

# FOOD EQUIPMENT DISTRIBUTORS PTY LIMITED

ABN 17 090 943 418

## TERMS AND CONDITIONS OF SALE (August 2014, v07)

### 1 APPLICATION

- 1.1 These Terms and Conditions of Sale ("Terms") apply to all goods sold by Food Equipment Distributors Pty Limited (ABN 17 090 943 418) ("the Company"). "Goods" means all goods sold and/or delivered by the Company to the Customer from time to time and includes goods delivered on consignment.
  - 1.2 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
  - 1.3 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Goods or the sale of the Goods other than as contained in these Terms.
- ### 2 TERMS OF PAYMENT
- 2.1 Prices quoted are ex Company's premises and are subject to change without notice.
  - 2.2 Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated herein or in the relevant invoice or statement.
  - 2.3 Payments are to be made before the goods are delivered, otherwise noted in writing or indicated on our company's invoices.
  - 2.4 Payment by cheque will not be deemed to be made until and unless the relevant cheque is cleared.
  - 2.5 Interest is payable on all overdue accounts calculated on a daily basis at the rate of 2% per month as from the due date for payment until payment is received by the Company.
  - 2.6 A handling fee as determined by the Company from time to time will be charged for each invoice.

- 3 **PROPERTY IN GOODS** – Legal and beneficial ownership of Goods supplied by the Company will not pass to the Customer until such time as the Goods so supplied and all other goods supplied by the Company to the Customer from time to time, have been paid in full in cash or cleared funds.

### 4 RE-SALE OF GOODS

- 4.1 Should the Customer be a re-seller then, subject to sub-clause 4.2.4, the Customer has the right to sell the Goods in its own name at full market value and in the ordinary course of business.
- 4.2 Until the amount payable to the Company in respect of the Goods, and in respect of all other goods previously supplied by the Company to the Customer, has been paid in full in cash or cleared fund:
  - 4.2.1 The Customer will hold the Goods only as bailee for the Company;
  - 4.2.2 The Goods must be stored in such manner that they are readily distinguishable from other goods owned by the Customer or other persons and so as to clearly show that they are the property of the Company;
  - 4.2.3 The Customer must indemnify the Company from and against any claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by the Company arising out of the possession, use or disposal of the Goods by the Customer or repossession or attempted repossession of them by the Company; and
  - 4.2.4 any sale of the Goods under clause 4.1 will only be effected by the Customer as trustee for the Company and the proceeds of such sale and the rights of the Company's Customer against its Customer arising from such sale will be held on trust for the Company. The said proceeds must be held in a separate account or otherwise clearly identified in the books and records of the Customer.
- 4.3 If the Customer resells any Goods then, unless the Goods are clearly identifiable by serial numbers or other distinguishing marks, the Customer is deemed to have disposed of the Goods in the chronological order of supply by the Company to the Customer (oldest to most recent).

### 5 DEFAULT – If:

- 5.1 the Goods are not paid for in accordance with these Terms or any other written agreement between the Company and the Customer; or
- 5.2 the Company receives notice of, or reasonably believes that a third party may attempt to levy execution against or attach the Goods; or
- 5.3 any other event occurs which is likely to adversely affect the Customer's ability to pay for the Goods (including but not limited to the appointment of a receiver, receiver and manager, administrator, controller, liquidator, provisional liquidator, trustee or similar person (each an "insolvency representative") to the Customer's undertaking), then the Company may at any time thereafter, without notice to the Customer and without prejudice to any other rights which it may have against the Customer, terminate any contract relating to the Goods and the bailment referred to in clause 4.2.

- 6 **RIGHT TO ENTER PREMISES** – In any of the circumstances referred to in the preceding clause, the Customer:

- 6.1 authorises the Company by itself, its agents or representatives at all reasonable times, without notice, to enter onto (with force if reasonably necessary) and at all necessary time(s), to remain in and on any premises where the Goods are located in order to collect the Goods, without being guilty of any manner of trespass; and
- 6.2 assigns to the Company all the Customer's rights to enter onto and remain in and on such premises until all the Goods have been collected.

### 7 ADMINISTRATION, RECEIVERSHIP ETC.

- 7.1 In any of the circumstances referred to in clause 5.3, neither the Customer nor its insolvency representative or any other person acting for the Customer and/or its creditors is entitled to sell, charge, remove, dispose of, use or otherwise deal with the Goods in any way inconsistent with the Company's ownership of the Goods, without the Company's prior written approval.
- 7.2 The Customer, its insolvency representative or any other person acting for or on behalf of the Customer and/or its creditors is obliged to re-deliver the Goods to the Company immediately or immediately on his appointment at its or his expense.
- 7.3 If the Goods are returned to or collected by the Company, the Company will within 28 days, account to the Customer or its legal representative for all monies received for the Goods from the Customer less the Company's reasonable administration charges, expenses incurred and loss of profits involved.

