

Terms & Conditions of Sale

Effective Date 1st May 2022

The supply of goods and/or services by Italian Gelato Concepts Pty Limited ("Italian Gelato Concepts") ABN 48 603 731 424 are made, on the following terms and conditions ("Contract Terms").

1. GENERAL

- 1.1. These Contract Terms include all those statutory rights conferred on the buyer that Italian Gelato Concepts is not capable of excluding, restricting, or modifying ("the buyer's statutory rights").
- 1.2. Unless agreed in writing by Italian Gelato Concepts, these Contract Terms, as amended periodically, shall apply to the exclusion of all others including all prior discussions, representations, understandings and arrangements, any terms and conditions of the buyer (whether stated in a buyers purchase order or otherwise), written or oral, express or implied which are contrary to or inconsistent with these Contract Terms shall not apply nor shall they constitute a counter offer delivered by the buyer to Italian Gelato Concepts.
- 1.3. Italian Gelato Concepts may alter these Contract Terms from time to time and without written notice.
- 1.4. No goods and/or services will be supplied by Italian Gelato Concepts on any Contract Terms other than those set out herein and by taking delivery of goods and/or services the buyer shall be deemed to agree these Contract Terms shall apply to the exclusion of all others.
- 1.5. By initialling the appropriate Clause on the Italian Gelato Concepts Order Form, the buyer agrees that they have received, read, understand, and acknowledge the buyer's rights and obligations under these Contract Terms. The buyer is advised to seek independent legal advice prior to signing the Italian Gelato Concepts Order Form.

2. DEFINITIONS

- 2.1. In these Contract Terms the following words will (unless the context otherwise requires) mean the following:
 - 2.1.1. "Buyer" means and includes the buyer and any servant, company, firm, agent, employee, body corporate or entity who or which has offered to purchase the goods or services from Italian Gelato Concepts or whom Italian Gelato Concepts has offered to sell the goods or services. This includes those buyers that purchase the goods or services with the intention of reselling them rather than using them.
 - 2.1.2. "Italian Gelato Concepts" includes all Italian Gelato Concepts employees, agents, and representatives
 - 2.1.3. "Goods" means the products or items supplied by Italian Gelato Concepts
 - 2.1.4. "Services" mean the services supplied by Italian Gelato Concepts
 - 2.1.5. "PPSA" means Personal Properties Security Act 2009.
 - 2.1.6. "Consumer Guarantee" means a right or guarantee the Customer may have under Australian Consumer Law or other rights in relation to the supply of goods or services (such as terms implied into a contract) that cannot lawfully be excluded
 - 2.1.7. "Consequential Loss" means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue, loss of income, loss of business, loss of profits, loss of production, loss of or damage to goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, losses arising from Claims by third parties, loss of or damage to credit rating, loss of anticipated savings and/or loss or denial of opportunity
 - 2.1.8. "Loss" means any damage, loss, liability, expense, or cost (including, but not limited to, special, proximate, incidental, direct, indirect or Consequential Loss or damages or loss caused by the negligence of CE)
 - 2.1.9. "OEM" means Original Equipment Manufacturer
 - 2.1.10. "Written Notice" means by e-mail, facsimile, or hardcopy letter.

3. QUOTATIONS AND ORDERS

- 3.1. All orders are subject to written acceptance by Italian Gelato Concepts.
- 3.2. Unless previously withdrawn by Italian Gelato Concepts at any time, a quotation/offer is valid for a maximum period of thirty (30) days from the date on the quotation after which time the quotation/offer will lapse.
- 3.3. All purchase orders are to be submitted in writing with the quantity, product code, description of goods and price stated. The buyer acknowledges Italian Gelato Concepts is not liable for any errors, mistakes or omissions on orders not submitted in this manner.
- 3.4. In the case of goods not expressed to be offered from stock, the delivery time is an estimate only of when goods may be available for delivery. This is based upon the estimated time necessary to obtain goods from manufacturers and/or suppliers.
- 3.5. Italian Gelato Concepts does not accept any responsibility for delays caused by manufacturers, suppliers and/or transport that failure to deliver within the estimated time stated.
- 3.6. The buyer acknowledges that failure to deliver the goods strictly within the time stated shall not entitle the buyer to treat the order as rejected or cancelled.

4. PRICE AND PRICE VARIATION

- 4.1. Italian Gelato Concepts is entitled to alter or vary any invoice price of goods or services on the date of delivery considering any variation in cost including, but not limited to;
 - 4.1.1. Delays in manufacture and/or installation as the result of any act or omission by the buyer, or other circumstances beyond Italian Gelato Concepts 's control.
 - 4.1.2. Variations in the costs of manufacture including, without limitation, variations in the cost of labour or raw materials.
 - 4.1.3. Variations in the cost of the goods due to changes in the cost of freight, insurance premiums, customs duties or currency exchange rates.
 - 4.1.4. Any unforeseen errors or omissions
- 4.2. All prices quoted are exclusive of Goods and Services Tax (GST) and therefore GST will be added to each invoice at the current rate at the date of invoicing.

- 4.3. Any Claim in respect of incorrect pricing of goods invoiced, must be made by the buyer, in writing, within seven (7) days of receiving the tax Invoice accompanied by a completed credit request and goods return form.
- 4.4. Unless otherwise stated and agreed, all prices charged are ex works.

5. GOODS AND SERVICES TAX

- 5.1. If GST is imposed on any taxable supply under these Contract Terms, then Italian Gelato Concepts has the right to increase the purchase price payable on that taxable supply by an amount equal to the GST imposed.
- 5.2. To obtain a valid tax invoice, the buyer must supply Italian Gelato Concepts with its registered ABN.
- 5.3. Any reference in this Clause to "GST", "taxable supply" and "tax invoice" has the meaning given to those expressions in A New Tax System (Goods and Services Tax) Act 1999.

