

# SCOTS ICE AUSTRALIA PTY LTD

ABN 54 080 084 260

8/13 Berry Street Clyde, NSW 2142 Australia

## TERMS & CONDITIONS OF SALE

### NOTES:

- **This price list supersedes all previous price lists**
- **Scots Ice Australia Pty Ltd reserves the right to change prices and specification of products listed in this price list without notice**

### **DEFINITIONS:** In these terms:

1. **"SELLER"** means Scots Ice Australia Pty Ltd

2. **"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.

### **3. GENERAL**

Any order placed by a buyer is deemed to be an order incorporating these terms and conditions notwithstanding any inconsistencies which may be introduced in the buyer's order unless otherwise expressly agreed to by Scots Ice Australia Pty Ltd (The Seller) in writing.

### **4. PRICE and PAYMENT**

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 was made for approved account customers. For non account customer's payment will be C.O.D. If payment is by cheque, payment is effected upon clearance of the cheque.

### **5. 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 C.O.D.

### **6. 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.

### **7. RETENTION OF TITLE**

(a) The purchaser acknowledges that property in the goods shall not pass to the purchaser until the purchaser has paid all money due for the goods and for all other goods supplied by the Seller. If such goods are sold by the purchaser 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 purchaser, the purchaser 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) In any event of the purchaser's default in the due observance or performance of these trading terms or any of them all money paid by the purchaser by way of deposit shall be absolutely forfeited to the Seller at the Seller's option.

(c) The Seller shall be entitled to enter at all times upon the premises occupied by the purchaser and upon which the goods may be for the time being in order to take possession of the goods and 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.

### **8. DELIVERY and FREIGHT CHARGES**

All goods prices, except spare parts, unless specified otherwise include scheduled delivery within Sydney, Melbourne and Brisbane metropolitan areas. Deliveries to Perth, Adelaide, Darwin and Hobart carry a surcharge. Individual deliveries of equipment or attachments are subject to local carriage charges. Deliveries outside metropolitan areas will be charged from Sydney or Brisbane at the company's discretion. Goods deliveries are to ground floor level, kerbside or loading dock areas only, where a crane is required it is to be supplied by the purchaser. Failure to receive goods will subject the goods to charges on re-delivery. Additional delivery charges for Upright Refrigerators to any location.

### **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**

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. No claim can be made if the carrier consignment note has been signed as received in good physical condition. Under no circumstances are Goods to be returned for credit without prior authorization in writing. 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. For any special project goods or custom made goods, not listed in Scots Ice Australia Price List, a 75% cancellation fee will be charged on any goods confirmed by written order from the Buyer for returning/cancel to the Seller's warehouse in Sydney.

### **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.

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### 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. 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 13(b) and 13(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.

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
- Renova Banquet Carts and Regeneration Ovens

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) and Storage Bins

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.

(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 13(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 oils, lubricants, cleaning materials and accessory tools.

(f) The Seller's undertaking in paragraph 13(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, water supply disturbances, drainage faults and alterations without consent in writing from Scots Ice Australia Pty Ltd.

(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.

(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 loss 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.

**IN NO EVENT SHALL SCOTS ICE AUSTRALIA PTY LTD 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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