

TERMS & CONDITIONS OF SALE

NOTES:

- This price list supercedes all previous price lists
- Scots Ice Australia Food Service Equipment reserves the right to change prices and specification of products listed in this price list without notice

1. DEFINITIONS: In these terms:

(a) "SELLER" means Scots Ice Australia Food Service Equipment

(b) "BUYER" means the person, firm, company, body corporate or entity who or which has offered to purchase the Goods from the Seller or whom the Seller has offered to sell the Goods, this includes those defined as a Reseller.

(c) "RESELLER" means the person, firm, company, body corporate or entity that purchases goods or services with the intention of reselling them rather than consuming or using them. A Reseller is also defined as a Buyer (as above).

(d) "GOODS" means the products or items to be purchased by the Buyer from the Seller forming the subject matter of this contract.

(e) "PPSA" means Personal Properties Security Act 2009.

(f) "PURCHASE MONEY SECURITY INTEREST" has the same meaning as that given to it in the Personal Properties Security Act 2009.

2. GENERAL

Any order placed by a Buyer is deemed to be an order incorporating these terms and conditions unless otherwise expressly agreed to by Scots Ice Australia Pty Ltd (The Seller) in writing.

3. PRICE and PAYMENT

(a) The Buyer must pay to the Seller the agreed price ("**Price**") for the supply of the Goods. The time for payment of the Price will be within thirty (30) days from the day the delivery of the Goods was made for approved account customers. For non account customer's payment will be pre-payment or C.O.D. If payment is by cheque or by electronic funds transfer (EFT), payment is effected upon clearance of the funds. The Seller reserves the right to apply 12% p.a. interest, compounded monthly, to unpaid balances overdue after 30 days, plus any costs associated with the recovery, unless prior arrangements have been made.

(b) A 40%, non-refundable deposit is required upon placement of any order of Firex goods. The remainder will be paid strictly C.O.D.

4. CREDIT SUSPENSION

Failure to abide by the payment terms will result in automatic credit suspension upon expiry date of the due date, and any future orders will be strictly pre-payment or C.O.D.

5. GST

All prices quoted are exclusive of any Goods and Services Tax, and therefore GST will be added to each invoice at the current rate.

6. RETENTION OF TITLE

(a) The Buyer acknowledges that property in the Goods shall not pass to the Buyer until the Buyer has paid all money due for the Goods and for all other Goods supplied by the Seller. If such goods are sold by the Buyer prior to payment, then the proceeds of sale of those Goods shall be the property of the Seller. Until property passes in the Goods to the Buyer, the Buyer acknowledges that it is in possession of the Goods solely as bailee for the Seller and in that capacity shall store the Goods (if any) of those of any other person in a manner which renders the Goods clearly identifiable as Goods of the Seller.

(b) The Buyer grants the Seller a purchase money security interest under the PPSA of 2009 as security of payment of the Goods and agrees to indemnify the Seller on demand for the costs of registering, maintaining or enforcing this security interest including legal costs (if applicable).

(c) The Buyer waives any right to receive a verification statement in relation to the verification interest.

(d) In any event of the Buyer's default in the due observance or performance of these trading terms or any of them all money paid by the Buyer by way of deposit shall be absolutely forfeited to the Seller at the Seller's option.

(e) The Seller shall be entitled to enter at all times upon the premises occupied by the Buyer and upon which the Goods may be in order to take possession of the Goods. It shall be lawful for the Seller in addition to and without prejudice to its other rights and remedies for the purpose of that repossession to enter into and upon those premises and for that purpose to break open or remove any outer or inner gate or fastening or other obstruction without liability for any action or trespass or other proceeding for so doing and with liberty to plead that leave and license hereby given in bar in any such action or proceeding brought or instituted.

(f) The Buyer acknowledges that the rights granted to the seller pursuant to this clause are for the benefit of the seller and shall not be waved without the seller's consent.

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7. DELIVERY and FREIGHT CHARGES

- (a)** All Goods prices, except spare parts, unless specified otherwise include scheduled delivery within Sydney, Melbourne and Brisbane metropolitan areas to the Reseller's loading dock only. Deliveries to Perth, Adelaide, Darwin and Hobart carry a surcharge.
- (b)** Deliveries to third parties as nominated by the Reseller are subject to local carriage charges at the Seller's discretion.
- (c)** Deliveries outside metropolitan areas will be charged from Sydney, Melbourne or Brisbane at the Seller's discretion.
- (d)** Goods deliveries are to ground floor level, kerbside or loading dock areas only, where a crane, forklift, trolley or pallet jack is required it is to be supplied by the Buyer.
- (e)** Failure to receive Goods will subject the Goods to charges on re-delivery at the Seller's discretion.
- (f)** Additional delivery charges for upright and bench type refrigerators and large convection ovens to any location.