6. DEPOSITS

- 6.1. A deposit of 50% of the total purchase value is required on all custom-built projects at the time of signing the purchase order.
- 6.2. On non-stock indent items, a deposit of 30% of the total purchase value is required with the signed purchase order.
- 6.3. On stock items, a deposit of 20% of the total purchase value is required with the signed purchase order.

7. TERMS OF PAYMENT

- 7.1. Terms of payment will be pre-payment prior to dispatch unless otherwise agreed in writing by Italian Gelato Concepts. If payment is by cheque or by electronic funds transfer (EFT), payment is affected upon clearance of said funds which may take up to five (5) days.
- 7.2. If extended trading terms are offered to the buyer, payment for all goods or services will be within the agreed payment terms as specified on the invoice.
- 7.3. Visa and MasterCard payments incur a 2% surcharge unless otherwise agreed. AMEX and Diner Club credit cards are not accepted.
- 7.4. The buyer 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.

8. VARIATION OF TERMS OF PAYMENT AND DEFAULT

- 8.1. Italian Gelato Concepts reserves the right to invoice the buyer for an off-site payment and/or storage surcharges and/or price increases (as covered in Clause 4.1, 4.2), for any special project or custom-made goods, listed and not listed in the Italian Gelato Concepts Price List, that are delayed or not accepted for delivery by the buyer or their agent on or before the delivery date confirmed on the initial written order provided by the buyer.
- 8.2. If Italian Gelato Concepts decides the credit worthiness of the buyer has become unsatisfactory, Italian Gelato Concepts may on written notice to the buyer;
 - 8.2.1. Vary the terms of payment,
 - 8.2.2. May require payment in full and in cash,
 - 8.2.3. Require the provision of security for any amount unpaid,
 - 8.2.4. May stop any goods in transit until any requirements under this Clause have been complied with.
- 8.3. Italian Gelato Concepts reserves the right to deliver the goods by instalments and each instalment shall be deemed to be sold under a separate contract incorporating these Contract Terms.
- 8.4. Failure of Italian Gelato Concepts to deliver or withhold any instalment shall not entitle the buyer to cancel any contract or cancel the balance of the contract.
- 8.5. Without prejudice to any other remedies, Italian Gelato Concepts may charge Interest on overdue invoices accruing daily from the payment due date, calculated at current cash interest rate as published by the Australian Reserve Bank per calendar month until receipt of payment in full. Italian Gelato Concepts has sole discretion to compound such interest monthly after and/or before any judgment.
- 8.6. If the buyer owes Italian Gelato Concepts any money the buyer shall indemnify Italian Gelato Concepts from and against all costs and disbursements incurred by Italian Gelato Concepts in the recovery of the debt including but not limited to, internal administration fees, legal and solicitor costs, contract default fee, and bank dishonour fees incurred by Italian Gelato Concepts.
- 8.7. If Italian Gelato Concepts organises to perform an "Out Of Warranty" service on any equipment, either sold by Italian Gelato Concepts or not, then the end user shall indemnify Italian Gelato Concepts from and against all costs and disbursements incurred by Italian Gelato Concepts in the recovery of the debt including but not limited to, internal administration fees, legal and solicitor costs, contract default fee, and bank dishonour fees incurred by Italian Gelato Concepts.
- 8.8. Without prejudice to any other remedies, Italian Gelato Concepts may have, if at any time the buyer is in breach of any obligation, including those relating to payment under these Contract Terms Italian Gelato Concepts may suspend or terminate the supply of goods and or services to the buyer. Italian Gelato Concepts will not be liable to the buyer for any loss or damage the buyer suffers because Italian Gelato Concepts has exercised its rights under this Clause.
- 8.9. Without prejudice to Italian Gelato Concepts 's other remedies at law Italian Gelato Concepts shall be entitled to cancel all or any part of any order of the buyer which remains unfulfilled and all amounts owing to Italian Gelato Concepts shall, due for payment, become immediately payable if:
 - 8.9.1. Any money payable to Italian Gelato Concepts becomes overdue, or in Italian Gelato Concepts 's opinion the buyer will be unable to make a payment when it falls due;
 - 8.9.2. The buyer 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
 - 8.9.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the buyer or any asset of the buyer.
- 8.10. In the event where your overdue account is referred to a collection agency and/or law firm, you will be liable for all costs which would be incurred as if the debt is collected in full, including legal demand costs

9. DELIVERY AND COMPLETION

- 9.1. Italian Gelato Concepts will endeavour to deliver and/or supply the goods and/or services or otherwise complete the contract within the agreed period or within a reasonable time (in the absence of agreement).
- 9.2. Italian Gelato Concepts 's obligations to supply goods shall be deemed to be completed and the goods deemed to be delivered when:

