

**General Conditions of Sale and Delivery of ICE COM
Handelsgesellschaft m.b.H. ("Ice Com"), Vienna
for machine trade**

Version: 1/2015

1. **Preamble:** The following „General Conditions of Sale and Delivery“ shall apply, unless anything to the contrary is stated in Ice Com’s offer or order confirmation or the parties agree to the contrary in writing.

1.1. Any special purchase conditions or specific requirements made by the buyer concerning the purchased goods and stated, for example, in the buyer’s general conditions of purchase, acceptance, order or elsewhere, shall not be binding of Ice Com unless Ice Com has in writing accepted such special conditions, whether or not Ice Com has rejected such purchase conditions or specific requirements.

1.2. Ice Com’s order confirmation or delivery of the goods without Ice Com’s simultaneous objection to the buyer’s contradictory purchase conditions, shall not constitute a tacit acceptance by Ice Com of any of the buyer’s purchase conditions.

1.3. These general clauses apply also for further businesses.

2. **Machine capacity:** Capacity data are referred to in pieces per hour or litre per hour in regard to the particular product (e.g. a bigger product needs a longer filling-time therefore the machine capacity decreases accordingly). The particular capacity data (with regard to the standard recipe and technical parameters of the ice cream as referred in the offer with regard to the environmental conditions e.g. humidity) is stated in the leaflets.

The **standard technical parameters for the ice cream production and mix** are the following if not other information are expressly given in writing and form part of the offer:

- Fats min. 6% - max 12%
- Sugar min. 8% - max 18%
- Total solids min 34% - max 38%
- Stabiliser min 0,3% - max 0,5%
- Overrun 100%
- Technical water feed min +15°C – max +20°C
- Air temperature in the production room not more than 25°C
- Air humidity in the production room no more than 70%
- The recipe for some products should contain also glucose syrup.

2.1. Statements of capacity, weight and quantity are approximate data and form not a part of a warranty, guarantee or representation of Ice Com, unless otherwise agreed in writing. It is agreed that the effective capacity of the machine can lay up to 15% under the nominal capacity (the actual effective capacity can only be determined after a praxis test run on the location of final operation).

2.2. Defective goods: up to 5% in regard to the effective capacity shall be tolerated. The buyer is not entitled to claim any damages in this regard.

3. **Delivery Terms and Time:** Unless anything to the contrary is expressly agreed upon, the delivery term shall be „CPT (carriage paid to), Incoterms 2010“ with such changes and additions as may appear from Ice Com’s offer, order confirmation and the present Conditions of Sale and Delivery.

3.1. Unless otherwise agreed in writing, the delivery time shall run from whichever is the latest date of either Ice com’s receipt

of the first due instalment of the purchase amount or the clarification of all technical details and Ice Com’s receipt of the product information sheets and layouts of the machines confirmed by the buyer.

3.2. In the case of payment delays or non-payment of an instalment, the delivery time shall be prolonged accordingly until payment is effected as due. Furthermore any delivery which should be effected between 22.12-15.1. and 1.8.-25.8. will be prolonged by this time period.

3.3. Delivery in parts is allowed.

4. **Software:** The software provided is Ice Com’s sole property and may be used by the buyer in connection with the purchased goods only.

4.1. Without Ice Com’s written consent, the buyer shall have no right to copy, reproduce, change, modify or program the provided software, nor shall the buyer have any right to pass on the software to any third party or inform any third party of its contents. Any modification or programming services are offered by Ice Com exclusively.

5. **Terms of payment:** 30% of the purchase price shall be paid through a bank remittance when placing the order. Further 30% of the purchase price shall be paid 2 months after the order placement. After another 2 months (= 4 months after the order placement) another 30% of the purchase price shall be paid. 5% of the purchase price shall be paid within 7 working days after Ice Com’s confirmation that the machine is ready for transport and the final 5% shall be paid within 7 working days after completion of the on-site test, or after the receipt of the hand-over protocol, but not later than 60 days after the date of invoice. For each down payment will be issued a down payment invoice, the first one with the order confirmation. The final invoice will be issued before dispatch of the goods.

