

# CONDITIONAL SALES CONTRACT

PURCHASER

SAME AS PURCHASER UNLESS  
OTHERWISE INDICATED

SOLD TO

City of Blaine  
10801 Town Square Drive NE  
Blaine, MN 55449

SHIP TO

Jerome Krieger  
City of Blaine  
10801 Town Square Drive NE  
Blaine, MN 55449

Rapids Restaurant Equipment Co. ("Seller") agrees to sell and Purchaser agrees to purchase the products, parts or accessories (the "Goods") and services, if any, described in Attachment A on the terms and conditions set forth in this Order.

**A. Payment Schedule.** Total Contract: \$12,927.63 Items on the Contract: True two door refrigerator (R120331), True two door freezer (R120463), Manitowoc ice cuber (R151112), Manitowoc ice machine filter (R151035), Manitowoc ice bin (R151222), Star hot dog roller (C210606), Wisco pizza warmer (C110364), Wisco pizza oven (C270320).

Balance is subject to Credit Approval. Payments not made within 30 days of due date shall be subject to a late charge of 1.5% per month. In the event you decide pay for any amount of this transaction with a credit card you will be required to pay a 4% service charge associated with the transaction amount actually charged to your credit card.

The final payment is required prior to delivery which is scheduled for \_\_\_\_\_, or 30 days after scheduled delivery date at the latest. Rapids Restaurant Equipment is not responsible for construction delays, unless "seller" is deemed responsible, and payment is required on date specified

OR:

X Credit terms have been pre-approved and final payment is due NET15 days from substantial completion.

**Substantial Completion is as specified:**

The earlier of fifteen (15) days from delivery and set-up, fifteen (15) days from first day of business or thirty (30) days of planned opening date of \_\_\_\_\_. Rapids Restaurant Equipment Co. is not responsible for construction delays, unless "seller" is deemed responsible.

**B. Purchase Money Security Interest.** To secure payment of any amounts due Seller, Purchaser grants to Seller a purchase money security interest in the Goods, and in all attachments, accessories, improvements, replacements, products and proceeds thereof. Purchaser irrevocably authorizes Seller, at any time, to file in any filing office in any jurisdiction any financing statements, amendments or other appropriate documents to evidence and perfect such security interest. Purchaser agrees to promptly execute and deliver such documents, or furnish such information, to Seller as may be required by Seller to perfect this security interest, and if Purchase fails to do so, any outstanding amount due Seller shall become immediately due and payable. Seller shall have all the rights and remedies of a secured party under Iowa Uniform Commercial Code, which rights and remedies shall be cumulative.

**C. THIS ORDER IS SUBJECT TO THE ATTACHED GENERAL TERMS AND CONDITIONS.**

**D.** This Order shall not be effective and binding on Seller until approved and signed by an authorized officer of Seller at the home office of Seller in Marion, Iowa.

**E.** Purchaser is a ☐ individual or proprietorship, or ☐ a corporation, a ☐ LLC or ☒ other entity (please specify type: Local Government \_\_\_\_\_), organized under the laws of the state of Minnesota \_\_\_\_\_.

Purchaser has read, understands, and agrees to the terms of this Contract and the included General Terms and Conditions. The undersigned representative of Purchaser is authorized to execute this Agreement on behalf of Purchaser.

Purchaser Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

**Section Below To Be Signed By Marion Office Only**

Rapids Restaurant Equipment Co.

This order/quotation is approved and accepted this 8th day of JUNE, 2015.

BY: \_\_\_\_\_

Print Name: Blake Skjei Title: Assistant Manager Rapids Restaurant Equipment

# GENERAL TERMS AND CONDITIONS

1. **General.** The sale by Rapids Restaurant Equipment Co., ("Seller") of any products or services to Purchaser shall be subject to the following terms and conditions, and the terms and conditions stated on the face page of the Seller's Conditional Sales Contract to which these terms and conditions are attached or on any Seller invoice accompanying the products or services sold by Seller (the "Terms and Conditions"). THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN PURCHASER AND SELLER WITH RESPECT TO THE GOODS AND SERVICES FURNISHED BY SELLER. NO REPRESENTATION, PROMISE OR CONDITION NOT SET FORTH HEREIN HAS BEEN RELIED UPON BY PURCHASER OR SHALL BE BINDING ON EITHER PARTY HERETO.