- 9.2.1. in the case of goods sold for delivery and installation - when the goods are in position and assembled and ready for connecting to the power, water and all other services by other trades and or suppliers.
- 9.2.2. in the case of goods sold for delivery only - when the goods reach the specified destination. Unloading of goods is the sole responsibility of the buyer unless otherwise expressly agreed in writing.
- 9.2.3. in the case of goods sold for delivery ex works - when the goods are collected by the nominated carrier.
- 9.3. Unless otherwise agreed, spare parts will be delivered by courier freight at the buyer's expense.
- 9.4. Italian Gelato Concepts shall not be liable for any loss or damage, whether direct or indirect, caused by any failure to deliver, supply or complete either in whole or in part.
- 9.5. Italian Gelato Concepts shall not be liable or may suspend delivery, supply or completion and/or terminate the contract where the failure to deliver, supply or complete is caused by force majeure, including any act or omission on the part of the buyer, or by any act of God, war, lightning, fire, earthquake, storm, flood, explosion, any embargoes, delay of vessel, robbery, restraint orders or restrictions imposed directly or indirectly by any government or governmental authority, agency or department, unavailability or delay in availability of equipment, materials or transport, labour dispute and any other case whether of the kind enumerated or otherwise which is not within the control of Italian Gelato Concepts.
- 9.6. All goods prices, except spare parts and accessories not included with the item, unless specified otherwise include scheduled delivery within Sydney, Melbourne and Brisbane metropolitan areas to the buyer's loading dock only.
- 9.7. Deliveries to Perth, Adelaide, Darwin and Hobart metropolitan areas or to any other area, will attract additional transport charges.
- 9.8. Deliveries to a third party nominated by the buyer are subject to local carriage charges at Italian Gelato Concepts 's discretion.
- 9.9. Deliveries outside metropolitan areas will be charged from Sydney, Melbourne or Brisbane at Italian Gelato Concepts 's discretion.
- 9.10. Deliveries are to ground floor level, kerbside or loading dock areas only. Where a tail-lift truck, forklift, crane, trolley or pallet jack is required it is to be supplied by the buyer including labour.
- 9.11. Failure to receive goods will be subject to re-delivery charges at the buyer's expense.
- 9.12. Large oversize items, specialist and custom-made items will attract additional delivery charges to any location.
- 9.13. Italian Gelato Concepts will not be liable for any Claim whatsoever in respect of the goods including late deliveries and breakage unless a Claim is made in writing within (48) forty-eight hours of delivery of the goods.
- 9.14. Claims will not be accepted where the carrier consignment note has been signed as received in good physical condition.

10. INSTALLATION, COMMISSIONING, SERVICE AND TESTING

- 10.1. Where Italian Gelato Concepts is to install, start-up, commission or provide a service to the goods, the buyer will provide suitable access to and possession of the premises where the goods are to be installed, started up, commissioned and serviced.
- 10.2. The buyer will bear all costs of:
 - 10.2.1. 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.
 - 10.2.2. Any alterations to existing equipment or premises.
 - 10.2.3. All fuels, services and other facilities required for the installation, starting up, commissioning and servicing of the goods.
 - 10.2.4. The supply of any materials required for testing or the commissioning of those goods.
- 10.3. Italian Gelato Concepts reserves the right to ask for a written purchase order or a credit card as advanced payment before providing or referring services of a sub-contractor to install, start-up, commission or provide a service to the goods.
- 10.4. Italian Gelato Concepts may conduct tests on any installed or commissioned goods for commissioning, testing, servicing and or training.
- 10.5. The buyer shall bear the costs of any additional tests required by it.
- 10.6. The buyer must provide Italian Gelato Concepts with a copy of any report obtained in relation to those additional tests.
- 10.7. Italian Gelato Concepts may charge the buyer an engineering test fee where any goods returned for testing, subsequently pass all applicable tests.
- 10.8. When a client conducts their own installation, an Italian Gelato Concepts approved service provider is required to inspect the installation prior to the equipment being powered on.
- 10.9. If the client uses the equipment and the customer fails to notify Italian Gelato Concepts that the equipment is ready for commissioning, prior to its usage, this may, at Ital Gelato Concepts discretion void all manufacturers warranties.

11. CANCELLATION AND RETURNS

- 11.1. Any Claim in respect of faulty or defective goods, or in respect of any incorrect supply of goods, must be made by the buyer, in writing, within seven (7) days of the receipt of goods, accompanied by a completed credit request and goods return form.
- 11.2. Italian Gelato Concepts 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 buyer. Italian Gelato Concepts shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3. In the event the buyer cancels delivery of goods the buyer shall be liable for all losses incurred (whether direct or indirect) by Italian Gelato Concepts as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 11.4. A 25% cancellation / restocking fee of the full invoice amount will be charged on any goods confirmed by written order from the buyer for cancellation or returning to Italian Gelato Concepts 's warehouse in Brisbane.
- 11.5. A 75% cancellation fee of the full invoice amount will be charged for any special project goods or custom-made goods, both listed and not listed in Italian Gelato Concepts Price List confirmed by written order from the buyer or signed Italian Gelato Concepts order confirmation form, for cancellation or returning to Italian Gelato Concepts' warehouse in Brisbane.
- 11.6. Custom-made goods will not be accepted for return once a payment has been transferred to the supplier to commence manufacture.
- 11.7. Under no circumstances are goods to be returned without prior authorisation in writing from Italian Gelato Concepts.
- 11.8. The buyer is responsible for organising the return of goods and liable for all costs associated with the return. Any goods returned and not in re-saleable condition or in the original packaging, will not be accepted and the buyer will be liable for payment in full.
- 11.9. The buyer is responsible for all costs associated with clearing, repair, or refurbishment, where return is agreed with the buyer, to bring goods to saleable condition. The buyer will be responsible for any loss or difference in the sale value of returned goods.

12. TRADE-IN EQUIPMENT

- 12.1. Where the buyer delivers goods to Italian Gelato Concepts as a trade-in, the risk of any loss or damage to those goods remains with the buyer until those goods are accepted by Italian Gelato Concepts as traded-in.

- 12.2. Any credit given by Italian Gelato Concepts for goods traded-in will be based on the condition of those goods when delivered to Italian Gelato Concepts.
- 12.3. Legal title and property ownership to traded-in goods shall pass to Italian Gelato Concepts upon its written acceptance of those goods.