5.1. The instalment payments may be withheld and used for reimbursement of damages and expenditures caused by the buyer, especially in case of termination of the contract.

5.2. For payment delays (delay of one instalment is sufficient) the legal interest rates and fees shall be charged, minimum 12% p.a. based upon the open balance at Ice Com’s accounting. The open interest is capitalised at the end of every quarter. The buyer recognizes fully the open balance at Ice Com’s accounting, if he does not rise any objections within 10 days after receipt of Ice Com’s open balance. All payments will be ascribed to the oldest open positions, first to the open interest and then to the open capital.

5.3. In case that the buyer is in delay of payment with more than one instalment with more than 14 days, then Ice Com can set the total amount as being due immediately. The instalment payments already paid may be withheld and used for reimbursement of damages and expenditures caused by the buyer, especially in case of termination of the contract.

6. **Transfer of Title / Goods-reservation of Ownership:** The delivered goods shall remain the property of Ice Com until full payment including interest has been made to Ice Com. In case that the national law requires an application for a notification in a national register in order a retention of title is valid and effective the buyer will sign any declaration required and cooperate with the seller and the competent authorities.

7. **Limitation of Liability:** Notwithstanding anything to the contrary in the Contract and except to the extent required by law, the total liability of Ice Com, Ice Com’s personnel, Ice Com’s affiliates as well as Ice Com’s sub-contractors for any act or omission, whether in contract, tort (including gross as well as slight negligence or strict liability), by way of indemnities or any other legal or equitable theory shall not exceed the amount

equivalent to 5% of the purchase price for the machine (thus not including transport and installation costs).

7.1. In case of delivery delays caused by Ice Com, the buyer shall be entitled by written notification to Ice Com to insist on delivery and to fix a final time-limit of maximum 15 days. If delivery does not take place within such final time-limit as fixed by the buyer, the buyer shall be entitled by written notification to Ice Com to claim damages which can amount to no more than 0,5% per week of the total purchase amount, counting from 4 weeks after the latest delivery date fixed. This means that the first 4 weeks after the latest delivery date fixed are free of any penalty or damages. However, the overall damages are limited to 5% of the total purchase amount as stated above.

7.2. Ice Com is only liable to the extent as described above for defects in new machines delivered by Ice Com. Used machines are taken over in their existing condition without Ice com being liable, and consequently the buyer cannot hold Ice Com responsible for defects, if any, whether latent or noticeable.

7.3. The length of the period of any contractual liability is limited to the average operation usage of the machine being an average operation usage not more than 8 hours a day (one shift production scheme), thus 2.000 working hours per year. Furthermore, the liability of the seller is limited to the single components not the whole production unit. The time limit for contractual liability for the delivered new machines is furthermore to a period of 12 months from the receipt/signing of the handover protocol. In case no handover protocol was signed for no reason in the sphere of either party and the handover date cannot be verified, - also not with approximately within a bandwidth of several weeks - any liability expires 15 months from the date shown in the invoice. In such a case the guarantee expires automatically after 15 months calculated from the date of the seller's invoice.

Ice Com shall not be liable to the buyer for any loss of profit (actual or anticipated), loss of use, loss of production, loss of contracts, loss of opportunities, loss of revenue, cost of capital, costs of replacement, loss of goodwill, loss of reputation, loss of information or data, loss from any third party contracts, loss due to business interruption, loss of interest, loss of power, cost of purchased or replacement power, contractual claims from third parties or any indirect, incidental, special or consequential losses or damages arising from or in connection with its performance or non-performance under this Contract and whether based upon contract, tort, or any other legal theory. This clause shall apply to the benefit of Ice Com's personnel, Ice Com's affiliates and Ice Com's sub-contractors.

8. **Force Majeure and Hardship:** The parties agree that the ICC Force Majeure Clause 2003 and the ICC Hardship Clause 2003, publication No. 650, shall apply on this contract and form part of this contract. This applies, if there is not a more favourable provision according to these general conditions or the offer or the purchase contract, whichever prevails.

