

TERMS AND CONDITION OF SALE

These Terms and Conditions of Sale ("Terms and Conditions") shall govern the purchase of any products ("Products") and related installation services ("Services") by buyer listed below ("Buyer") from Commercial Kitchens LLC ("Seller"). These Terms and Conditions take precedence over Buyer's additional or different terms and conditions, to which notice of objection is hereby given and acceptance by Buyer is limited to these Terms and Conditions. Any changes in these Terms and Conditions must specifically be agreed to in writing by Seller and Buyer. The parties expressly agree that except for the item type, quantity, requested delivery dates and location on an accepted purchase order, any terms and conditions on Buyer's purchase order will have no effect.

1. **Orders.** All orders placed with Seller must be in writing. Any purchase order shall only be accepted and binding upon Seller upon written acceptance by Seller. Seller may reject any purchase order in its reasonable discretion.

2. **Price and Payment.** Buyer shall pay the prices on Seller's invoice(s), plus all applicable federal, state and local sales and similar taxes. Unless required to be paid in advance, Buyer will pay Seller all fees and costs within thirty (30) days after the date of Seller's invoices, without set-off or deduction. The fees and costs are due and payable regardless of whether Buyer receives payment from its customer for such Products and Services. Interest accrues on the amounts overdue at 1.5% per month or the maximum interest rate permitted by law, whichever is lower, until paid in full. All costs (including collection costs and attorneys' fees) incurred by Seller in collecting any past due balances and enforcing its security interest are Buyer's responsibility. Buyer, and on behalf of its customer, grants to Seller a purchase money security interest in the Products until all payments have been made. Seller may file a financing statement for the security interest and Buyer, and on behalf of its customer, agrees to sign any financing statements or other documents necessary to document Seller's security interest.

3. **Delivery.** Delivery terms and risk of loss of the Products must be indicated on Buyer's accepted purchase order. Seller will perform the Services per the agreed schedule.

4. **Acceptance.** Products and Services are deemed accepted upon receipt of shipment or performance of Services unless notice of defect is received within thirty (30) days after receipt. In the event of Buyer's rejection of defective Product(s), subject to the warranty rights provided by the Product manufacturer, Seller's sole and exclusive obligation to Buyer shall be, at Seller's option, to exchange such Product(s) for a new one of the same type or to provide Buyer with a refund or credit in the amount of the price of the Product(s), subject to a restocking fee of 30% of the price of the Products. Rejection of the Product(s) does not void Buyer's obligation to pay for Services rendered in connection with this Agreement.

5. **Warranty; Disclaimer.** **TO THE EXTENT PERMISSIBLE, SELLER WARRANTS THAT NEW PRODUCTS WILL OPERATE IN ACCORDANCE WITH THE MANUFACTURER'S WARRANTY FOR ONE YEAR AFTER DATE OF PURCHASE. SELLER WILL PASS THROUGH TO BUYER MANUFACTURER WARRANTIES WITHOUT MODIFICATION AS PERMITTED BY MANUFACTURER. USED PRODUCTS HAVE A THIRTY (30) DAY OPERATING WARRANTY FROM DATE OF PURCHASE. SELLER DOES NOT PROVIDE ANY PRODUCT WARRANTIES ITSELF AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. BUYER WILL BRING ANY WARRANTY CLAIMS FOR THE PRODUCTS SOLELY AND DIRECTLY TO THE MANUFACTURER. SERVICES ARE PERFORMED ON AN AS-IS, WITHOUT WARRANTY BASIS, SUBJECT TO SECTION 4.**

6. **Indemnification.** Buyer will indemnify, defend, and hold Seller, its directors, officers, employees, subsidiaries, affiliates, and

the successors and assigns harmless against all claims, liabilities, obligations, demands, damages, expenses (including reasonable attorney fees), and amounts paid in settlement by, imposed on or incurred by Seller related to acts or omissions of Buyer.

7. **Limitation of Liability.** Seller's total liability arising from the Products and Services, under any theory of liability, will be limited to the amounts received by Seller from Buyer for the particular Product or Service giving rise to a claim. **IN NO EVENT WILL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, IN CONNECTION WITH THIS AGREEMENT.** No action relating to the Products or Services may be brought more than one year the date on the purchase order giving rise to the claim.

8. **Insurance.** Buyer shall be responsible for its own general, broad form comprehensive insurance policy to cover all of its acts or omissions related to the Products. Buyer is not permitted to submit any claim against Seller's insurance coverage related to this Agreement, the Products, or the Services.

9. **Independent Contractors; Compliance.** The parties agree that each party is an independent contractor of the other party and cannot bind the other party in any respect other than the purchase of Products on Buyer's behalf. Seller may complete the Services in any manner it deems necessary or appropriate. Neither party is responsible for the actions of the other party, its agents, independent contractors or employees. Buyer will comply with all applicable laws, regulations and orders.

10. **Termination.** Seller may terminate any purchase order at any time in its discretion. Buyer will pay for all Products ordered or received and Services received through the termination date.

11. **Confidentiality.** Buyer will treat Seller's Confidential Information as confidential and will not disclose to others or use it for any purpose except to comply with these Terms and Conditions. "Confidential Information" includes, without limitation, whether in writing or not, these Terms and Conditions, information not generally known to the public, Products, Services, strategies, pricing, trade secrets, know-how, financial information, sales and distribution information, actual and potential customers. Buyer is responsible for any disclosure of Confidential Information under its possession or control.

12. **Miscellaneous.** If a provision of these Terms and Conditions is held invalid, illegal or unenforceable, such holding will not affect the other sections in these Terms and Conditions. Seller can exercise any and all remedies allowed by law. If Seller waives a Buyer breach or fails to waive a Buyer breach, it is not deemed to be a waiver to other breaches. These Terms and Conditions are governed by Ohio law. Buyer may not assign any of its rights, interests, obligations or liabilities with regard to the purchase of Products or receipt of Services. Each party shall be excused from performance of its obligations under a purchase order if it suffers an event that is caused by an act of God, or other cause beyond the control of the party.