

# Terms & Conditions of Sale

Effective Date 8<sup>th</sup> March 2024

The supply of goods and/or services by Italian Gelato Concepts Pty Limited ABN 48 603 731 424 are made, on the following terms and conditions as amended from time to time.

## 1 GENERAL

- 1.1 These Contract Terms apply to the order for Goods by the Buyer and the supply of Goods by Italian Gelato Concepts to the Buyer.
- 1.2 The Buyer's attention is drawn to Clause 38 (*Definitions*) and Clause 39 (*Interpretation*).
- 1.3 Italian Gelato Concepts may alter these Contract Terms from time to time in accordance with Clause 37.
- 1.4 Nothing in this agreement is intended to exclude, restrict or modify rights which the Buyer may have under the Australian Consumer Law which may not be excluded, restricted or modified.
- 1.5 To the extent permitted by law, unless agreed in writing by Italian Gelato Concepts, these Contract Terms (as amended from time to time in accordance with Clause 37) 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 Buyer's 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.
- 1.6 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.
- 1.7 By initialling the appropriate provisions 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 acknowledges and agrees that Italian Gelato Concepts recommends and has given the Buyer the opportunity to obtain independent legal advice in connection with these Contract Terms prior to submitting any Orders and/or signing the Italian Gelato Concepts Order form.
- 1.8 The Order shall only be deemed to be accepted by Italian Gelato Concepts when Italian Gelato Concepts issues a written acceptance of the Order, including by email confirmation, at which point the Contract shall come into existence. The Contract will relate only to those Goods confirmed in the Order confirmation.
- 1.9 If Italian Gelato Concepts is unable to supply the Buyer with the Goods for any reason (in whole or in part), Italian Gelato Concepts shall inform the Buyer of this by email and Italian Gelato Concepts will not process the Buyer's order to the extent it is unable to do so. If the Buyer has already paid for the Goods, Italian Gelato Concepts will refund the Buyer the relevant amount (in whole or in part having regard to the amount payable for each of the Goods, as relevant).
- 1.10 For the avoidance of doubt, the Buyer waives any right it might otherwise have to rely on any term contained in any documents of the Buyer that are inconsistent with these Contract Terms.
- 1.11 Any drawings, descriptive matter or advertising produced by Italian Gelato Concepts and any descriptions or illustrations contained in or on its website, catalogues and/or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. To the extent permitted by law, they shall not form part of the Contract nor have any contractual force.
- 1.12 A quotation for the Goods (if any) given by Italian Gelato Concepts shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

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## 2 DISCLOSURE

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- 2.1 Italian Gelato Concepts disclose to consumers (as defined under the ACL) the substance and effect of certain terms of these Contract Terms, including for the purposes of section 47A of the *Fair Trading Act 1987* (NSW):
- (a) Clause 5.11 requires the Buyer to pay a fee if you fail to make any payment by the due date;
  - (b) Clauses 9.2 and 28 allow Italian Gelato Concepts to terminate your credit account with Italian Gelato Concepts at any time;
  - (c) Clauses 1.1 (including 1.1, 18.7.5, 18.7.6) and 25 comprise certain limitations and exclusions of liabilities of Italian Gelato Concepts;
  - (d) Clause 11 imposes certain limitations on you cancelling Orders;
  - (e) Clauses 10.6, 11.9, 11.10, 15.1, 0 and 18.1 requires, in relation to the return of Goods, that you must pay any transportation and Packaging costs to return the Goods to Italian Gelato Concepts;
  - (f) Clause 20.2 comprises the grant by you to Italian Gelato Concepts of a Security Interest in the Goods supplied by Italian Gelato Concepts to you, including all related proceeds, as security for all or part of the payment of any amount relating to the Goods in accordance with these Contract Terms or otherwise;
  - (g) Clauses 9.6, 9.7, 20.1, 20.4 and 23 comprises an indemnity in favour of Italian Gelato Concepts for certain claims; and
  - (h) Clauses 8.5, 9.8, 27.1, 27.2 and 27.3 allow Italian Gelato Concepts to terminate or suspend these Contract Terms and any Contract for the supply of Goods and/or Services and upon such termination or suspension, you must immediately pay any outstanding monies owed to Italian Gelato Concepts.

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## 3 QUOTATIONS AND ORDERS

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- 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 Orders are to be submitted in writing with the quantity, product code, description of goods and price stated. To the maximum extent permitted by law, the Buyer acknowledges and agrees 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.

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## 4 BUYER'S OBLIGATIONS

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- 4.1 It is the Buyer's responsibility to ensure that:
- (a) the terms of the Buyer's Order are complete and accurate;
  - (b) the Buyer cooperates with Italian Gelato Concepts in all matters relating to the Goods;

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (c) the Buyer provides Italian Gelato Concepts with such information and materials Italian Gelato Concepts may reasonably require in order to supply the Goods, and ensure that such information is complete and accurate in all material respects; and
- (d) the Buyer complies with all applicable laws.

4.2 By completing an Order, the Buyer represents and warrants that all information provided is true, accurate and complete and the Buyer is entitled to purchase and sell, and not prohibited by law in respect of purchase or sale of, the Goods. The Buyer must promptly notify Italian Gelato Concepts of any changes to the details provided as part of the Order.

## 5 PRICE AND PAYMENT

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5.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Italian Gelato Concepts' published price list in force as at the date of delivery.

5.2 Italian Gelato Concepts may, by giving notice to the Buyer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
- (b) any delay caused by any instructions of the Buyer or failure of the Buyer to give Italian Gelato Concepts adequate or accurate information or instructions;
- (c) delays in manufacture and/or installation as the result of any act or omission by the Buyer;
- (d) variations in the costs of manufacture including, without limitation, variations in the cost of labour or raw materials;
- (e) variations in the cost of the Goods due to changes in the cost of freight, insurance premiums, customs duties or currency exchange rates;
- (f) any other factor or circumstances beyond Italian Gelato Concepts' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, and other manufacturing costs); and/or
- (g) any unforeseen errors or omissions

5.3 The price of the Goods:

- (a) excludes amounts in respect of goods and services tax (**GST**), which the Buyer shall additionally be liable to pay to Italian Gelato Concepts at the prevailing rate, subject to the receipt of a valid tax invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

5.4 Italian Gelato Concepts may invoice the Buyer for the Goods in accordance with the Contract at any time after placement of the Order.

5.5 The Buyer shall pay each invoice submitted by Italian Gelato Concepts:

- (a) at the date and time of issue of that invoice and at the time of placing the Order for the Goods;
- (b) on the date of dispatch of the Goods; or
- (c) otherwise in accordance with any credit terms approved in writing by Italian Gelato Concepts from time to time, including as may be specified on the invoice; and

5.6 The Buyer shall pay Italian Gelato Concepts in full and in cleared funds by:

- (a) credit card payment in such manner accepted by Italian Gelato Concepts from time to time; or

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (b) by electronic transfer of immediately available funds to the bank account nominated in writing by Italian Gelato Concepts from time to time.
- 5.7 Visa and MasterCard payments will incur a surcharge at the applicable rate unless otherwise agreed by Italian Gelato Concepts in writing. AMEX and Diner Club credit cards are not accepted.
- 5.8 All prices quoted are exclusive of GST and GST will be added to each invoice at the current rate at the date of invoicing.
- 5.9 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.
- 5.10 Unless otherwise stated and agreed in writing, all prices charged are EX WORKS.
- 5.11 If the Buyer fails to make a payment due to Italian Gelato Concepts under the Contract by the due date, then, without limiting Italian Gelato Concepts' remedies under Clause 27, the Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.11 will accrue each day at 10% per annum.
- 5.12 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.13 The Buyer represents and warrants that the Buyer has the authority to make the payment on the order or transaction by providing Italian Gelato Concepts with a valid credit card or PayPal account, as relevant.
- 5.14 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.

