

## SCOTS ICE AUSTRALIA FOODSERVICE EQUIPMENT – TERMS AND CONDITIONS OF SALE

The supply of goods or services by Scots Ice Trading Pty Ltd as Trustee for Scots Ice Trust trading as Scots Ice Australia Foodservice Equipment (“Scots Ice”) is made on the following terms and conditions (the “Contract Terms”).

These Terms and Conditions as well as Warranty Terms supersede all previous versions to date. For the most up to date terms and conditions please visit [www.scotsice.com.au/terms/](http://www.scotsice.com.au/terms/).

### 1. GENERAL

**1.1** These Contract Terms shall apply to the exclusion of all others and any terms and conditions of the customer (whether in a customer order form or otherwise) which are contrary to or inconsistent with these Contract Terms shall not apply nor shall they constitute a counter offer. No goods or services will be supplied by Scots Ice on any Contract Terms other than those set out herein and by taking delivery of goods or services the customer shall be deemed to agree these Contract Terms shall apply to the exclusion of all others.

### 2. QUOTATIONS AND ORDERS

- 2.1** All orders are subject to written acceptance by Scots Ice.
- 2.2** Unless previously withdrawn by Scots Ice at any time, a quotation is valid for thirty (30) days from the date on the quotation after which time it will lapse.
- 2.3** All orders are to be submitted in writing with the quantity, description of goods and price. The customer acknowledges that Scots Ice is not liable for any mistakes in orders that are not submitted this way.
- 2.4** In the case of goods not expressed to be offered from stock, the time of delivery is an estimate only of when goods may be available for delivery and is based upon estimated time necessary to obtain goods from manufacturers and /or suppliers and Scots Ice does not accept any responsibility for failure to deliver within the time stated. The customer acknowledges that failure to deliver the goods strictly within the time stated shall not entitle the customer treat the order as repudiated.

### 3. PRICE AND PRICE VARIATION

- 3.1** Scots Ice may invoice the goods or services at the prices ruling on the date of delivery.
- 3.2** All prices quoted are exclusive of:
- (a)** Goods and Services Tax (GST) and therefore GST will be added to each invoice at the current rate.
  - (b)** any delivery charges or surcharge or both, otherwise imposed by Scots Ice in its absolute discretion.
- 3.3** Scots Ice is entitled to alter or vary any prices of goods or services and terms on which those goods or services are to be supplied to take into account a variation in cost arising from:
- (a)** delays in manufacture or installation as a result of any act or omission by the customer, or other circumstances beyond Scots Ice's control;
  - (b)** variations in the cost of the goods to Scots Ice due to variations in the cost of freight and transport, manufacturer price increase, insurance premiums, duties or currency exchange rates; and
  - (c)** any error or emissions
- 3.4** Any claim in respect of incorrect pricing of goods invoiced or sold, must be made by the customer, in writing, within seven (7) days of the receiving the tax Invoice accompanied by a completed credit request and goods return form.

### 4. PAYMENT TERMS

- 4.1** Terms of payment will be pre-payment prior to dispatch or cash on delivery unless otherwise agreed in writing. If payment is by cheque or by electronic funds transfer (EFT), payment is effected upon clearance of the funds which may take up to five (5) days.
- 4.2** If Scots Ice shall extend trading terms to the customer, payment for all goods or services will be within thirty (30) days from the date of invoice.

**4.3** Visa and Mastercard payments incur a 1.5% surcharge.

**4.4** The customer acknowledges that they shall not be entitled to withhold payment of the purchase price or any part of the purchase price or make any deduction from the purchase price in respect of any alleged set off or counter-claim.

**4.5** Delayed Project Clause: Scots Ice reserves the right to invoice the customer for an off-site payment and/or storage surcharges and/or price increases (as covered in Clause 3.3), for any special project goods or custom made goods, listed and not listed in Scots Ice Price List, that are not accepted for delivery by the customer on or before the delivery date confirmed on the initial written order.

### 5. DEPOSITS

**5.1** A non-refundable deposit of 50% is required upon placement of any order of Firex goods or special projects goods or custom goods, listed and not listed in the Scots Ice Price List. The balance will be paid in full prior to dispatch of goods, unless otherwise agreed in writing.