### 8 CONSIGNMENT – If the Company supplies goods on consignment ("Consignment Goods") then:

- 8.1 The Customer must bear all risk of loss and/or damage to the Consignment Goods and must, in addition, effect and maintain insurance against loss, fire and theft of the Consignment Goods, in an amount adequate to cover the Company's interest as owner of such Consignment Goods;
- 8.2 The Customer must keep the Consignment Goods free from liens, encumbrances and adverse claims of all kinds which might otherwise diminish or adversely affect the Company's exercise of its full rights of ownership of the Consignment Goods;
- 8.3 if the Consignment Goods are lost or damaged while in the Customer's possession or care, the Customer undertakes to reimburse the Company, within 30 days of date of replacement or repair, as the case may be, the full cost of such replacement or repair; and the Customer must provide to the Company, a monthly statement by the 15<sup>th</sup> of the following month, listing in full all Consignment Goods supplied to the Customer as well as full details of all purchasers of the Consignment Goods sold during the preceding month, together with the quantities of the Consignment Goods purchased and the relevant prices paid

### 9 CUSTOMER AS TRUSTEE – If the Customer carries on business as trustee of a trust then the Customer warrants that:

- 9.1 the Customer enters into the contract as trustee of a trust;
- 9.2 the Customer has all requisite powers to enter into the contract;
- 9.3 the beneficiary of the trust approves the purchase of the Goods on the terms of the contract; and
- 9.4 the assets of the trust are available to the Company in satisfaction of any debt incurred by the Customer.

### 10 SALES TAX AND GOODS AND SERVICES TAX

- 10.1 Sales tax and Goods and Services tax ["GST"] are not included in the quoted price.
  - 10.2 Unless the Customer produces a Sales Tax Exemption Certificate applicable to the Goods and quotes its Sales Tax Exemption Number, the Customer must pay all sales tax payable for the Goods at the date of invoice.
  - 10.3 If GST is imposed on the Company in respect of the Goods then the Customer must pay to the Company the amount of such GST in addition to the quoted price.
  - 10.4 The Company will give the Customer written notice of the amount of any GST payable under this clause and provide a tax invoice showing the amount of GST payable.
- ### 11 CUSTOMS DUTIES, TARIFFS AND LEVIES – All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing indicates otherwise.
- ### 12 DELIVERY
- 12.1 Availability dates are estimates only, but the Company will use its best endeavours to maintain these estimates.
  - 12.2 At the Customer's request, the Company will arrange for the delivery of the Goods into the Customer's premises at the Customer expense.

### 13 DELIVERY BY INSTALMENTS

- 13.1 The Company reserves the right to deliver the Goods in whole or by instalments, as well as to deliver prior to the date for delivery and in such event the Customer must not refuse to take delivery of the Goods.
  - 13.2 Where the Goods are delivered by instalments, each instalment is sold under a separate contract.
  - 13.3 Any failure on the part of the Company to deliver instalments within any specified time does not entitle the Customer to repudiate the contract with regard to the balance remaining undelivered.
- ### 14 RISK
- The Goods are entirely at the Customer's risk from the instant the Goods leave the Company's premises.
- ### 15 INSPECTION
- Unless the Customer has inspected the Goods and given written notice to the Company within seven (7) days after collection or delivery that the Goods do not comply with the relevant specifications or descriptions, the Goods are deemed to have been accepted in good order and condition.
- ### 16 RETURN OF GOODS
- No claim for credit or damaged goods shall be considered unless notification is made within 7 days in writing to the Company.
- ### 17 CANCELLATION OF ORDER
- No order may be cancelled, modified or deferred without the prior written consent of the Company and if such consent is given, the Company will be reimbursed for all losses, including loss of profits, and paid a cancellation and restocking fee (being not less than 20% of the invoice value of the Goods).

### 18 COMPANY'S LIABILITY LIMITED

- 18.1 These Terms do not affect the rights, entitlements and remedies conferred by the Trade Practices Act (1974).
- 18.2 The Company is not subject to, and the Customer releases the Company from any liability (including but not limited to consequential loss or damage, removal costs or re-installation costs or liability for loss of use or profit) because of any delay in delivery or fault or defect in the Goods. The Customer acknowledges that the Company is not responsible if the Goods do not comply with any applicable safety standard(s) or similar regulation(s), and that the Company is not liable for any claim, cost, damage or demand resulting from such non-compliance.
- 18.3 If any statutory provisions under the Trade Practices Act 1974 or any other statute(s) apply to the Agreement then, to the extent to which the Company is entitled to do so, the Company's liability under the statutory provisions is limited, at the Company's option, to:
  - 18.3.1 replacement or repair of the Goods or the supply of equivalent Goods; or
  - 18.3.2 payment of the cost of replacing or repairing the Goods or of acquiring equivalent goods; or
  - 18.3.3 refund of the purchase price,and in any case, the Company will not be liable for any consequential or other direct or indirect loss or damage.