## 6 GOODS AND SERVICES TAX

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- 6.1 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.
- 6.2 To obtain a valid tax invoice, the Buyer must supply Italian Gelato Concepts with its registered ABN.
- 6.3 Any reference in this Clause 6 to, "**taxable supply**" and "**tax invoice**" has the meaning given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 7 DEPOSITS

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- 7.1 Unless the parties agree otherwise in writing:
- (a) a deposit of 50% of the total purchase value is required on all custom-built projects at the time of signing the Order;
- (b) On non-stock indent items, a deposit of 30% of the total purchase value is required with the signed Order; and
- (c) On stock items, a deposit of 20% of the total purchase value is required with the signed Order.

## 8 DELIVERY AND COMPLETION

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- 8.1 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).
- 8.2 Italian Gelato Concepts' obligations to supply goods shall be deemed to be completed and the Goods deemed to be delivered when:

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (a) 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.
  - (b) 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.
  - (c) in the case of goods sold for delivery EX WORKS - when the Goods are collected by the nominated carrier.
- 8.3 Unless otherwise agreed, spare parts will be delivered by courier freight at the Buyer's expense.
- 8.4 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.
- 8.5 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 Event.
- 8.6 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.
- 8.7 Deliveries to Perth, Adelaide, Darwin and Hobart metropolitan areas or to any other area, will attract additional transport charges.
- 8.8 Deliveries to a third party nominated by the Buyer are subject to local carriage charges at Italian Gelato Concepts 's discretion.
- 8.9 Deliveries outside metropolitan areas will be charged from Sydney, Melbourne or Brisbane at Italian Gelato Concepts 's discretion.
- 8.10 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.
- 8.11 Failure to receive goods will be subject to re-delivery charges at the Buyer's expense.
- 8.12 Large oversize items, specialist and custom-made items will attract additional delivery charges to any location.
- 8.13 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.
- 8.14 Claims will not be accepted where the carrier consignment note has been signed as received in good physical condition.

## 9 VARIATION OF TERMS OF PAYMENT AND DELIVERY AND INTEREST ON LATE PAYMENTS

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- 9.1 Italian Gelato Concepts reserves the right to invoice the Buyer for an off-site payment and/or storage surcharges and/or price increases (as described in Clause 5.1), in respect of 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 its agent on or before the delivery date confirmed on the initial written Order provided by the Buyer.
- 9.2 If Italian Gelato Concepts decides (in its absolute discretion) the creditworthiness of the Buyer has become unsatisfactory, Italian Gelato Concepts may on Written Notice to the Buyer:
- (a) vary the terms of payment;
  - (b) require payment in full and in cash;
  - (c) require the provision of security for any amount unpaid; and/or

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (d) stop any goods in transit,  
until the Buyer has complied with any requirements of Clause 5, Clause 7 and this Clause 9.
- 9.3 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.
- 9.4 Failure of Italian Gelato Concepts to deliver the Goods or withhold any instalment of the Goods shall not entitle the Buyer to cancel a Contract or cancel the balance of a Contract.
- 9.5 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.
- 9.6 If the Buyer owes Italian Gelato Concepts any money the Buyer indemnifies and must indemnify Italian Gelato Concepts from and against all costs and expenses incurred by Italian Gelato Concepts in the recovery of the debt including but not limited to, internal administration fees, legal and solicitor costs (on an indemnity basis), contract default fees, and bank dishonour fees incurred by Italian Gelato Concepts.
- 9.7 If Italian Gelato Concepts arranges performance of an “*Out Of Warranty*” service in respect of any Goods or equipment, either sold by Italian Gelato Concepts or not, then the Buyer indemnifies and must indemnify Italian Gelato Concepts from and against all costs and expenses incurred by Italian Gelato Concepts in the recovery of such costs and expenses including but not limited to, internal administration fees, legal and solicitor costs, contract default fee, and bank dishonour fees incurred by Italian Gelato Concepts.
- 9.8 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 9.

## 10 INSTALLATION, COMMISSIONING, SERVICE AND TESTING

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- 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 by an Italian Gelato Concepts licensed or approved technician.
- 10.2 The Buyer 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 Goods, equipment or premises;
  - (c) all fuels, services and other facilities required for the installation, starting up, commissioning and servicing of the Goods; and
  - (d) 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 formal written order or a credit card as advanced payment before providing or referring services of a sub-contractor to install, start-up, commission, test or provide a service in connection with the Goods.
- 10.4 Italian Gelato Concepts may conduct tests on any installed or commissioned goods for commissioning, testing, servicing and or training.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 10.5 The Buyer shall bear the costs of any additional tests required by the Buyer. The Buyer must provide Italian Gelato Concepts with a copy of any report obtained in relation to such additional tests.
- 10.6 Italian Gelato Concepts may charge the Buyer an engineering test fee where any goods returned for testing, subsequently pass all applicable tests.
- 10.7 When a Buyer conducts its own installation, an Italian Gelato Concepts approved service provider is required to inspect the installation prior to the Goods (including equipment) being powered.
- 10.8 If the Buyer uses the Goods (including equipment) and fails to notify Italian Gelato Concepts that the Goods ready for commissioning, prior to its usage, the Buyer acknowledges and agrees that such failure may to the extent permitted by law and at Italian Gelato Concepts determination (acting reasonably) void some or all of the manufacturer's warranties (including OEM warranties) in respect of such Goods.

## 11 CANCELLATION AND RETURNS

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- 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 Subject to Clauses 11.4 to 11.10, the Buyer may not cancel an Order, or any part of it, unless:
- (a) Italian Gelato Concepts gives its written consent; and
  - (b) The Buyer pays to Italian Gelato Concepts (if required by us in the absolute discretion of Italian Gelato Concepts) any and all costs (including any Consequential Loss) reasonably incurred by Italian Gelato Concepts regarding the cancelled Order or the cancelled part of the Order to the date of cancellation.
- 11.4 In the event the Buyer cancels an Order or 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 Consequential Loss).
- 11.5 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' warehouse in Brisbane.
- 11.6 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.
- 11.7 Custom-made goods will not be accepted for return once a payment has been transferred to the supplier to commence manufacture.
- 11.8 Under no circumstances are goods to be returned without prior authorisation in writing from Italian Gelato Concepts.
- 11.9 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.
- 11.10 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.

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## 12 TRADE-IN EQUIPMENT

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- 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.

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## 13 PURCHASE OF EQUIPMENT THROUGH THIRD PARTY VENDORS

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- 13.1 Italian Gelato Concepts recognise that third party vendors, including but not limited to, resellers, builders, distributors and fabricators may 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:
- (a) work completed by Italian Gelato Concepts on behalf of the third party vendor;
  - (b) third party vendors can refer to the Italian Gelato Concepts Schedule of Support Fees available by contacting Italian Gelato Concepts directly; and
  - (c) any unforeseen events or circumstances, including as contemplated in Clause 8.
- 13.5 Italian Gelato Concepts reserves the right to charge the Buyer for any reasonable fees, costs or expenses in respect of:
- (a) any replacement documentation, such as Operation Manuals and User Guides; and
  - (b) any occurrences covered by, but not limited to Clauses 10, 15 and 16.