### 6. DEFAULT AND CONSEQUENCES OF DEFAULT

- 6.1** Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Scots Ice sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.2** If the customer owes Scots Ice any money the customer shall indemnify Scots Ice from and against all costs and disbursements incurred by Scots Ice in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Scots Ice contract default fee, and bank dishonour fees).
- 6.3** Without prejudice to any other remedies Scots Ice may have, if at any time the customer is in breach of any obligation (including those relating to payment) under these Contract Terms Scots Ice may suspend or terminate the supply of goods or services to the customer. Scots Ice will not be liable to the customer for any loss or damage the customer suffers because Scots Ice has exercised its rights under this clause.
- 6.4** Without prejudice to Scots Ice's other remedies at law Scots Ice shall be entitled to cancel all or any part of any order of the customer which remains unfulfilled and all amounts owing to Scots Ice shall, whether or not due for payment, become immediately payable if:
- (a)** any money payable to Scots Ice becomes overdue, or in Scots Ice's opinion the customer will be unable to make a payment when it falls due
  - (b)** the customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c)** a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the customer or any asset of the customer.

### 7. INACTIVE AND OVERDUE ACCOUNTS

**7.1** Scots Ice will close any accounts which are inactive for a continuous period of six (6) months or in default of payment over ninety (90) days. A new Credit application to open an account is required to be submitted for approval.

## 8. DELIVERY AND FREIGHT CHARGES

- 8.1** All spare parts and accessories sold separately will incur a freight and packing charge.
- 8.2** All goods prices, except spare parts and accessories sold separately, unless specified otherwise include scheduled delivery within Sydney, Melbourne and Brisbane metropolitan areas to the customer's loading dock only.
- 8.3** Deliveries to Perth, Adelaide, Darwin and Hobart metropolitan areas and to any other area carry a surcharge.
- 8.4** Deliveries to third parties as nominated by the customer are subject to local carriage charges at Scots Ice's discretion.
- 8.5** Deliveries outside metropolitan areas will be charged from Sydney, Melbourne or Brisbane at Scots Ice's discretion.
- 8.6** 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 customer.
- 8.7** Failure to receive goods will subject the goods to charges on re-delivery at Scots Ice's discretion.
- 8.8** Additional delivery charges apply for all upright and bench type refrigerators and large convection ovens to any location.
- 8.9** Scots Ice 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.
- 8.10** No claim can be made if the carrier consignment note has been signed as received in good physical condition.
- 8.11** Scots Ice shall not be liable for non-fulfilment or late delivery should actual delivery of the goods or any parts be prevented or 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. CANCELLATION AND RETURNS

- 9.1** Any claim in respect of faulty or defective goods, or in respect of any incorrect supply of goods, must be made by the customer, in writing, within seven (7) days of the receipt of goods, accompanied by a completed credit request and goods return form.
- 9.2** Scots Ice may cancel any contract to which these Contract Terms apply or cancel delivery of goods at any time before the goods are delivered by giving written notice to the customer. Scots Ice shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 9.3** In the event that the customer cancels delivery of goods the customer shall be liable for any and all loss incurred (whether direct or indirect) by Scots Ice as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 9.4** A 25% cancellation/restocking fee will be charged on any goods confirmed by written order from the customer for cancellation or returning to Scots Ice's warehouse in Sydney.
- 9.5** A 75% cancellation fee will be charged for any special project goods or custom made goods, listed and not listed in Scots Ice Price List confirmed by written order from the customer for cancellation or returning to Scots Ice's warehouse in Sydney.
- 9.6** Under no circumstances are goods to be returned without prior authorisation in writing from Scots Ice.
- 9.7** The customer is responsible for organising the return of goods and liable for all costs associated with their return. Any goods returned not in re-saleable condition, in the original packaging, will not be accepted and the customer will be liable for payment in full.