13. PURCHASE OF EQUIPMENT THROUGH THIRD PARTY VENDORS

- 13.1. Italian Gelato Concepts recognise that third party vendors, including but not limited to, Resellers, Builders, Distributors and Fabricators provide equipment as an Agent of Italian Gelato Concepts.
- 13.2. Unless otherwise stipulated in writing by Italian Gelato Concepts, third party vendors are responsible for all the after sales support of the buyer.
- 13.3. Third party vendors can engage Italian Gelato Concepts for buyer support as deemed necessary.
- 13.4. Italian Gelato Concepts reserve the right to charge the third party vendor for:
- 13.4.1. Work completed by Italian Gelato Concepts on behalf of the third party vendor.
- 13.4.2. Third party vendors can refer to the Italian Gelato Concepts Schedule of Support Fees available by contacting Italian Gelato Concepts directly.
- 13.4.3. Any unforeseen events covered by, but not limited to Clause 9.
- 13.5. Italian Gelato Concepts reserve the right to charge the buyer for:
- 13.5.1. Any replacement documentation, such as Operation Manuals and User Guides.
- 13.5.2. Any occurrences covered by, but not limited to Clauses 10,15,16.

14. WATER QUALITY AND WATER FILTERS

- 14.1. It is the responsibility of the buyer to provide a suitable water filter for the goods where water is used for any operation.
- 14.2. Water filters supplied by Italian Gelato Concepts 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 cause damage to the goods through long term exposure.
- 14.3. The water filters and any spare parts associated with the water filters provided by Italian Gelato Concepts are not covered by any warranty, express or implied, or any damages caused to the goods through misuse or user error.
- 14.4. 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 the OEM warranty of any goods damaged or affected by this.
- 14.5. Some areas within Australia are subject to poor water quality. It is the buyer's responsibility to ensure that water filtration and treatment meets all local requirements to avoid any calcification or scale build up.
- 14.6. Failure to do so will void the OEM warranty.

15. CONTRACTOR PAYMENTS

- 15.1. Italian Gelato Concepts will only accept charges from authorised technicians for warranty repairs under the following conditions;
- 15.1.1. The invoice must contain a valid Italian Gelato Concepts work order or job card number.
- 15.1.2. Each invoice must have a unique work order or job card number.
- 15.1.3. Duplicate work order or job card numbers will not be accepted.
- 15.1.4. The contractor invoice must not be older than ninety (90) days.
- 15.1.5. The Contractor invoice must be received within ninety (90) days from date of the warranty service call.
- 15.1.6. All faulty parts are to be returned to Italian Gelato Concepts at the buyers' cost.
- 15.1.7. Invoices must only contain charges for repairs that meet the requirements for warranty.
- 15.1.8. All repairs that are deemed non-warranty must be invoiced directly to the buyer and will not be paid by Italian Gelato Concepts unless prior written agreement and approval is provided by Italian Gelato Concepts.
- 15.2. Failure to meet these requirements will result in non-payment

16. SUB-CONTRACTORS

- 16.1. Italian Gelato Concepts may at its discretion use or recommend sub-contractors to install, commission, repair and/or service the goods supplied by Italian Gelato Concepts.
- 16.2. Should the buyer need to make any Claim regarding damage, loss, the performance or conduct of such a sub-contractor then the buyer agrees to make such Claim direct to the sub-contractor in the first instance and shall only involve Italian Gelato Concepts in such a Claim if the buyer is unable to resolve the issue with the subcontractor.
- 16.3. All Claims should be made in writing within seven (7) days of the Claim to Italian Gelato Concepts.

17. ACCEPTANCE

- 17.1. Acceptance by the buyer of these Contract Terms, as amended by Italian Gelato Concepts from time to time, may be by any one of the following ways:
- 17.1.1. By signing and returning a copy of these Contract Terms.
- 17.1.2. By performing an act that is done with the intention of adopting or accepting these conditions, including but not limited to placing an order for goods or services using a purchase order or signing and returning an Italian Gelato Concepts Order Confirmation form.
- 17.1.3. By oral acceptance.
- 17.2. Failure to accept these Contract Terms within seven (7) days of receipt by the buyer of these Contract Terms may result in the immediate withdrawal of Italian Gelato Concepts 's offer to supply goods or services.

18. WARRANTY

- 18.1. The supply of commercial products ("the Goods") by Italian Gelato Concepts to the original buyer is made on the following terms and conditions (the "Warranty Terms").
- 18.2. Italian Gelato Concepts warrants the Goods will be free from defects in material and/or workmanship.
- 18.3. Italian Gelato Concepts further warrants the Goods will perform adequately under normal use if professionally installed and maintained in accordance with the OEM manual furnished with the Goods.
- 18.4. The Warranty Terms applies to Goods sold and installed in Australia only.

19. WARRANTY PERIOD

19.1. In Australia, Italian Gelato Concepts Pty Ltd warrants the Goods for the following period from the date on original invoice issued from Italian Gelato Concepts to the buyer ("the Warranty Period"):

ITAL PROGET -	Gelato & pastry displays, bar & café refrigeration equipment – Twelve (12) months parts and labour
HIBER -	Blast chillers, fridges and freezers - Twenty-four (24) months parts and Twelve (12) months labour
VALMAR -	Gelato & pastry equipment – Twenty four (24) months parts and Twelve (12) months labour
DEBLASI -	Gelato & pastry displays, bar & café refrigeration equipment – Twelve (12) months parts and labour
CAB -	Slush, frozen, and cold drink dispensers - Twelve (12) months parts and labour
GEL MATIC -	Soft serve ice cream & yoghurt dispensers - Twelve (12) months parts and labour
KLIMAGEL -	Soft serve ice cream & yoghurt dispensers - Twelve (12) months parts and labour
TECFRIGO -	Freezer & refrigerated displays - Twelve (12) months parts and labour
LOLSBERG -	Scoop & jug washers - Twelve months parts only
Refurbished Equipment –	Is sold without any parts or labour warranty unless otherwise stipulated in writing on the originating invoice.
Used Equipment –	Is sold without any parts or labour warranty unless otherwise stipulated in writing on the originating invoice.
Spare Parts -	Defective replacement or spare parts - Three (3) months parts re-supply only

19.2. Unless otherwise specified by Italian Gelato Concepts in writing, the Warranty Activation Date for all warranty periods for all equipment will have a commencement date as being the date of the originally issued invoice.