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## 14 WATER QUALITY AND WATER FILTERS

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- 14.1 It is the responsibility of the Buyer to provide suitable water filters for the Goods where water is used in respect of any operation.
- 14.2 The Buyer acknowledges and agrees:
- (a) 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.
  - (b) To the maximum extent permitted by law, any water filters and/or any spare parts associated with them which are 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.
  - (c) 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.
  - (d) Some areas within Australia have poor water quality and it is the Buyer's responsibility to determine the relevant water quality and ensure that water filtration and treatment meets all local requirements to avoid any calcification or scale build up within the Goods (including equipment).

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (e) failure by the Buyer to comply with any of the obligations contained in this Clause 14 will void the Warranty and any OEM Warranty.

### 15 CONTRACTOR PAYMENTS

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- 15.1 Italian Gelato Concepts will only accept charges from authorised technicians for warranty repairs under the following conditions:
- (a) The invoice must contain a valid Italian Gelato Concepts work order or job card number.
  - (b) Each invoice must have a unique work order or job card number.
  - (c) Duplicate work order or job card numbers will not be accepted.
  - (d) The contractor invoice must be not older than ninety (90) days.
  - (e) The contractor invoice must be received within ninety (90) days from date of the warranty service call.
  - (f) All faulty parts are to be returned to Italian Gelato Concepts at the Buyers' cost.
- 15.2 Invoices must only contain charges for repairs that meet the requirements for warranty.
- 15.3 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.
- 15.4 The Buyer acknowledges and agrees failure to meet these requirements will result in non-payment by Italian Gelato Concepts (in full or in part, as relevant).

### 16 SUB-CONTRACTORS

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- 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 directly 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

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- 17.1 Acceptance by the Buyer of these Contract Terms 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 placing an Order for Goods or Services using an Order or signing and returning an Italian Gelato Concepts Order Confirmation form;
  - (c) By oral acceptance; or
  - (d) By making any payment in accordance with these Contract Terms.
- 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 by Italian Gelato Concepts of its offer to supply Goods or Services.

### 18 WARRANTY

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#### 18.1 Warranty as to materials and workmanship

- 18.1.1 Italian Gelato Concepts warrants that the Goods and Parts sold to the Buyer by Italian Gelato Concepts will be free from Defect under normal use in the:

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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(a) materials supplied by Italian Gelato Concepts; or

(b) workmanship of Italian Gelato Concepts,

subject to the terms and conditions of this Clause 18 during the Warranty Period (“**Warranty**”).

18.1.2 In the event that any Goods or Parts are found to be defective in either materials or workmanship during the Warranty Period, Italian Gelato Concepts shall at its cost and at its option:

(a) repair the defective Goods or Parts; or

(b) replace the defective Goods or Parts with any of a new or used Goods or Parts;

in accordance with the Warranty, subject to the terms and conditions of this Clause 18.

18.1.3 The parties acknowledge and agree the Warranty is a voluntary warranty given by Italian Gelato Concepts, and the benefits to the Buyer given by the Warranty are in addition to other rights and remedies that the Buyer may have under the law in relation to the Goods.

18.1.4 The Goods do not include (and the Warranty does not apply to):

(a) Goods that have been sold or disposed of by the first purchaser. This Warranty applies only to the original purchaser from Italian Gelato Concepts;

(b) Goods that have been decommissioned and/or reinstalled by a third party other than Italian Gelato Concepts or without Italian Gelato Concepts' prior written approval.

18.1.5 Goods presented for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods. This notice is given under the Australian Consumer Law.

18.1.6 The Warranty applies for replacement of parts and/or provision of labour in respect of the Goods for the following periods (the “**Warranty Period**”) from the Sale Date:

(a) **ITAL PROGET** - Gelato & pastry displays, bar & café refrigeration equipment – Twelve (12) months parts and labour

(b) **HIBER** - Blast chillers, fridges and freezers - Twenty-four (24) months parts and Twelve (12) months labour

(c) **VALMAR** - Gelato & pastry equipment – Twenty four (24) months parts and Twelve (12) months labour

(d) **CAB** - Slush, frozen, and cold drink dispensers - Twelve (12) months parts and labour

(e) **TECFRIGO** - Freezer & refrigerated displays - Twelve (12) months parts and labour

(f) **ICE TEAM** – Gelato & pastry equipment - Twelve(12) months parts and labour

(g) **SAMAREF** – Blast chillers, fridges and freezers - Twelve(12) months parts and labour

(h) **LOLSBERG** - Scoop & jug washers - Twelve months parts only

(i) **BRX** – Ice Cream, Gelato & Pastry equipment - Twelve(12) months parts and labour

(j) **SALVALACQUA/BRX** – Water Economizer equipment - Twelve(12) months parts and labour

(k) **MONDIAL FRAMEC** – Ice Cream, Gelato & Refrigerated equipment

(l) **BILAIT** – Chocolate Equipment - Twelve(12) months parts and labour

(m) **UGOLINI** – Frozen & Hot Beverage dispensers - Twelve(12) months parts and labour

(n) **QUICK FILL** – Ice Cream dosing dispenser - Twelve(12) months parts and labour

(o) **MANUFACTURERS’ NOT LISTED ABOVE** - For equipment manufacturers not listed above, for which IGC is a manufacturers agent - Twelve(12) months parts and labour

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (p) **Refurbished Equipment** – Is sold without any parts or labour warranty unless otherwise stipulated in writing on the originating invoice.
- (q) **Used Equipment** – Is sold without any parts or labour warranty unless otherwise stipulated in writing on the originating invoice.
- (r) **Spare Parts** - Defective replacement or spare parts - Three (3) months parts re-supply only

### 18.2 Services to be provided by Italian Gelato Concepts

- 18.2.1 Any Services to which the Buyer is entitled under this Warranty shall be provided to the Buyer by Italian Gelato Concepts or Italian Gelato Concepts Service during Business Hours.
- 18.2.2 Transportation costs for the Goods or Parts and any repaired or replacement Goods or Parts whether to or from (as Italian Gelato Concepts directs) Italian Gelato Concepts or Italian Gelato Concepts Service for the purposes of any Warranty claim are at the Buyer's expense unless Italian Gelato Concepts advises the Buyer otherwise in writing.

### 18.3 Termination of the Warranty

- 18.3.1 This Warranty ceases at the end of the Warranty Period.
- 18.3.2 If Italian Gelato Concepts replaces Goods and/or Parts, the replaced Goods and/or Parts becomes the property of Italian Gelato Concepts. The replacement Goods and/or Parts is the Buyer's property and is warranted for the balance of the Warranty Period.
- 18.3.3 If Italian Gelato Concepts repairs Goods and/or Parts, the repaired Goods and/or Parts are warranted for the balance of the Warranty Period that applied to the original Goods and/or Parts.
- 18.3.4 After the applicable Warranty Period (as specified in Clause 18.1.6) expires, Italian Gelato Concepts is not liable under the Warranty to pay any costs relating in any way whatsoever to damage, repair or replacement of the Goods.