## 10. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA") AND RETENTION OF TITLE

- 10.1** In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2** Upon assenting to these Contract Terms in writing the customer acknowledges and agrees that these Contract Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all goods that have previously been supplied and that will be supplied in the future by Scots Ice to the customer.
- 10.3** The customer undertakes to promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Scots Ice may reasonably require to;
- (a)** register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (b)** register any other document required to be registered by the PPSA; or
- (c)** correct a defect in a statement referred to in clause 6 (a) (i) or 6 (a) (ii)
- 10.4** The customer undertakes to indemnify, and upon demand reimburse, Scots Ice for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
- 10.5** The customer undertakes to not register a financing change statement in respect of a security interest without the prior written consent of Scots Ice;
- 10.6** The customer undertakes to not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the prior written consent of Scots Ice;
- 10.7** The customer agrees to immediately advise Scots Ice of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- 10.8** Scots Ice and the customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Contract Terms.
- 10.9** The customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.10** The customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.11** Unless otherwise agreed to in writing by Scots Ice, the customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.12** The customer must unconditionally ratify any actions taken by Scots Ice under clauses 7 (c) to 7 (d).
- 10.13** Subject to any express provisions to the contrary nothing in these Contract Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10.14** The customer acknowledges that property in the goods shall not pass to the customer until the customer has paid all money due for the goods and for all other goods supplied by Scots Ice. If such goods are sold by the customer prior to payment, then the proceeds of sale of those goods shall be the property of Scots Ice. Until property passes in the goods to the customer, the customer acknowledges that it is in possession of the goods solely as bailee for Scots Ice 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 Scots Ice.
- 10.15** In any event of the customer's default in the due observance or performance of these trading terms or any of them all money paid by the customer by way of deposit shall be absolutely forfeited to Scots Ice at Scots Ice's option.
- 10.16** Scots Ice shall be entitled to enter at all times upon the premises occupied by the customer and upon which the goods may be in order to take possession of the goods. It shall be lawful for Scots Ice 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.

## 11. CUSTOMER'S REQUIREMENT FOR INSURANCE

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

## 12. EXCLUSION OF LIABILITY

**12.1** Scots Ice accepts no liability to the customer or to any third party for any loss or damage of any kind whatsoever, including without limitation, loss of profit and consequential loss caused by any act, negligent or otherwise, or omissions by Scots Ice, its servants or its agents or any other person in any way related to or arising out of the supply or non-supply or performance or non-performance of anything or any service provided for or contemplated by or in pursuance of these Contract Terms.

**12.2** The customer hereby acknowledges that the goods require periodic maintenance, inspection, replacement and operation according to the manufacturer's specifications. The customer agrees that they shall inform any person to whom they sell the goods of the necessity for such periodic maintenance, inspection, replacement and operation according to the manufacturer's specifications.

**12.3** Scots Ice accepts no liability to the customer or to any third party for incidental or consequential damages of any kind or nature, or for any damages resulting in whole or in part from mis-use or inadequate maintenance of the goods or any part thereof.

**12.3** Scots Ice is not liable for any misprint contained in these Contract Terms and subsequent price list and reserves the right to make changes without notice and is not liable for out-dated information. Please refer to the website at [www.scotsice.com.au](http://www.scotsice.com.au) for the most up-to-date information or call us on free call 1800 222 460.

## 13. GOVERNING LAW

**13.1** The Contract Terms shall be governed by the laws of the State of New South Wales and the customer agrees to submit to the jurisdiction of the Courts of the State of New South Wales.

## 14. NO WAIVER

**14.1** Failure by Scots Ice to insist upon strict performance of any term, warranty or condition of the Contract Terms shall not be deemed as a waiver of any of Scots Ice's rights or a waiver of any subsequent or continuing breach.

## 15. PRIVACY ACT 1988 - NOTICE OF CONSENT

**15.1** The customer agrees for Scots Ice to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the customer in relation to credit provided by Scots Ice.

**15.2** The customer agrees that Scots Ice may exchange information about the customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the customer; and/or
- (b) to notify other credit providers of a default by the customer; and/or
- (c) to exchange information with other credit providers as to the status of this

credit account, where the customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the customer including the customer's repayment history in the preceding two years.

**15.3** The customer consents to Scots Ice being given a consumer credit report to collect overdue payment on commercial credit.

**15.4** The customer agrees that personal credit information provided may be used and retained by Scots Ice for the following purposes (and for other agreed purposes or required by):

- (a) the provision of goods; and/or
- (b) analysing, verifying and/or checking the customer's credit, payment and/or status in relation to the provision of goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the customer;
- (d) enabling the collection of amounts outstanding in relation to the goods.

**15.5** Scots Ice may give information about the customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the customer including credit history.
- 15.6** The information given to the CRB may include:
- (a) personal information as outlined in (a) above;
  - (b) name of the credit provider and that Scots Ice is a current credit provider to the customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the customer no longer has any overdue accounts and Scots Ice has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) Information that, in the opinion of Scots Ice, the customer has committed a serious credit infringement;

(h) Advice that the amount of the customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

**15.7** The customer shall have the right to request (by e-mail) from Scots Ice:

- (a) a copy of the information about the customer retained by Scots Ice and the right to request that Scots Ice correct any incorrect information; and
- (b) that Scots Ice does not disclose any personal information about the customer for the purpose of direct marketing.