19.3. The Warranty Activation Date can be varied by the return of the Warranty Activation Form. The Warranty Activation Form must be signed by an authorised representative of the company receiving the equipment (typically the end user).

19.4. A Warranty Activation Form must contain;

19.4.1. The name of the company receiving the equipment (the end user).

19.4.2. A contact name and phone number for a company representative receiving the equipment.

19.4.3. The date the equipment was commissioned.

19.4.4. The name and phone number of the person that commissioned the equipment.

19.5. The Warranty Activation Form is deemed to have been returned when Italian Gelato Concepts have received it by:

19.5.1. Australia Post

19.5.2. Facsimile

19.5.3. Attachment to an Email

19.6. Verbal confirmation over the phone will not suffice as Warranty Activation.

19.7. For equipment sales outside of Australia, Italian Gelato Concepts, only offer a commercial equipment warranty according to the periods listed in clause 19.1 above. Unless otherwise stipulated in writing by Italian Gelato Concepts Pty Ltd, the Labour Warranty component is to be carried by the Dealer or Reseller.

20. WARRANTY CONDITIONS

20.1. Except for Consumer Guarantees, Italian Gelato Concepts excludes:

20.1.1. any term, condition or warranty that may otherwise be implied into these Terms.

20.1.2. any liability for Loss or any liability for Consequential Loss

20.2. Subject to Clause 20.3, the liability of Italian Gelato Concepts in respect of any breach of or failure to comply with any Consumer Guarantee is limited to the following:

20.2.1. In the case of goods to

20.2.1.1. The replacement of the goods or the supply of equivalent goods

20.2.1.2. The repairs of the goods.

20.2.1.3. The payment of the cost of replacing the goods or of acquiring equivalent goods or

20.2.1.4. The payment of the cost of having the goods repaired.

20.2.2. In the case of services to

20.2.2.1. The supply of the services again or

20.2.2.2. The payment of the cost of having the services supplied again.

20.3. The liability of Italian Gelato Concepts in respect of a breach of, or a failure to comply with a Consumer Guarantee will not be limited in the manner set out in Clause 20.2 if:

20.3.1. the goods or services supplied are goods or services of a kind ordinarily acquired for personal, domestic, or household use or consumption, as that expression is used in Section 64A of the Australian Consumer Law

20.3.2. it is not 'fair or reasonable' for Italian Gelato Concepts to rely on such limitation in accordance with Section 64A(3) of the Australian Consumer Law or;

20.3.3. the relevant Consumer Guarantee is a guarantee pursuant to Sections 51, 52 or 53 of the Australian Consumer Law. Italian Gelato Concepts undertakes to repair, replace or supply (at Italian Gelato Concepts' discretion) all goods deemed to be defective and/or faulty in materials or workmanship subject to the following:

20.3.3.1. The original invoice details, including serial number, must be provided to Italian Gelato Concepts at the time of Claim.

20.3.3.2. The Warranty is not transferable and is only offered to the original buyer.

20.3.3.3. The Warranty period is not renewed or extended because of a warranty repair or replacement.

20.3.3.4. The Warranty does not extend to Goods that have been completely or partially disassembled or moved.

20.3.3.5. The Warranty Terms cannot be amended except in writing by an authorised representative of Italian Gelato Concepts.

20.3.3.6. Any Warranty Claim must be made within seven (7) days of discovery of any potential fault of defect.

20.3.3.7. All decisions regarding defects in material or workmanship or accident, alteration, misuse or improper maintenance or installation, shall be made by Italian Gelato Concepts or an authorised agent and shall be binding upon the buyer.