### 18.4 Application of this Warranty

- 18.4.1 This Warranty applies only to those Goods and/or Parts sold to the Buyer by Italian Gelato Concepts and used within Australia within the Warranty Period.
- 18.4.2 This Warranty is conditional upon the Goods and Parts being maintained by the Buyer in accordance with the Maintenance Program.
- 18.4.3 This Warranty does not apply:
  - (a) if the Buyer breaches or does not comply with any of the requirements of this Clause 18 (including Clause 18.4);
  - (b) if any Defect is caused or contributed to by the Buyer's misuse, negligence, accident, or failure to maintain or use the Goods and/or the Parts in accordance with the Maintenance Program or the recommendations of Italian Gelato Concepts or the OEM;
  - (c) if any Defect arises as a result of or in connection with, a condition identified through the Maintenance Program or otherwise, for which Italian Gelato Concepts has recommended certain action to the Buyer and the Buyer fails to comply with that recommendation;
  - (d) in relation to alterations, modifications or repairs to Goods or Parts, including the fitting of attachments parts or use of consumables, that are not authorised or approved by Italian Gelato Concepts and which in the reasonable opinion of Italian Gelato Concepts causes or contributes to the Defect;
  - (e) to repairs or replacements required due to normal maintenance or operating services for the Goods and/or Parts, including but not limited to inspections, adjustments, tune-ups, fuel, lubricants, or Consumables, routine or scheduled parts repairs or replacements;
  - (f) without limiting paragraphs (a) to (d) to Defects or damage to the Goods (including Parts) caused by or resulting from:

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (i) improper use or installation, or use or installation not in accordance with Specifications or instructions or directions of Italian Gelato Concepts or an OEM;
  - (ii) improper or inadequate maintenance (including with regard to any OEM or other manual supplied with the Goods);
  - (iii) unauthorised modification or alteration of the Goods;
  - (iv) neglect, misuse or abuse of the Goods;
  - (v) exposure to corrosive elements or incompatible products or substances;
  - (vi) wear and tear caused by multiple installations and dismantling;
  - (vii) incorrect storage or handling;
  - (viii) normal wear and tear;
  - (ix) exposure to wind speeds exceeding the design rating;
  - (x) the failure of Parts or components supplied by others;
  - (xi) the failure of support structures or components, including posts, walls, existing buildings and shipping containers;
  - (xii) from foundation or anchorage failure;
  - (xiii) aberrant natural events (such as cyclones, earthquakes, lightning strikes or floods);
  - (xiv) items or goods inside or near the Goods;
  - (xv) explosions, sabotage, accident, embargoes, riots, civil commotions, terrorist activities, war and acts of war (whether declared or undeclared);
  - (xvi) vandalism or intentional damage, whether by the Buyer or another person,
- (g) if the Buyer has delayed more than fourteen (14) days in notifying of any potential Defect after first becoming aware of it;
- (h) if the Buyer has unreasonably delayed in providing the Goods and/ or Parts to Italian Gelato Concepts after first becoming aware of it;
- (i) if the Buyer fails to adhere to any recommendation made by Italian Gelato Concepts;
- (j) if the Buyer fails to supply the Required Documents when requested by Italian Gelato Concepts; or
- (k) if Italian Gelato Concepts in its absolute discretion determines any use or installation of the Goods and/or Parts has caused or contributed to the Defect,

where Italian Gelato Concepts will act reasonably in the case of any disagreement regarding these matters but its decision will be final.

### 18.5 Limitation of Warranty

18.5.1 To the extent permitted by law, the Warranty is exclusive and is in lieu of all other express or implied warranties, conditions and representations of merchantability or fitness for any particular purpose, whether statutory or otherwise.

18.5.2 Without limiting the generality of Clause 18.5.1, no warranty is given and Italian Gelato Concepts disclaims and excludes all express and implied warranties, conditions and representations in respect of:

- (a) used or reconditioned Goods and/or Parts or Goods and/or Parts which are not new at purchase;
- (b) parts, components or attachments not sold by Italian Gelato Concepts; or
- (c) Defects caused or contributed to, or arising as a result of, or in connection with, any of the items in Clauses 18.5.2(a) to 18.5.2(b) above,

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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provided always that nothing shall limit any warranty given independently to the Buyer by any OEM of parts, components or attachments referred to in Clauses 18.5.2(a) and 18.5.2(b) or any third party.

- 18.5.3 The liability of Italian Gelato Concepts to the Buyer for loss, damage, injury or property damage, whether direct or indirect, special or consequential or otherwise, arising out of breach of this Warranty, shall be limited to requiring Italian Gelato Concepts to comply with Clause 18.1.2.
- 18.5.4 Italian Gelato Concepts shall not be liable to the Buyer or to any other third parties in contract, tort or equity, for breach of any statute (to the fullest extent permitted by law) or in any other action, including but not limited to:
- (a) direct or indirect loss of profit or revenue, loss of use of any Goods, Part, part, component, or associated equipment, cost of capital, cost of substituted equipment, facilities or service, downtime costs, labour costs in connection with or arising out of the supply, performance or use of the Goods and/or Parts or any service performed by Italian Gelato Concepts; or
  - (b) any direct or indirect losses or special or consequential loss or damage or otherwise of any kind whatsoever,

arising directly or indirectly from any act, omission, breach, error, default, or delay of Italian Gelato Concepts or its employees or representatives in connection with, or arising out of, the supply, performance or use of the Goods and/or Parts in the performance of, or in relation to the Warranty.

- 18.5.5 Nothing in this Clause 18 shall limit those provisions of the *Competition and Consumer Act 2010* (Cth) including the Australian Consumer Law, nor statutes, rules or regulations from time to time in force in Australia which imply or guarantee certain conditions or warranties or impose obligations on Italian Gelato Concepts which conditions, warranties and obligations cannot, or cannot except to a limited extent be excluded, restricted or modified. If any such statutory provisions apply, then to the extent to which Italian Gelato Concepts is entitled to do so, its liability under those statutory provisions shall be limited at its option to:
- (a) in the case of goods:
    - (i) the replacement of goods or the supply of equivalent goods; or
    - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iii) the payment of the cost of having the goods repaired; or
    - (iv) the repair of the goods; and
  - (b) in the case of services:
    - (i) the supply of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

- 18.5.6 Subject to Clause 18.5.5, the benefits to the Buyer given by the Warranty are in addition to any other rights and remedies the Buyer may have as a consumer under a law in relation to the goods or services to which the Warranty relates. If the Buyer is acquiring goods from Italian Gelato Concepts as a “consumer” as defined under Australian Consumer Law, then Italian Gelato Concepts advises that its goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

### 18.6 Assignment or Transfer

The Buyer must not assign or transfer any of the Buyer’s rights or obligations under the Warranty.

- 18.1 The Buyer is responsible for and must pay to Italian Gelato Concepts on request that portion of the cost of the repair or replacement that is additional to the Warranty Cover (as determined under

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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Clause 0 above), plus the cost of freight, delivery charges, taxes, levies, installation and any third party charges associated with the supply of such repair or replacement, if required by Italian Gelato Concepts.