### 19 WARRANTY

- 19.1 The Company warrants to the Customer that the Goods will be supplied in an undamaged condition and will be free from defects in material and workmanship.
- 19.2 On discovery of any defect in the Goods, the Customer must notify the Company in writing of such defect. All warranty claims must be received by the Company within three (3) days of the day of delivery.
- 19.3 The Company provides a warranty on parts and labour against faulty material or workmanship for brand new stock for a period of twelve months, 6 months for show room stock and 3 months for second-hand stock & spare parts from the date of delivery unless otherwise stated in writing.  
**NOTE** Dealer display and floor stock items are subject to special warranty terms and conditions. The warranty covers all components contained within the equipment housing but does not include elements, heat lamps, light bulbs, fittings or glass, hoses, external fittings or consumable items. Equipment must be correctly installed in accordance with the manufacturer's instructions, placed level and properly positioned in relation to clearances, heat / cold sources and airflow. Refrigeration fans, condensers and units must be properly maintained, kept clean and free of blockages at all times. Bench fridges & freezers must be placed no nearer than 100 mm to walls or other equipment.
- 19.4 The warranty is void if the Goods have not been maintained and serviced, or if the Goods have been subject to misuse, negligence or accident, operated incorrectly, serviced by unauthorised persons or at the date of the claim the Goods have not been paid in full.  
The Customer must not carry out any remedial work to alleged defective Goods without first obtaining the written consent of the Company to do so. The Customer's failure to provide written notice to the Company within the required time of any alleged breach of the above warranty will release and discharge the Company from any obligation or liability for that breach of warranty.  
The above warranty extends only to the Customer and to no other person.
- 19.5 The provisions of any act or law (including but not limited to the Trade Practices Act 1974) implying terms, conditions and warranties, or any other terms, conditions and warranties which might otherwise apply to or arise out of the agreement between the Company and the Customer in relation to the Goods (the "Agreement") are hereby expressly negated and excluded to the full extent permitted by law.
- 19.6 The Customer expressly acknowledges and agrees that it has not relied, and the Company is not liable for any advice given by the Company, its servants, agents, representatives or employees in relation to the suitability for any purposes of the Goods.
- 19.7 The warranty covers defects and faulty workmanship under normal use (single shift) with recommended service maintained on the equipment.
- 19.8 Warranty, back to base applies to any item/s that can be carried and placed into a standard vehicle is/are to be returned (or sent via pre-paid freight) to the place where purchased from, or, F.E.D.'s closest official service agent, or to F.E.D.'s head office. Delivery to and from F.E.D. or its service agents, is at the Customer's care and expense. Warranty for non-carryable items is to be undertaken during normal business working hours (8:00am to 5:00pm) and does not include travel to and from the equipment's location. *Costs incurred through travel are limited to 50km from F.E.D.'s closest official service agent.*
- 19.9 Credit on replacement parts will ONLY be issued on receipt and examination of damaged parts and when determined by the Company to be defective.  
*If more information is required on warranty prerequisites, please contact the F.E.D. Service Department.*

- 20 **CATALOGUES** – Particulars in leaflets, catalogues, drawings, brochures and other printed material are illustrations only, and form no part of the contract between the Company and the Customer, and are not binding on the Company.

- 21 **SAMPLES** – Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

### 22 SPECIFICATIONS

- 22.1 Unless otherwise agreed in writing, the Goods are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Goods, or, if no such specification has been published or set out, subject to such specification as is normally regarded as being commercially acceptable.
- 22.2 Where any specifications for the Goods are to be supplied by the Customer, they must be supplied in a reasonable time to enable the Company to complete delivery by the date for delivery.
- 22.3 Goods over a rating of 240VAC, 15 Ampere and 415VAC are not fitted with plugs.

### 23 CONTRACT

- 23.1 The terms of contract between the parties are wholly contained in these Terms and any other writing signed by both parties. The contract is deemed to have been made at the Company's place of business in Sydney and any cause of action is deemed to have arisen there.
- 23.2 The provisions of the United Nations Convention on contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 does not apply to any Goods supplied by the Company to the Customer.

- 24 **FORCE MAJEURE** – The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

- 25 **WAIVER OF BREACH** – No failure by the Company to insist on strict performances of any of the terms in these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the Customer.

- 26 **NO ASSIGNMENT** – Neither the Agreement nor any rights arising under the Agreement may be assigned by the Customer without the prior written consent of the Company which is at the Company's absolute discretion.

**SEVERABILITY** – If any provision contained in these Conditions of Sale is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.