-of-sale-us>