- 18.2 Italian Gelato Concepts is not required to complete any work under the Warranty or comply with any obligations under the Warranty if:
- (a) the Buyer has not satisfied its payment and other obligations under this Clause 18 and Clause 1.1 (including payment in full of the portion due from the Buyer as described in Clause 18.7.13); or
  - (b) the Buyer is in breach of any arrangements with Italian Gelato Concepts, whether related to the relevant Goods, under the Warranty, or under any other agreement including the Contract.
- 18.3 All repaired or replacement Goods will be dispatched by Italian Gelato Concepts to destinations within Australia, or to an Australian port for other destinations.
- 18.4 This Warranty will apply to any Goods that are repaired, or any product that is supplied in replacement for any Goods, under the Warranty only for the remaining unexpired period of the Warranty that applied to the Goods as originally supplied.
- 18.5 To the extent permitted by law, and subject to Clauses 18.1 and 18.1.4 above:
- (a) all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or imposed by statute, custom or the general law are excluded from the Warranty;
  - (b) Italian Gelato Concepts sole and exclusive liability, whether based in contract, tort, or otherwise, will not exceed its obligations to repair or replace the Goods as set out under the Warranty; and
  - (c) By taking the benefit of the Warranty, the Buyer expressly releases and discharges Italian Gelato Concepts and its agents from any claim, action, suit, demand or judgment arising from any defect or damage as detailed in the Warranty.
- 18.6 Any part of Clause 18.5 that would contravene a statute or cause any part of the Warranty to be void will be excluded from the Warranty.
- 18.7
- 18.8 To validate the Warranty the Buyer must comply with the following steps, failing which Italian Gelato Concepts will have no obligations under the Warranty and may refuse all or any part of a claim under it:
- (a) the Buyer must complete all requested details on Italian Gelato Concepts' warranty form ("**Warranty Activation Form**") including:
    - (i) the full name of the Buyer;
    - (ii) the contact name and phone number for the Buyer's representative;
    - (iii) the date the equipment was installed; and
    - (iv) the name and phone number of the person that installed the equipment;
  - (b) the Buyer must return the Warranty Form to Italian Gelato Concepts via mail or email, including ten (10) good-quality detailed photographs of the Goods as installed within thirty (30) days of the Goods being installed.
- 18.9 The Warranty Activation Form is deemed to have been returned when Italian Gelato Concepts have received it by:
- (a) courier;
  - (b) post (including Australia Post);
  - (c) facsimile; or

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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(d) as an attachment to an email.

- 18.10 Italian Gelato Concepts will, upon receipt of a Warranty Form, where the Warranty Form is received within thirty (30) days of the Goods being installed, determine whether the photographs evidence correct installation of the Goods, and if so, confirm the Warranty by returning a validated copy of the Warranty Form to the Buyer.
- 18.11 It is a condition of the Warranty that, in the event of a claim being made under the Warranty, the Buyer must, at the Buyer's expense comply with the requirements of Clause 18.8 (*Making a Warranty Claim*)
- 18.12 The Warranty in respect of labour applies to Goods sold and installed in Australia only. In respect of any Goods sold outside of Australia, the Warranty shall only apply in respect of parts and not labour. Unless otherwise agreed in writing by Italian Gelato Concepts, any component of the Warranty attributable to labour in respect of any Buyer outside of Australia is to be carried by the Buyer or in accordance with any separate written agreement between the Buyer and any dealer or reseller of the relevant Goods.

### 18.7 Warranty Terms

- 18.7.1 The Warranty does not extend to Goods that have been completely or partially disassembled or moved.
- 18.7.2 The Warranty cannot be amended except in writing by an authorised representative of Italian Gelato Concepts.
- 18.7.3 Any Warranty Claim must be made within fourteen (14) days of the Buyer becoming aware of any potential Defect or fault.
- 18.7.4 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 (acting reasonably) and shall be binding upon the Buyer.
- 18.7.5 To the maximum extent permitted by law and without limiting Clause 18.4.3, Italian Gelato Concepts is not liable for and will not authorise repairs pursuant to a Claim under the Warranty for:
- (a) 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;
  - (b) consumable items including, but not limited to, door seals, switches, cleaning materials and accessory tools;
  - (c) breakage of glass or plastic components of the Goods;
  - (d) replacement of lights, fluorescent tubes, gaskets, or components which have been damaged by exposure to spillage;
  - (e) parts subject to wear and tear including but not limited to filters, oil, fuses, lamps, batteries, handles, locks, hinges, gears, belts; or
  - (f) Damage or failure of the Goods because of:
    - (i) non-removal of packaging and transport materials before use;
    - (ii) installation other than in accordance with the written manual, instructions or directions of Italian Gelato Concepts and/or OEM;
    - (iii) inappropriate operation and/or misuse or abuse of the Goods;
    - (iv) failure of periodic maintenance and service as per manufacturer's instructions. 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;

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (v) improper use of cleaning agents, detergents, bleaches, or other chemicals of a corrosive nature;
- (vi) excessive water use during cleaning and/or cleaning with high pressure water hoses;
- (vii) failure to ensure water treatment/filtration (use of water filter) as some areas in Australia are subject to poor water quality;
- (viii) 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;
- (ix) 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;
- (x) Goods that have been completely or partially disassembled, modified or moved from original location;
- (xi) Goods not bearing original serial numbers or compliance plates;
- (xii) Goods installed in an environment whereby the ambient temperature and relative humidity are outside the operating parameters specified for those goods; or
- (xiii) Goods operating without adequate ventilation specified for those goods, including in any written manual, instructions or directions of Italian Gelato Concepts and/or OEM.

18.7.6 The liability of Italian Gelato Concepts under the Warranty is limited to the repair or replacement of defective Goods, Parts or components. All other costs, including, but not limited to the following, are not covered and will be chargeable to the Buyer:

- (a) parking;
- (b) travel time to and from location;
- (c) moving machines to and from location;
- (d) hire of cranes, forklifts or specialist lifting equipment as well as manpower to enable access to the equipment;
- (e) after hours, weekend, public holiday, mileage, or other premium charges; and/or
- (f) cartage, carriage and dismantling and/or installation.

18.7.7 Italian Gelato Concepts is not liable for the costs of the licensed technician or sub-contractor other than the standard labour costs during normal Business Hours.

18.7.8 Commissioning and training or re-training of operators will be carried out on a chargeable basis to the Buyer.

18.7.9 Any freight costs incurred to send parts and/or machines to the destination required will be chargeable to the Buyer.

18.7.10 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.

18.7.11 For warranty of Goods in remote locations, these will need to be taken to the nearest Italian Gelato Concepts approved technician at the Buyer's expense and Italian Gelato Concepts accepts no responsibility for damages or loss during the period of transporting the machines.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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18.7.12 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.

18.7.13 In respect of any Goods the subject of Clause 18.7.12, the Buyer may elect to have such goods at the Buyer's premises as an on-site warranty repair. In doing so, the Buyer agrees that they are liable for and must pay to Italian Gelato Concepts any fees and charges in connection with any associated costs or expenses in connection with such on-site attendances.

18.7.14 Extended labour charges at the request of the purchaser for the purpose of equipment testing.

### 18.8 MAKING A WARRANTY CLAIM

18.8.1 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.

18.8.2 In the event of a claim being made under the Warranty, the Buyer must, at the Buyer's expense:

- (a) submit to Italian Gelato Concepts via mail or email a detailed claim in writing within fourteen (14) days of the Buyer becoming aware of the defect or damage;
- (b) include in the Buyer's claim:
  - (i) 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;
  - (ii) a detailed description of the alleged defect or damage;
  - (iii) a detailed description of the cause of the alleged defect or damage;
  - (iv) ten (10) good-quality detailed photographs of the Goods; and
  - (v) additional close-up photographs of the alleged defect or damage;
- (c) provide Italian Gelato Concepts with:
  - (i) any information relating to the event or circumstances giving rise to the Warranty claim requested by Italian Gelato Concepts;
  - (ii) access to any property on which the Goods are situated (including procuring the consent of any third-party property owner necessary for Italian Gelato Concepts to access the Goods);
  - (iii) access to the Goods and any damaged or defective parts;
- (d) allow Italian Gelato Concepts to take and remove any damaged or defective Goods or parts, to allow for further investigation and testing; and
- (e) cooperate with all reasonable requests by Italian Gelato Concepts.