9. **Approval, permission and responsibility:** The buyer shall obtain, bear the risk of obtaining and pay for any necessary approval and permission to deliver, assemble, install, start, test and run the plant and the machines purchased from the seller

9.1. Infringement of intellectual property rights and other rights relating to products produced on the machinery delivered by Ice Com is the buyer's own responsibility and Ice Com cannot in any way be held liable so far. It is the sole responsibility of the buyer to collect all relevant information of his jurisdiction and comply with them. The buyer cannot terminate the contract for any such reason. The producer warrants that his products are free from IP right's from third parties in the country of origin.

10. **Suitability test:** Samples of product recipes, ingredients, packaging materials, sticks, cups, cones and other stuff sent to Ice Com by the purchaser in the sufficient quantity and by the agreed date (usually 14 days after the formation of the contract) will be tested by the producer of the machine for their suitability. Ice Com may make recommendations based on previous experience or dry run (no test on real ice cream production in full operation is made – unless otherwise agreed; all risk insofar is born by the buyer; such studies are very cost intensive). However, since it is not always possible to foresee or simulate actual and local production conditions, these recommendations shall be regarded as a guide only and shall in no way be considered as a warranty or guarantee or constitute any kind of legal obligation on Ice Com's part.

11. **Installation supervision:** Supervision, erection, installation, starting-up and testing of the delivered machines at the buyer's premises are not included in the purchase contract and thus not included in the purchase price, unless specifically agreed in the written offer.

11.1. In case it has been specifically agreed in the offer that supervision, creation or installation are included in the purchase contract and thus also expressly included in the total purchase price, the buyer shall ensure that the work can be commenced immediately upon the inspector's arrival. The inspector shall only arrive after the buyer confirms that the necessary infrastructure (e.g. electricity, gas, hot and cold water, cooling water, steam, compressed air, sanitary appliances, etc. – this a non-exhaustive list, more information can be given upon request) is functioning. Extra costs incurred through delays or repeated visits resulting from lack of necessary infrastructure shall be borne by the buyer, as shall all costs incurred through the interruption of erection or any other delay of the starting-up for which Ice Com is not responsible. Costs of repeated missions are to be paid by the buyer in advance. Any agreement concerning supervision, erection, installation, and mechanical test covers only those machines supplied by Ice com. The buyer has to cooperate on his own costs and bear all consequences including interruption of production of his sight including all forms of loss of profit. The buyer shall also, free of charge, place at Ice Com's disposal the skilled and unskilled labour necessary for the erection of the machine and equipment (e.g. welding equipment and material).

11.2 In the case it has been specifically agreed in the offer that supervision, creation or installation are included in the purchase contract the travel expenses, accommodation costs (minimum 3 star hotel, single bed room) and catering for the inspector are not included in the total purchase price and shall be borne by the buyer. The buyer shall also be responsible for the purchase of the airplane tickets if necessary.

11.3 The environmental conditions in the workshop during installation are requested to be at min +15° and max +30°C ambient temperature.

12. **On-site test:** If Ice Com according to the written offer is also responsible for execution of an on-site test of the machine, this will be commenced immediately after the installation is finished but latest 15 days after the final delivery. The on-site test covers only these machines supplied by Ice Com.

12.1. The test run shall take 4 hours of operation per product type, at which the respective products are produced under the supervision of Ice Com in order to prove that the machine meets the agreed demands (with regard and limitation to clause 2) as to the output and product. The test will be effected on the product types once only: horizontal extruded stick-ice, vertical extruded stick-ice, Cornetto, Sandwiches, wafer-cup, cup and

bulk ice-cream. The maximal test run for all 7 product types shall not exceed 24 hours of operation.

12.2. Before the on-site test is commenced the following conditions shall be fulfilled:

- (1) The machine shall be properly set up, installed and connected.
- (2) The necessary infrastructure (e.g. electricity, compressed air, cooling water, ice water, etc.) shall be present. Equipment and connections not supplied by Ice Com shall be compatible and correctly installed.
- (3) The quantity and quality of the raw materials, auxiliary materials and consumables to be used shall be provided in sufficient quantity on the buyer's expenses.