8. FORCE MAJEURE

The Seller shall not be liable for non-fulfilment or late delivery should actual delivery of the Goods or any parts be delayed in consequence of unforeseen events such as strikes, unforeseen breakdown, of machinery (save where caused by improper maintenance or operation by untrained personnel), suspension of electricity or other relevant power supply, riots, war, robbery, civil commotion, adverse non foreseeable weather conditions, disaster caused by fire and/or water, action of government or port authority, delay of vessel, rail-road embargoes, inability to obtain transportation facilities or due to a failure of an original equipment manufacturer to supply components by the due date.

9. INSURANCE

The Buyer assumes all risk of loss and damage to the Goods upon invoice/delivery of Goods by the Seller. Thereafter until title of the Goods passes, the Buyer will at its expense insure the Goods under a comprehensive policy of insurance in the name of both the Buyer and the Seller for the full insurable value of the Goods against fire, accident, malicious damage and theft. The Buyer will hold the proceeds of any insurance claim made in respect of the Goods in trust of the Seller, and immediately upon receipt will remit such proceeds to the Seller.

10. LIABILITIES

- (a)** The Seller will not be liable for any claim whatsoever in respect of the Goods including late deliveries and breakage, unless made in writing within (7) seven days of delivery of the Goods.
- (b)** No claim can be made if the carrier consignment note has been signed as received in good physical condition.
- (c)** Under no circumstances are Goods to be returned for credit without prior authorisation in writing.
- (d)** A 25% cancellation fee will be charged on any Goods listed in Scots Ice Australia Price List confirmed by written order from the Buyer for returning/cancel to the Seller's warehouse in Sydney.
- (e)** A 75% cancellation fee will be charged for any special project Goods or custom made Goods, listed and not listed in Scots Ice Australia Price List confirmed by written order from the Buyer for returning/cancel to the Seller's warehouse in Sydney.
- (f)** Scots Ice Australia Food Service Equipment is not liable for any misprint contained in this Price List and reserves the right to make changes without notice and is not liable for outdated information.

11. GOVERNING LAW

The validity and interpretation of these conditions of sale and the rights of the parties both pursuant to these conditions of sale and otherwise, shall be governed by the laws of New South Wales and the Personal Properties Security Act 2009 of the Commonwealth.

12. WAIVER

Failure by the Seller to insist upon strict performance of any term, warranty or condition of the contract shall not be deemed a waiver thereof or of any rights the Seller may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.

13. SERVICE TECHNICIAN WARRANTY CHARGES

Scots Ice Australia Food Service Equipment will only accept charges from authorised technicians for warranty repairs under the following conditions:

- (a)** The invoice contains a valid Scots Ice Australia Food Service Equipment purchase order or job card number.
- (b)** The invoice is not older than 90 days.

Failure to meet both of the above requirements will result in non payment.

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14. WATER FILTERS

(a) Water filters supplied by the Seller with the purchase of Goods are strictly for the purposes of removing dirt and chlorine and are not to be relied upon for the removal of heavy metals or any other element that could pose damage to the Goods through long term exposure. It is therefore the responsibility of the Buyer to provide a suitable water filter for the Goods for the filtration of these damaging elements.

(b) The water filters and any spare parts associated with the water filters provided by the Seller are not covered by any warranty or any damages caused to the Goods by misuse or user error; see paragraph **14(a)**.

(c) Cleaning and maintenance of water filters should be carried out a minimum of every 3 months. This includes changing the filter cartridge. Failure to do so will void warranty of any Goods damaged or affected by this.

(d) Some areas in Australia are subject to poor water quality. It is the Buyer's responsibility to ensure that water treatment/filtration meets requirements to avoid any calcification or scale build up. Failure to do so will void all manufacturer's warranty.

15. WARRANTY

NOTE - To be eligible for the warranty the Buyer has to notify in writing to Scots Ice Australia Pty Ltd within 30 days of invoice/installation with the following information:

- **Location of installation (Name of premises and address)**
- **Model of the product**
- **Serial Number**
- **Date of installation**
- **Date of purchase**
- **Supplier and Invoice Number**

(a) Except for any express warranty given by it, the Seller excludes all conditions, warranties and terms implied by statute, general law or custom, except any implied condition or warranty the exclusion of which would contravene and statute or cause this clause to be void ("Non-excludable Condition").

(b) The Seller accepts no liability for any loss or damage direct or indirect of or to any person or property arising from the installation or operation of goods including consequential loss or damage arising from any circumstances whatsoever, except under a Non-excludable Condition.