18.8.3 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.

18.8.4 Italian Gelato Concepts reserves the right to have pre-authorized a set amount on an active credit card to cover instances where warranty is being claimed by the Buyer prior to an authorised technician attending site.

18.8.5 The pre-authorized amount will vary depending on, but not limited to:

- (a) expected time of the technician's attendance;
- (b) expected duration of the technician's attendance;
- (c) whether spare parts are to be supplied or not; and/or
- (d) expected distance of travel from the technician's place of origin.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 18.13 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.
- 18.14 Credit Card details are not kept on record by Italian Gelato Concepts or the mendr service software platform.
- 18.8.6 Credit Card details are securely kept in an encrypted manner by Stripe Bank in the USA. Stripe bank is the approved pre-authorisation bank for credit card transactions for Italian Gelato Concepts.
- 18.8.7 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.
- 18.8.8 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.

## 19 BUYER RESPONSIBILITIES

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- 19.1 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.
- 19.2 The Buyer must ensure (as the case requires):
- (a) Goods are serviced by an Italian Gelato Concepts licensed or approved 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;
  - (b) all Goods which are air-cooled refrigeration equipment must have the air-cooling condenser serviced and cleaned by an Italian Gelato Concepts licensed or approved technician every three (3) months;
  - (c) all Goods which are 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;
  - (d) all Goods which include refrigeration air cooled condensers must be cleaned and freed of any dirt and dust a minimum of four (4) times per year; and
  - (e) all Goods are adequately cleaned and preventative maintenance is completed by the Buyer or an Italian Gelato Concepts licensed or approved technician (as relevant) in respect of the Goods as per the manufacturer's specifications and/or as per instructions sheets provided by Italian Gelato Concepts.
- 19.3 The Buyer acknowledges and agrees that if the Buyer is in breach of Clause 19.2 (in whole or in part) this will reduce the production capacity of the Goods and may affect a Claim of Warranty. The Buyer must promptly contact Italian Gelato Concepts if it requires more information about preventative maintenance.
- 19.4 The Buyer acknowledges and agrees 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.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 19.5 Before submitting a Warranty Claim, the Buyer must check the following common causes of inoperability of Goods:
- (a) Power is connected, and circuit breaker / isolator are on;
  - (b) Check the water hoses are not crushed or kinked;
  - (c) Water is connected and is turned on;
  - (d) Drain is not blocked and are installed correctly;
  - (e) The air filters and condensers are clean;
  - (f) The water filter is clean and correctly installed;
  - (g) The room temperature does not exceed the manufactures specifications and that there is adequate air flow; and/or
  - (h) There are no restrictions to the air flow on air-cooled equipment.
- 19.6 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.

## 20 PERSONAL PROPERTIES SECURITY ACT – PPSA Act

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- 20.1 In this Clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 20.2 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.
- 20.3 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:
- (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 Section 6
- 20.4 The Buyer indemnifies and 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.
- 20.5 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.
- 20.6 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.
- 20.7 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.
- 20.8 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.
- 20.9 The Buyer waives its rights to receive notices under Sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 20.10 The Buyer waives its rights as a grantor and/or a debtor under Sections 142 and 143 of the PPSA.
- 20.11 Unless otherwise agreed to in writing by Italian Gelato Concepts, the Buyer waives its right to receive a verification statement in accordance with Section 157 of the PPSA.
- 20.12 The Buyer unconditionally approves any actions taken by Italian Gelato Concepts under Clauses 20.
- 20.13 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.

## 21 RETENTION OF TITLE

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- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.
- 21.5 The Buyer assumes all risk of loss or damage to the Goods upon 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 its 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.

## 22 INTELLECTUAL PROPERTY RIGHTS

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- 22.1 No rights of ownership to Italian Gelato Concepts Intellectual Property are transferred under these Contract Terms. Italian Gelato Concepts retains its rights to use Italian Gelato Concepts Intellectual Property for any purpose.
- 22.2 No rights of ownership to the Buyer Intellectual Property are transferred under these Contract Terms provided however, to the extent that Buyer Intellectual Property is incorporated into any New IP, then the Buyer grants Italian Gelato Concepts a non-exclusive, transferable, perpetual, irrevocable, royalty free licence to the incorporated Buyer Intellectual Property.
- 22.3 The Buyer represents and warrants to Italian Gelato Concepts that:
- (a) the Buyer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use) in respect of the Intellectual Property Rights in the Buyer Intellectual Property; and
  - (b) is entitled to licence to Italian Gelato Concepts the Intellectual Property Rights in the Buyer Intellectual Property in accordance with Clause 22.2,

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 22.4 Upon creation, all New IP will be owned by, and vest in, Italian Gelato Concepts. The parties will take all necessary steps and execute all (or procure the execution of all) necessary documents to perfect Italian Gelato Concepts' title to New IP.
- 22.5 Each party must not do, or permit or omit to do, any act which infringes the Intellectual Property Rights of the other party.
- 22.6 Each party must notify each other party within 3 Business Days if it becomes aware of:
- (a) any actual or suspected infringement by a third party of a party's Intellectual Property Rights; or
  - (b) any actual or threatened claim by a third party that their Intellectual Property Rights have been or will be infringed by any act or omission by a party in connection with these Contract Terms.
- 22.7 Each party warrants to each other party that it has the full right and title to enter into the Contract and to grant the rights it sets out to the other parties.
- 22.8 The Buyer consents to Italian Gelato Concepts infringing, and waives any Moral Rights that the Buyer (and must ensure that each of its officers, employees, agents and contractors waive any Moral Rights that any of them) may have or become entitled to in any works created, developed, modified or enhanced in the course of Italian Gelato Concepts performing the Services.
- 22.9 Italian Gelato Concepts may publish or join in publishing any description or illustration of the Goods (including those incorporating Buyer Intellectual Property), including on Italian Gelato Concepts' website from time to time.

## 23 INDEMNITY

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- 23.1 The Buyer indemnifies Italian Gelato Concepts and each of the Italian Gelato Concepts Personnel from and against all Losses (including all legal costs, and any other associated fees and costs) for which Italian Gelato Concepts incurs as a direct or indirect result of:
- (a) recovering any amounts the Buyer owes to Italian Gelato Concepts (including any fees paid to a debt collector or similar);
  - (b) any breach of a Contract by the Buyer (including any breach of the warranties provided by the Buyer);
  - (c) any unlawful, negligent or wilful act or omission by the Buyer, the Buyer's employees, agents, servants, contractors or others for whom the Buyer is legally responsible; and
  - (d) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Buyer Intellectual Property.

except to the extent such Losses have been caused by or contributed to by the unlawful or negligent act, error or omission of Italian Gelato Concepts.