20.3.3.8. Any Warranty Claims must meet the requirements set out below in Clause 23 "Make a Claim".

21. WARRANTY COVERAGE EXCLUDES

- 21.1. Italian Gelato Concepts is not liable for and will not authorise repairs pursuant to a Claim under these Warranty Terms for:
- 21.1.1. Goods and components thereof manufactured either entirely or substantially of glass plexiglass or similar substances, light globes, LED's, oven glass doors, infrared or quartz tubes and electrical controls or elements.
 - 21.1.2. Consumable items including, but not limited to, door seals, switches, cleaning materials and accessory tools.
 - 21.1.3. Breakage of glass or plastic components of the Goods.
 - 21.1.4. Replacement of lights, fluorescent tubes, gaskets, or components which have been damaged by exposure to spillage.
 - 21.1.5. Parts subject to wear and tear including but not limited to filters, oil, fuses, lamps, batteries, handles, locks, hinges, gears, belts.
 - 21.1.6. Damage or failure of the Goods because of:
 - 21.1.6.1. Not removing packaging and transport materials before use
 - 21.1.6.2. Installation not in accordance with Italian Gelato Concepts and/or manufacturer's instructions
 - 21.1.6.3. Inappropriate operation and/or misuse or abuse
 - 21.1.6.4. Failure of periodic maintenance and service as per manufacturer's instructions
 - 21.1.6.5. With respect to fridges and freezers, failure to provide condenser coil cleaning with a maximum period of four (4) months between cleanings. Such cleaning must be evidenced by way of tax invoice.
 - 21.1.6.6. Improper use of cleaning agents, detergents, bleaches, or other chemicals of a corrosive nature
 - 21.1.6.7. Excessive water use during cleaning and/or cleaning with high pressure water hoses.
 - 21.1.6.8. Failure to ensure water treatment/filtration (use of water filter) as some areas in Australia are subject to poor water quality
 - 21.1.6.9. Extraordinary and unforeseeable events including, but not limited to, lightning strikes, power surges, irregular power supply, water and gas supply disturbances, drainage faults, natural events, and disasters
 - 21.1.6.10. External influences including, but not limited to, incorrect wiring connections or any matters related to wiring not meeting the latest and most current relevant Australian Standard requirements, incorrect gas or water connections, drainage faults, cleaning of condenser, replacement of water filter cartridges, periodical maintenance, or alterations.
 - 21.1.6.11. Goods that have been completely or partially disassembled, modified or moved from original location
 - 21.1.6.12. Goods not bearing original serial numbers or compliance plates
 - 21.1.6.13. Goods installed in an environment whereby the ambient temperature and relative humidity are outside the operating parameters specified for those goods.
 - 21.1.6.14. Goods operating without adequate ventilation specified for those goods.

22. WARRANTY EXCLUSIONS & CHARGES

- 22.1. The liability of Italian Gelato Concepts under this warranty is limited to the repair or replacement of defective Goods or components. All other costs, including, but not limited to, are not covered and will be chargeable to the buyer:
- 22.1.1. Parking
 - 22.1.2. Travel time to and from location
 - 22.1.3. Moving machines to and from location
 - 22.1.4. Hire of cranes, forklifts or specialist lifting equipment as well as manpower to enable access to the equipment.
 - 22.1.5. After hours, weekend, public holiday, mileage, or other premium charges
 - 22.1.6. Cartage, Carriage and dismantling and/or installation.
- 22.2. Italian Gelato Concepts is not liable for the costs of the licensed technician or sub-contractor other than the standard labour costs during normal working hours as described in Clause 23.7.
- 22.3. Commissioning and training or re-training of operators will be carried out on a chargeable basis to the buyer.
- 22.4. Any freight costs incurred to send parts and/or machines to the destination required will be chargeable to the buyer.
- 22.5. Italian Gelato Concepts will not be responsible for any costs involved in gaining access to Goods for repairs, checks or modifications. Any expense associated with obtaining reasonable access to the Goods, including but not limited to any modification of cabinetry, relocation of furniture, modifications to building structures such as removal of doors or windows, time and costs associated with induction training, is the responsibility of the buyer.
- 22.6. For warranty of Goods in remote locations they will need to be taken to the nearest Italian Gelato Concepts approved technician at the buyer's expense and Italian Gelato Concepts takes no responsibility for damages or loss during the period of transporting the machines.
- 22.7. For warranty of Goods that can be easily transported in a normal passenger vehicle, they will need to be taken to the nearest Italian Gelato Concepts approved technician at the buyer's expense and Italian Gelato Concepts takes no responsibility for damages or loss during the period of transporting the machines.
- 22.7.1. In consideration of Clause 23.7, the purchaser may elect to have goods described in Clause 22.7 as an on-site warranty repair. In doing so, the purchaser agrees that they are liable for fees and charges as described in Clause 23.7.
- 22.8. Extended labour charges at the request of the purchaser for the purpose of equipment testing.

23. MAKING A WARRANTY CLAIM

- 23.1. All Claims must be made in writing to Italian Gelato Concepts using the Warranty Claim Form and emailed or posted to Italian Gelato Concepts, Unit 1, 32 Mortimer Road Acacia Ridge Qld 4110.
- 23.2. All Claims must contain the following information: brand, model and serial number of goods, original invoice number and date, location of goods (name of premises and full address), contact name, email and phone number, and the reported fault.
- 23.3. Italian Gelato Concepts reserves the right to ask for proof of purchase of goods via a copy of the original tax Invoice to proceed with any Claim under these Warranty Terms and to determine the Warranty Period has not expired.
- 23.4. Italian Gelato Concepts reserves the right to have pre-authorised a set amount on an active credit card to cover instances where warranty is being claimed by the customer prior to an authorised technician attending site.
- 23.4.1. The pre-authorised amount will vary depending on, but not limited to:
 - 23.4.1.1. Expected time of the technician's attendance.
 - 23.4.1.2. Expected duration of the technician's attendance.
 - 23.4.1.3. If spare parts are to be supplied or not
 - 23.4.1.4. Expected distance of travel from the technician's place of origin.

- 23.5. Italian Gelato Concepts reserves the right to make multiple pre-authorisations on an active credit card should the value of the current pre-authorisation limit be reached.
- 23.5.1. Credit Card details are not kept on record by Italian Gelato Concepts or the mendr service software platform.
- 23.5.2. Credit Card details are securely kept in an encrypted manner by Stripe Bank in the USA. Stripe bank is our approved pre-authorisation bank for credit card transactions.
- 23.6. Italian Gelato Concepts reserves the right to invoice for a service call out fee and any parts and labour, and any other charges applicable for a service that is deemed by the licensed technician not to be connected to a warranty issue. The invoice is required to be paid within seven (7) days or Italian Gelato Concepts reserves the right to stop any further warranty work on the Goods.
- 23.7. Warranty repairs are carried out during Italian Gelato Concepts 's normal business hours (usually 08.30 to 16.30) Monday to Friday excluding designated Public Holidays. Repairs may be available at times other than normal business hours but will not be treated as warranty and will be subject to call-out fees and after hour charges and rates. This includes any 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.