(c) Subject to Clause **15(b)** and **15(d)** the Seller undertakes to repair, replace or supply (at the Sellers option) all goods and components thereof supplied by it which the Seller in its sole and absolute discretion deems to be defective in materials or workmanship under proper, normal and recommended conditions of use and maintenance. Travel time is not considered part of warranty and is chargeable. For warranty of machines in remote locations they will need to be taken to the nearest Scots Ice Australia approved warranty technician at the Buyer's expense and the Seller takes no responsibility for damages or loss during the period of transporting the machines.

This undertaking unless otherwise confirmed in writing by the Seller covers the provision of labour and parts for 12 months for the following products:

- Baron Commercial Cooking Equipment
- Polaris Blast Chiller/Freezers
- Moduline Banquet Carts and Regeneration Ovens
- Firex Cooking Equipment
- Lotus Fryers

Provision of labour and parts for 24 months for the following products:

- Scotsman Ice Makers (cubers)

Provision of labour for 12 months and parts for 24 months for the following products:

- Scotsman Flakers (crushed ice machines)
- Storage Bin doors are NOT covered by warranty

Provision of labour for 3 months and parts for 6 months for the following products:

- Pizza Vera Oven

from the date of invoice/installation of the goods, whichever of these shall occur first. If the goods are not installed in accordance with the manufacturer's written instructions, the Seller may at its sole discretion render the warranty partially or wholly invalid.

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15. WARRANTY (cont.)

(d) Defective replacement spare parts will be repaired or re-supplied for a period of three (3) months from delivery. This undertaking applies only to state capitals and major provincial towns. Remote areas are not covered by this commitment and special enquires should be made.

(e) The Seller's undertaking in paragraph **15(c)** does not extend to goods and components thereof manufactured either entirely or substantially of glass or similar substances, light globes, infrared or quartz tubes and electrical controls or elements, neither is it extended to include consumable items such as door seals, switches, cleaning materials and accessory tools.

(f) The Seller's undertaking in paragraph **15(c)** does not extend to include the repair of damage nor to adjustments to equipment as a result of external influences including, but not limited to, lightning strikes, power surges including fuses, circuit breakers, incorrect wiring connections or any matters related to wiring not meeting AS-3000 requirements, water supply disturbances, drainage faults, cleaning of condenser, periodical maintenance and alterations without consent in writing from Scots Ice Australia Food Service Equipment.

(g) Training of operators is normally conducted during commissioning of the equipment. Re-training of existing operators and training of newly assigned operators after commissioning is not classified as warranty and may only be carried out on a chargeable basis. Commissioning and training at remote locations or country sites that are not considered part of the metro area shall only be carried out on a chargeable basis.

(h) The liability of the Seller under this warranty is limited to the repair or replacement of defective goods or components. All other costs including, without limitation, cartage, carriage and installation shall be borne by the Buyer. Goods or components which fail as a result of operator error, misuse, abuse and inappropriate operation will not be repaired or replaced under warranty.

(i) While the goods are in custody of the Seller for investigation or repair, they shall be at the risk of the Buyer and no liability shall attach to the Seller, its servants or agents for any damage occasioned to, or loan of, the goods howsoever arising.

(j) To obtain the benefit of this warranty, the Buyer must give notice to the Seller immediately upon it becoming aware of the alleged defect and in any event before the expiration of the said twelve (12) month period.

(k) Warranty repairs are carried out during the Seller's normal business hours (usually 07.30 hrs to 16.00 hrs) Monday to Friday excluding designated Public Holidays. Repairs may be available at times other than normal warranty hours but will not be treated as warranty and will be subject to call-out fees and hourly charges, including penalty rates where applicable. Traveling time is not part of warranty and will be charged based on the distance from the technician to the repair site.

16. ACCEPTANCE

Acceptance by the Buyer of these Terms & Conditions, as amended by Scots Ice Australia Food Service Equipment from time to time, may be by any one of the following ways:

(a) by signing and returning a copy of these Terms & Conditions

(b) by performing an act that is done with the intention of adopting or accepting these conditions, including but not limited to continuing to order Goods

(c) by oral acceptance

Failure to accept these Terms & Conditions within seven days of receipt by the Buyer of these Terms & Conditions may result in the immediate withdrawal of Scots Ice Australia's offer to supply goods or services.

IN NO EVENT SHALL SCOTS ICE AUSTRALIA FOOD SERVICE EQUIPMENT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE, OR FOR ANY DAMAGES RESULTING IN WHOLE OR IN PART FROM MISUSE OR INADEQUATE MAINTENANCE OF THE PRODUCT OR ANY PART THEREOF.

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