## 24 LIABILITY

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- 24.1 Subject at all times to Clause 1.4 and 1776401984.552 (as applicable), the restrictions on liability in this Clause 24 apply to every liability arising under, or in connection with, the Contract, including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 24.2 Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Contract, for loss or damage to the extent that the other party (or the other party's officers, employees or agents) contributed to the loss or damage.
- 24.3 Subject to Clause 24.5, to the extent permitted by law, Italian Gelato Concepts shall not be liable to the Buyer for any Consequential Loss surrendered or incurred by the Buyer whether in contract, tort (including negligence) or otherwise in connection with a Contract.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 24.4 Subject to Clause 24.5, Italian Gelato Concepts' total liability to the Buyer in respect of a Contract shall not exceed the value of the Goods for that Contract.
- 24.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by law, including the Australian Consumer Law, as relevant; or
  - (d) defective products under the Australian Consumer Law.
- 24.6 To the maximum extent permitted by law:
- (a) 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 loss of, the Goods howsoever arising.
  - (b) Italian Gelato Concepts accepts no liability for the conduct and/or performance of contractors used by the Buyer after the Warranty Period has expired.
- 24.7 A party who suffers loss or damage must take reasonable steps to mitigate its loss. The other party will not be responsible for any loss, damage or expenses to the extent that the injured party could have avoided or reduced the amount of the loss, damage or expense, by taking reasonable steps to mitigate its loss.
- 24.8 This Clause 24 shall survive termination of the Contract

## 25 EXCLUSION OF LIABILITY

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- 25.1 To the maximum extent permitted by law, 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, Consequential Loss in any way related to or arising out of the supply or non-supply or performance or non-performance of any Goods or Services provided for or contemplated by or in pursuance of these Contract Terms which are:
- (a) caused by factors beyond the reasonable control of Italian Gelato Concepts;
  - (b) caused by any fraudulent, unlawful or negligent act, error or omission of the Buyer or any of its directors, officers, employees, agents or contractors (other than Italian Gelato Concepts) from time to time and at any time;
  - (c) in connection with:
    - (i) any Goods that have not been installed or maintained accordance to maintenance or care instructions;
    - (ii) any alterations or repairs to the Goods which were not performed by Italian Gelato Concepts or any person authorised (in writing) by Italian Gelato Concepts;
    - (iii) damage or defects caused to the Goods or any other products due to unusual, non-recommended, improper or negligent installation, maintenance, use, storage and handling of the Goods and/or products by the Buyer or any other person (other than Italian Gelato Concepts);
    - (iv) any other thing that the Warranty does not cover, including (without limitation) wearable parts, obsolete goods, loss or damage incurred in connection with transportation, Packaging or delivery of the goods;
    - (v) any non-compliance with any laws, regulations or standards in connection with food safety, food storage or hygiene,

except to the extent such loss or damage has been directly caused by or contributed to by the unlawful or negligent act or omission of Italian Gelato Concepts.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- 25.2 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.
- 25.3 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.
- 25.4 To the maximum extent permitted by law, 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.

## 26 NOTIFICATION OF CLAIMS

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- 26.1 The Buyer shall notify Italian Gelato Concepts immediately if it becomes aware of:
- (a) any claim; or
  - (b) any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Buyer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 26.2 The Buyer must:
- (a) not, without Italian Gelato Concepts' express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Goods, which is in breach of the Australian Consumer Law;
  - (b) take all steps and do all things necessary to promptly pass on to Italian Gelato Concepts any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Buyer's expense, assist Italian Gelato Concepts to comply with its obligations under the Australian Consumer Law; and
  - (c) not agree to settle any claim made by a Consumer without the prior written consent of Italian Gelato Concepts.

## 27 DEFAULT AND TERMINATION

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- 27.1 Without limiting its other rights or remedies, Italian Gelato Concepts may terminate a Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer fails to pay any amount due under a Contract on the due date for payment;
  - (b) Italian Gelato Concepts reasonably believes that the Buyer will be unable to pay any amount due under a Contract on the due date for payment;
  - (c) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Buyer being notified in writing to do so;
  - (d) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (e) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

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## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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(f) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

27.2 Without limiting any of its other rights or remedies, Italian Gelato Concepts may suspend provision of the Goods and/or Services under a Contract or any other contract between the Buyer and Italian Gelato Concepts if the Buyer becomes subject to any of the events listed in clause 27.1(d), or Italian Gelato Concepts reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.

27.3 Without limiting any of its other rights or remedies, Italian Gelato Concepts may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.

27.4 On termination of a Contract for any reason, the Buyer shall immediately pay to Italian Gelato Concepts all of Italian Gelato Concepts' outstanding unpaid invoices and interest and, in respect of Goods supplied, but for which no invoice has been submitted, Italian Gelato Concepts shall submit an invoice which shall be payable by the Buyer immediately on receipt.

27.5 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

27.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

## 28 INACTIVE AND OVERDUE ACCOUNTS

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28.1 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.

28.2 A new credit application to open an account is required to be submitted for approval.

## 29 FORCE MAJEURE

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29.1 Except in the case of an obligation to pay money, neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

## 30 ASSIGNMENT AND OTHER DEALINGS

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30.1 Italian Gelato Concepts may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

30.2 The Buyer must not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Italian Gelato Concepts.

## 31 NON-SOLICITATION

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31.1 During the term of any Contract and within 3 months of the date of any Contract, the Buyer must not:

(a) solicit any officer, employee, contractor or third party supplier of Italian Gelato Concepts;

(b) procure or offer any form of employment or contract to any officer, employee, contractor or third party supplier of Italian Gelato Concepts,

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## 32 GOVERNING LAW AND JURISDICTION

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- 32.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by the laws of the State of Queensland.
- 32.2 Each party agrees that the courts of the State of Queensland shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract or its subject matter or formation.
- 32.3 The United Nations *Convention on Contracts for the International Sale of Goods* (1980) (“**The Vienna Convention**”) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or the Agreement and are excluded.

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## 33 NO WAIVER

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- 33.1 A waiver of any right, power or remedy arising under or in connection with the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 33.2 Neither party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with the Contract.
- 33.3 A delay or failure to exercise, or the single or partial exercise of, any right, power or remedy arising under or in connection with the Contract shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

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## 34 DISPUTE RESOLUTION

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- 34.1 A party to the Contract claiming that a dispute has arisen from or in connection with the Contract (**Dispute**), must not commence court proceedings arising from or relating to the Dispute, other than a claim for urgent interlocutory relief, unless that party has participated in a mediation in accordance with this Clause.
- 34.2 A party to the Contract claiming that the Dispute has arisen must give a written notice to the other party or parties to the Contract, specifying the nature of the Dispute. The parties must then participate in mediation in accordance with this Clause.
- 34.3 The rules of the Resolution Institute will apply to this mediation and will govern the selection of the mediator and the process of the mediation.
- 34.4 This Clause 34 will survive termination or expiry of the Contract.
- 34.5 Unless the parties agree otherwise in writing, the venue for all arbitrations shall be in the city of Brisbane, Queensland.