24. INACTIVE AND OVERDUE ACCOUNTS

- 24.1. Italian Gelato Concepts has the right to close any accounts which are inactive for a continuous period of six (6) months or in default of payment over ninety (90) days.
- 24.2. A new Credit Application to open an account is required to be submitted for approval.

25. BUYER RESPONSIBILITY

- 25.1. Prior to Italian Gelato Concepts accepting any order, the buyer must inform Italian Gelato Concepts of all its requirements including any statutory or regulatory requirements relating to the installation and end use of goods in the place of the intended use. If the buyer fails to inform Italian Gelato Concepts of any such requirements, the buyer shall be responsible for, and shall indemnify Italian Gelato Concepts against, any action, claim, demand, loss, damage, cost, or expense associated with any failure to meet those requirements.
- 25.2. Goods must be serviced by a licensed technician at minimum every six (6) months as per the manufacturer's specifications and Italian Gelato Concepts reserves the right to ask for proof of service prior to attending the site for any Warranty Claims.
- 25.3. All air-cooled refrigeration equipment must have the air-cooling condenser serviced and cleaned every three (3) months.
- 25.4. Gelato display freezers must be shut down and defrosted for a minimum period of twelve (12) hours at a minimum of once (1) per week.
- 25.5. All refrigeration air cooled condenser must be cleaned and freed of any dirt and dust a minimum of three (3) times per year.
- 25.6. Failure to adequately clean and complete preventative maintenance to the Goods as per the manufacturer's specifications and/or as per instructions sheets provided by Italian Gelato Concepts will affect a Claim of Warranty and reduce the production capacity of the Goods. Contact Italian Gelato Concepts for more information about preventative maintenance.
- 25.7. Where a water filter is required, 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 the OEM warranty of any Goods damaged or affected by this.
- 25.8. Before submitting a Warranty Claim, you must check the following common causes of inoperability:
- 25.8.1. Power is connected, and circuit breaker / isolator are on
- 25.8.2. Check the water hoses are not crushed or kinked.
- 25.8.3. Water is connected and is turned on.
- 25.8.4. Drain is not blocked and are installed correctly.
- 25.8.5. The air filters and condensers are clean.
- 25.8.6. The water filter is clean and correctly installed.
- 25.8.7. The room temperature does not exceed the manufactures specifications and that there is adequate air flow.
- 25.8.8. There are no restrictions to the air flow on air-cooled equipment.
- 25.9. The buyer agrees that they will be charged for any work done by an authorised technician or sub-contractor that specifically falls outside of these Warranty Terms and that they will be required to provide a credit card for pre-payment when requesting services under this warranty.

26. PERSONAL PROPERTIES SECURITY ACT – PPS Act

- 26.1. In this Clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 26.2. Upon assenting to these Contract Terms in writing the buyer 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 Italian Gelato Concepts to the buyer.
- 26.3. The buyer undertakes to promptly sign any further documents and/or provide all further information (such information to be complete, accurate and up-to-date in all respects) which Italian Gelato Concepts may reasonably require to
- 26.3.1. Register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register
- 26.3.2. Register any other document required to be registered by the PPSA or
- 26.3.3. Correct a defect in a statement referred to in Section 6
- 26.4. The buyer undertakes to indemnify, and upon demand reimburse, Italian Gelato Concepts 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.
- 26.5. The buyer undertakes to not register a financing change statement in respect of a security interest without the prior written consent of Italian Gelato Concepts.
- 26.6. The buyer 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 Italian Gelato Concepts.
- 26.7. The buyer agrees to immediately advise Italian Gelato Concepts of any material change in its business practices of selling the goods which would result in a change proceeds derived from such sales.
- 26.8. Italian Gelato Concepts and the buyer agree that Sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Contract Terms.
- 26.9. The buyer waives their rights to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 26.10. The buyer waives their rights as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.

- 26.11. Unless otherwise agreed to in writing by Italian Gelato Concepts, the buyer waives their right to receive a verification statement in accordance with Section 157 of the PPSA.
- 26.12. The buyer unconditionally approves any actions taken by Italian Gelato Concepts under Clauses 26.
- 26.13. 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.

27. RETENTION OF TITLE

- 27.1. The buyer acknowledges that legal title and property in all the goods shall not pass to the buyer until the buyer has paid all money due for the goods and for all other goods and services supplied by Italian Gelato Concepts.
- 27.2. If such goods are sold by the buyer prior to payment, then the proceeds of sale of those goods shall be the property of Italian Gelato Concepts. Until property passes in the goods to the buyer, the buyer acknowledges that it is in possession of the goods solely as bailee for Italian Gelato Concepts 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 Italian Gelato Concepts.
- 27.3. 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 Italian Gelato Concepts at Italian Gelato Concepts' s option.
- 27.4. Italian Gelato Concepts shall be entitled with the right to enter always upon the premises occupied by the buyer and upon which the goods may be stored to take possession of the goods. It shall be lawful for Italian Gelato Concepts 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.
- 27.5. The buyer assumes all risk of loss or damage to the goods upon invoice / delivery of the goods by Italian Gelato Concepts. Thereafter until title of the goods passes from Italian Gelato Concepts to the buyer, the buyer will, at his expense insure the goods under a comprehensive policy of insurance in the name of both the buyer and Italian Gelato Concepts 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 Italian Gelato Concepts, and immediately upon receipt will remit such proceeds to Italian Gelato Concepts.