12.3. If the buyer cannot comply with the above conditions, Ice Com shall not be obliged to commence or continue any tests until such conditions have been met. Any additional costs (especially to adopt production setting changed since the delivery) incurred in this connection shall be borne by the buyer at the per hour rate for technical support applicable.

12.4. The machine is considered to be taken over and the test run concluded, when the handover protocol has been erected (also unilaterally by the seller), unless material defects have been established.

12.5. Ice Com will remedy minor defects established at the test runs as soon as possible and the parties shall agree on a time-limit for this. The buyer is not entitled to retain any part of the purchase price or to offset against such due to minor defects, if any, established at the test run.

12.6. In case the buyer, de facto, starts using the machine, irrespective of the extent and character thereof, before the signing of the handover protocol, then the machine shall be considered taken over by the buyer and the remaining part of the purchase price is due.

13. Product liability: Ice Com shall not be liable for damages to real or personal property occurring after the risk of the delivery of a product supplied by Ice Com has been transferred to the buyer. Ice Com commits to name the producer within 7 days after buyer's request in case the buyer claims damages out of the product liability.

13.1. Ice Com shall not be liable for damages to real or personal property or personal injury caused by products supplied by the buyer or caused by products of which these are part of. Furthermore, Ice Com shall not be liable for damages to the said products.

13.2. Ice Com shall not be liable for loss of production, loss of profit or any other indirect or consequential loss.

13.3. To the extent that Ice Com shall incur product liability towards third parties, the buyer shall be obliged to indemnify Ice Com to the same extent as Ice Com's liability shall be limited in accordance with the above provision.

14. Enticement of employees and subcontractors: The buyer undertakes to refrain from any enticement and employment, also through third parties, of employees or subcontractors of Ice Com for the duration of 5 years after the sales contract has been signed. This provision does not only apply to all employees directly employed by Ice Com, but also to all external employees and subcontractors with any contractual relationship to Ice Com who regularly render services in the name or on order of Ice Com or acts as a broker on behalf of Ice Com. This applies regardless of whether they have an employment contract, co-operation, service or a distribution agreement or any other legal agreement with Ice Com.

14.1. In the event of infringement of the aforementioned provision the buyer agrees to pay a penalty in the amount of 3

annual gross salaries of the enticed employee, which the employee received from Ice Com before the enticement. If the person enticed is not an employee the payments made by Ice Com as p.ex. a remuneration or compensation in the last three years is relevant for the calculation of the basis; if the contractual relationship is shorter the average payments obtained in the last year will be tripled. The penalty cannot be reduced by judicial discretion.

14.2. In addition, Ice Com is entitled to demand the omission of future employment of the enticed employee including external employees as defined above.

15. Coding – Machine Stop: In case of an instalment payment is agreement the delivered machines shall be encoded. The buyer will receive only a restricted utilisation permit. In case of delay of a payment for longer than 30 days of the agreed instalment the machine will come to a still stand and can only be reactivated after the buyer receives a reactivating-code by Ice Com what will be processed after the payment is made and received by Ice Com within one working day (after the day of receipt of the outstanding payment). In case of in time payment Ice Com shall give the buyer the reactivating-code within 4 working days after receipt of the payment.

16. Ongoing accounting - waiver: The buyer recognizes fully the open balance at seller's accounting, if he does not rise any objections within 10 days after receipt of seller's open balance. All payments will be ascribed to the oldest open positions, first to the open interest and then to the open capital and finally costs. In case that the buyer is in delay of payment with more than one instalment with more the 14 days, then the seller can set the total open amount as being due immediately.

17. Dispute Settlement / Choice of Law: All disputes or claims arising out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one arbitrator appointed in accordance with the said Rules. The provisions on expedited proceedings are applicable; the substantive law of Austria shall be applicable; the UN-Sales-Convention does not apply; the language to be used in the arbitral proceedings shall be German and the place of Arbitration shall be 1010 Vienna.

17.1. Ice Com shall have the exclusive right, at its option, to either apply to the public court competent or to the aforementioned arbitration court.