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## 35 SEVERANCE

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- 35.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 35, the parties shall negotiate in good faith to agree to a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

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## 36 ENTIRE AGREEMENT

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- 36.1 These Contract Terms, including any applicable Privacy Policy Statement, completely and exclusively state the agreement between the Italian Gelato Concepts and the Buyer 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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## 37 AMENDMENT AND UPDATES

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37.1 Without limiting Clause 5.2, Italian Gelato Concepts may amend or update these Contract Terms from time to time in its sole discretion. If so, Italian Gelato Concepts may let the Buyer know by written Notice and/or by posting the updated Terms on Italian Gelato Concepts' website. It's important the Buyer review these Contract Terms whenever updated or when placing Orders for Goods. If the Buyer continues to order or orders new Goods after Italian Gelato Concepts has posted updated Conditions this means that the Buyer accepts and agrees to the amendments and updates. If the Buyer does not agree to be bound by the amendments and/or updates, the Buyer must not order Goods anymore. The only exception is for changes Contracts in respect of orders that have been made prior to such amendment or update, in which case no variation of a Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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## 38 DEFINITIONS

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- 38.1 In these Contract Terms the following words will (unless the context otherwise requires) mean the following:
- (a) **"Australian Consumer Law"** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
  - (b) **"Business Day"** means a day other than a Saturday, Sunday or public holiday in Brisbane, Queensland or Sydney, New South Wales.
  - (c) **"Business Hours"** means the normal trading hours of Italian Gelato Concepts.
  - (d) **"Buyer"** means and includes the person, body corporate or entity that orders or has offered to purchase the Goods and/or Services from Italian Gelato Concepts or that Italian Gelato Concepts has offered to sell the Goods and/or Services. This includes those that purchase the Goods and/or Services with the intention of reselling them rather than using them.
  - (e) **"Buyer Intellectual Property"** means the Intellectual Property Rights of the Buyer which are owned or licensed to the Buyer or created by the Buyer independently of the Contract.
  - (f) **"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.
  - (g) **"Consumer Guarantee"** means a right or guarantee the Buyer 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.
  - (h) **"Contract Terms"** means the terms and conditions set out in this document as amended from time to time in accordance with Clause 37.
  - (i) **"Contract"** means the contract between Italian Gelato Concepts and the Buyer for the sale and purchase of the Goods in accordance with these Contract Terms.
  - (j) **"Defect"** or **"defective"** means any Goods which do not comply with OEM specifications, or which are faulty, materially non-conforming, inoperable, unsafe or not operating properly;
  - (k) **"EX WORKS"** has the meaning given for the term of Ex-Works under Incoterms 2020.
  - (l) **"Force Majeure Event"** means an event, circumstance or cause beyond a party's reasonable control including any Act of God, riots, insurrections, rebellions, terrorist acts, civil disturbances, wars (declared or undeclared), 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

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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equipment, materials or transport, government regulations for national defence, fire, lightning, earthquake, storm, weather conditions, flood, pandemic, explosion, epidemic, strikes, boycotts, lockouts, labour dispute or other labour disturbances and in the case of Italian Gelato Concepts any other case whether of the kind enumerated or otherwise which is not within the control of Italian Gelato Concepts.

- (m) **“Goods”** means the articles, goods, material or Parts specified to be supplied under the Contract, and includes the Services (if any) supplied by Italian Gelato Concepts.
- (n) **“GST”** means any form of goods and services tax payable under the GST Law.
- (o) **“GST Law”** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (p) **“Intellectual Property Rights”** means all current and future registered and unregistered rights (including rights held or acquired from a third person by agreement in the nature of a license or similar) in respect of copyright, circuit layouts, designs, trademarks, know-how, confidential information, patents, inventions, plant breeder’s rights and discoveries and all other intellectual property.
- (q) **“Italian Gelato Concepts”** means Italian Gelato Concepts Pty Limited ABN 48 603 731 424, its successors and assigns.
- (r) **“Italian Gelato Concepts Personnel”** means each of the employees, officers, agents and contractors of Italian Gelato Concepts from time to time.
- (s) **“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).
- (t) **“Maintenance Program”** means the program, specified by the OEM and/ or Italian Gelato Concepts, that details the processes, methods and the Buyer’s responsibilities for Goods maintenance and includes the manuals provided by Italian Gelato Concepts with the Goods;
- (u) **“Manuals”** means any operation, service or other manual or instruction or recommendation or other information supplied to the Buyer by the OEM and/or Komatsu in relation to the Goods;
- (v) **“New IP”** means any Intellectual Property Rights created in connection with the performance of the Services.
- (w) **“OEM”** means the original equipment manufacturer of the Goods.
- (x) **“Order”** means the Buyer's purchase order or order for the Goods and/or Services, as set out in the Buyer's purchase order or order, as relevant.
- (y) **“Part”** means a new part purchased by the Buyer from Italian Gelato Concepts, excluding Consumables;
- (z) **“PPSA”** means Personal Properties Security Act 2009.
- (aa) **“Sale Date”** means the earlier of either:
  - (i) the date the Buyer takes possession of the Goods; or
  - (ii) the date you pay for the Goods;
- (bb) **“Services”** mean the services to be performed under or in connection with the Contract, including in respect of any Goods, supplied by Italian Gelato Concepts
- (cc) **“Specification”** means any written specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and Italian Gelato Concepts.
- (dd) **“Supplier Intellectual Property”** means the Intellectual Property Rights of Italian Gelato Concepts which are created independently of the Contract.
- (ee) **“Warranty”** has the meaning given in Clause 18.1.

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (ff) “**Warranty Activation Form**” has the meaning given in 18.7.
- (gg) “**Written Notice**” means a notice given by e-mail, facsimile, or hardcopy (including letter).
- (hh) “**Warranty Period**”, in respect of Goods (including Parts), means the period specified in respect of those Goods (or Parts) in Clause 18.1.6.

### 39 INTERPRETATION

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- 39.1 In these Contract Terms unless the context clearly indicates otherwise:
- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - (b) A reference to a party includes its personal representatives, successors and permitted assigns.
  - (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
  - (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
  - (e) A reference to **writing** or **written** includes in electronic form, including email.

### 40 PRIVACY ACT 1988 - NOTICE OF CONSENT

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- 40.1 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.
- 40.2 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:
- (a) To assess an application by the Buyer and/or
  - (b) To notify other credit providers of a default by the Buyer and/or
  - (c) 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
  - (d) To assess the credit worthiness of the Buyer including the Buyer’s repayment history in the preceding two years.
- 40.3 The Buyer consents to Italian Gelato Concepts being given a consumer credit report to collect overdue payment on commercial credit.
- 40.4 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
- 40.5 The provision of goods and services and/or
- 40.6 Analysing, verifying and/or checking the Buyer’s credit, payment and/or status in relation to the provision of goods and services and/or
- 40.7 Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer
- 40.8 Enabling the collection of amounts outstanding in relation to the Goods and/or services.
- 40.9 Italian Gelato Concepts may give information about the Buyer to a CRB for the following purposes:
- (a) To obtain a consumer credit report

## Italian Gelato Concepts Pty Ltd - Terms and Conditions of Sale

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- (b) Allow the CRB to create or maintain a credit information file about the Buyer including credit history.

40.10 The information given to the CRB may include:

- (a) Personal information as outlined above
- (b) Name of the credit provider and that Italian Gelato Concepts is a current credit provider to the Buyer
- (c) Whether the credit provider is a licensee
- (d) Type of consumer credit
- (e) 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)
- (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 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)
- (g) Information that, in the opinion of Italian Gelato Concepts, the Buyer has committed a serious credit infringement
- (h) Advice that the amount of the Buyer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

40.11 The Buyer shall have the right to request (by e-mail) from Italian Gelato Concepts:

- (a) 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
- (b) That Italian Gelato Concepts does not disclose any personal information about the Buyer for direct marketing.

40.12 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.

40.13 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](http://www.oaic.gov.au).

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