28. LIABILITY

- 28.1. Italian Gelato Concepts 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.
- 28.2. While the goods are in custody of Italian Gelato Concepts for investigation or repair, they shall be at the risk of the buyer and no liability shall attach to Italian Gelato Concepts, its servants or agents for any damage occasioned to, or loan of, the goods howsoever arising.
- 28.3. Italian Gelato Concepts accepts no liability for the conduct and/or performance of sub-contractors used by the buyer after the Warranty Period has expired.

29. EXCLUSION OF LIABILITY

- 29.1. Italian Gelato Concepts accepts no liability to the buyer 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 Italian Gelato Concepts, 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.
- 29.2. The buyer hereby acknowledges that the goods require periodic maintenance, inspection, replacement, and operation in accordance with and set out by the manufacturer's specifications.
- 29.3. The buyer agrees that if the goods are on sold, they shall inform any person to whom they sell the goods to of the necessity for such periodic maintenance, inspection, replacement, and operation according to the manufacturer's specifications.
- 29.4. Italian Gelato Concepts accepts no liability to the buyer 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 misuse or inadequate maintenance of the goods or any part thereof.
- 29.5. Italian Gelato Concepts 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. Refer to the website at www.italiangelato.com.au for the most up-to-date information or call our office.

30. GOVERNING LAW

- 30.1. The Contract Terms shall be governed by the laws of the State of Queensland and the buyer agrees to submit to the jurisdiction of the Courts of the State of Queensland.

31. NO WAIVER

- 31.1. Failure by Italian Gelato Concepts 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 Italian Gelato Concepts' s rights or a waiver of any subsequent or continuing breach.

32. ARBITRATION & DISPUTE RESOLUTION

- 32.1. Any dispute, controversy, or claim, whether in tort, contract or otherwise, that arises from or relates to these Terms & Conditions, including whether the claims are asserted are arbitrable, shall be exclusively and finally determined by a single arbitration under the rules of the Australian Civil Procedures 2005 in effect from time to time.
- 32.2. Arbitrations arising from the same or related claims may be consolidated in one arbitral proceeding.
- 32.3. If any provision of this arbitration agreement is found to be unenforceable, the unenforceable provision shall be severed, and the remaining arbitral terms shall be enforced.
- 32.4. The venue for all arbitrations shall be in the city of Brisbane.

33. SEVERABILITY

- 33.1. The invalidity or unenforceability of any provision in these Terms & Conditions, shall not for those reasons alone affect the validity or enforceability of any other provision of these Terns & Conditions.

34. PRIVACY ACT 1988 - NOTICE OF CONSENT

- 34.1. The buyer agrees for Italian Gelato Concepts 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 buyer in relation to credit provided by Italian Gelato Concepts.
- 34.2. The buyer agrees that Italian Gelato Concepts may exchange information about the buyer with those credit providers and with related body corporates for the following purposes:
- 34.2.1. To assesses an application by the buyer and/or
 - 34.2.2. To notify other credit providers of a default by the buyer and/or
 - 34.2.3. To exchange information with other credit providers as to the status of this credit account, where the buyer is in default with other credit providers and/or
 - 34.2.4. To assess the credit worthiness of the buyer including the buyer's repayment history in the preceding two years.
- 34.3. The buyer consents to Italian Gelato Concepts being given a consumer credit report to collect overdue payment on commercial credit.
- 34.4. The buyer agrees that personal credit information provided may be used and retained by Italian Gelato Concepts for the following purposes and for other agreed purposes or required by
- 34.4.1. The provision of goods and services and/or
 - 34.4.2. Analysing, verifying and/or checking the buyer's credit, payment and/or status in relation to the provision of goods and services and/or
 - 34.4.3. Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the buyer
 - 34.4.4. Enabling the collection of amounts outstanding in relation to the goods and/or services.
 - 34.4.5. Italian Gelato Concepts may give information about the buyer to a CRB for the following purposes:
 - 34.4.5.1. To obtain a consumer credit report
 - 34.4.5.2. Allow the CRB to create or maintain a credit information file about the buyer including credit history.
 - 34.4.6. The information given to the CRB may include:
 - 34.4.6.1. Personal information as outlined above
 - 34.4.6.2. Name of the credit provider and that Italian Gelato Concepts is a current credit provider to the buyer
 - 34.4.6.3. Whether the credit provider is a licensee
 - 34.4.6.4. Type of consumer credit
 - 34.4.6.5. Details concerning the buyer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested)
 - 34.4.6.6. 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 buyer no longer has any overdue accounts and Italian Gelato Concepts has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments)
 - 34.4.6.7. Information that, in the opinion of Italian Gelato Concepts, the buyer has committed a serious credit infringement
 - 34.4.6.8. Advice that the amount of the buyer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 34.5. The buyer shall have the right to request (by e-mail) from Italian Gelato Concepts:
- 34.5.1. A copy of the information about the buyer retained by Italian Gelato Concepts and the right to request that Italian Gelato Concepts correct any incorrect information and
 - 34.5.2. That Italian Gelato Concepts does not disclose any personal information about the buyer for direct marketing.
- 34.6. Italian Gelato Concepts will destroy personal information upon the buyer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 34.7. The buyer can make a privacy complaint by contacting Italian Gelato Concepts via e-mail. Italian Gelato Concepts will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to decide as to the complaint within thirty (30) days of receipt of the complaint. If the buyer is not satisfied with the resolution provided, the buyer can make a complaint to the Information Commissioner at www.oaic.gov.au.

35. ENTIRE AGREEMENT

- 35.1. This Agreement, including any applicable Privacy Policy Statement, completely and exclusively state the agreement between you and Italian Gelato Concepts regarding the subject matter, and supersede all prior agreements and understandings, whether written or oral, with respect to the subject matter of this Agreement.

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