**15.8** Scots Ice will destroy personal information upon the customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

**15.9** The customer can make a privacy complaint by contacting Scots Ice via e-mail. Scots Ice will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the customer is not satisfied with the resolution provided, the customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 16. CONTRACTOR PAYMENTS

**16.1** Scots Ice will only accept charges from authorised technicians for warranty repairs under the following conditions and failure to meet the below requirements will result in non-payment.

- (a) The invoice must contain a valid Scots Ice job card number.

- (b) Each invoice must have a separate job card number and must not contain a duplicate job card number.
- (c) The invoice must not be older than ninety (90) days and must be received within ninety (90) days from date of job.
- (d) All faulty parts are to be returned to Scots Ice.
- (e) Invoices must only contain charges for repairs that meet the requirements for warranty. All repairs that are deemed non warranty must be invoiced directly to the customer and will not be paid by Scots Ice.

## 17. WATER FILTERS

- 17.1** Water filters supplied by Scots Ice 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 customer to provide a suitable water filter for the goods for the filtration of these damaging elements.
- 17.2** The water filters and any spare parts associated with the water filters provided by Scots Ice are not covered by any warranty or any damages caused to the goods by misuse or user error.
- 17.3** Cleaning and maintenance of water filters should be carried out a minimum of every three (3) months. This includes changing the filter cartridge. Failure to do so will void warranty of any goods damaged or affected by this.
- 17.4** Some areas in Australia are subject to poor water quality. It is the customer's responsibility to ensure that water treatment/filtration meets requirements to avoid any calcification or scale build up. Failure to do so will void warranty.

## 18. SUB-CONTRACTORS

- 18.1** Scots Ice may at its discretion use or recommend sub-contractors to install, commission, repair and service the goods. Scots Ice takes care to ensure that these sub-contractors are competent, trained and independently insured. Should the customer need to make any claim in regards to damage, loss, the performance or conduct of such a sub-contractor then the customer agrees to make such claim direct to the sub-contractor in the first instance and shall only involve Scots Ice in such a claim if the customer is unable to resolve the issue with the sub-contractor. Please make all claims in writing within seven (7) days to Scots Ice.

## 19. INSTALLATION, COMMISSIONING AND SERVICE

- 19.1** Where Scots Ice is to install, start-up, commission or provide a service to the goods, the customer will provide suitable access to and possession of the premises where the goods are to be installed, started up, commissioned and serviced.
- 19.2** The customer will bear all costs of:
  - (a) any work to be carried out by third parties including, without limitation, builders, masons, joiners, plumbers, electricians, air conditioning and refrigeration technicians and gas electrical technicians.
  - (b) any alterations to existing equipment or premises.
  - (c) all fuels, services and other facilities required for the installation, starting up, commissioning and servicing of the goods.
- 19.3** Scots Ice reserves the right to ask for a written purchase order or a credit card for payment up front before providing or referring services of a sub-contractor to install, start-up, commission or provide a service to the goods.

## 20. DEFINITIONS

- 20.1** In these contract terms the following words will (unless the context otherwise requires) mean the following:
  - (a) **"Customer"** means the person, firm, company, body corporate or entity who or which has offered to purchase the goods or services from Scots Ice or whom Scots Ice has offered to sell the goods or services, this includes those

- customers that purchase the goods or services with the intention of reselling them rather than using them;
- (b) **"Scots Ice"** includes all Scots Ice employees and agents;
- (c) **"Goods"** means the products or items supplied by Scots Ice;
- (d) **"Services"** mean the services supplied by Scots Ice;
- (e) **"PPSA"** means Personal Properties Security Act 2009.

## 21. ACCEPTANCE

- 21.1** Acceptance by the customer of these Contract Terms, as amended by Scots Ice from time to time, may be by any one of the following ways:
  - (a) by signing and returning a copy of these Contract Terms.
  - (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 or services.
  - (c) by oral acceptance.
- 21.2** Failure to accept these Contract Terms within seven (7) days of receipt by the customer of these Contract terms may result in the immediate withdrawal of Scots Ice's offer to supply goods or services.

**IN NO EVENT SHALL SCOTS ICE AUSTRALIA FOODSERVICE 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. SCOTS ICE AUSTRALIA FOODSERVICE EQUIPMENT – TERMS AND CONDITIONS OF SALE**

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Scots Ice Australia Foodservice Equipment (ABN: 24 353 726 846)

Terms and Conditions are subject to change without notice.

To ensure you are always viewing our latest Terms and Conditions, please visit [www.scotsice.com.au/terms/](http://www.scotsice.com.au/terms/)

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