2. **Other Documents.** These Terms and Conditions are in lieu of and replace any and all terms and conditions set forth in any documents issued by Purchaser. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY PURCHASER AT ANY TIME ARE HEREBY OBJECTED TO AND REJECTED BY SELLER, SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON SELLER. No waiver or amendment to these Terms and Conditions shall be binding on Seller unless made in a writing expressly stating that it is such a waiver or amendment and signed by Seller.

3. **Contract of Sale.** Any quotations given by Seller to Purchaser will be valid for the period stated on the Quotation, and if no period is stated, the Quotation is valid for 30 days from the date of the Quotation. All offers to purchase, and orders of Purchaser are subject to final acceptance by, and are not binding upon Seller until accepted by an authorized officer of Seller at its offices in Marion, Iowa. Orders accepted by Seller are not subject to cancellation by Purchaser without the written consent of Seller.

4. **Payment Terms.** Terms of payment are within Seller's sole discretion and, unless credit terms are otherwise agreed to by Seller, payment must be received by Seller prior to delivery of products or upon performance of services by Seller. Unless otherwise stated, all prices will be stated, and all payments must be made in U.S. Dollars. If credit terms have been agreed to by Seller, invoices are due and payable within thirty (30) days after the date of the invoice unless otherwise noted on the face page of the Purchase Order or Quotation or on Seller's invoice. Seller may invoice parts of an order separately. Purchaser agrees to pay interest on all past-due sums at the lesser of 1.5% per month or the highest rate allowed by law, and to pay all costs of collection, including costs of litigation and reasonable attorney's fees incurred by Seller. If Purchaser agrees to pay for any amount of this transaction with a credit card Purchaser will be required to pay a 4% service charge associated with the transaction amount actually charged to Purchaser's credit card.

5. **Delivery Schedules.** Stated Seller delivery schedules or dates are estimates only and not a commitment as to delivery on specific dates.

6. **Shipping and Delivery.** All shipments are made FOB Seller's shipping point, unless otherwise noted. If the contract requires delivery of the goods to the purchaser, delivery shall take place when physical possession of the Goods is given to the Purchaser or to a carrier for shipment to the Purchaser whichever comes first. Purchaser authorizes Seller to deliver the Goods in installments as they become available for delivery. Unless otherwise noted, sales prices do not include freight, shipping or handling charges. Separate charges for freight, shipping and handling will be shown on Seller's invoice(s). The Purchaser must make all claims for breakage, loss, delay and damage to the carrier. In the absence of directions, goods will be shipped by the method and via a carrier that the Seller believes dependable.

7. **Title and Risk of Loss.** Title and risk of loss and responsibility for the products shall pass to Purchaser upon delivery as provided in Section 6 above.

8. **Taxes.** Unless otherwise indicated, sales prices do not include, and Purchaser is responsible for and agrees to pay (unless Purchaser shall provide Seller at the time an order is submitted with exemption certificate or other documents acceptable to taxing or custom authorities), all sales, use, value added, excise and all other federal, state or local or foreign taxes, import or customs fees and duties associated with an order, however designated, except for Seller's franchise taxes and taxes on Seller's net income. If applicable, a separate charge for taxes will be shown on Seller's invoice.

9. **Maintenance and Repairs.** So long as Seller retains a security interest in the Goods, Purchaser agrees to maintain the Goods in good repair and not to permit the same to be removed from its possession or to be attached, levied upon or assessed against, not to permit any lien, encumbrance or adverse claim of any kind to be made against the Goods and to pay all taxes and indebtedness of every kind levied or assessed against the Goods or in connection with this Agreement. If Purchaser fails to maintain the Goods or fails to do any of the other things required of it under this Agreement, then Seller may, at its option, pay or do the same, and any money so paid by Seller shall be added to the amount due Seller and shall be repayable to Seller by Purchaser immediately upon demand by Seller, together with interest as provided in Section 4 above.

10. **Returns.** No returns will be accepted without prior written authorization of the Seller. Returns are subject to a 30% restocking charge. Purchaser shall be responsible for the cost of freight to return products. Notwithstanding the foregoing, no returns are permitted with respect to custom design and fabricated equipment and furniture.

11. **LIMITED WARRANTY AND DISCLAIMER OF ADDITIONAL WARRANTY.** ALL GOODS AND SERVICES ARE SOLD BY SELLER "AS IS" AND SELLER SPECIFICALLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR USAGE OF TRADE. This

provision does not affect warranties that may be provided by the manufacturer of the Goods. If there is a manufacturer's warranty with respect to Goods acquired by Purchaser from Seller, Seller is not a party to it and such warranty is between the manufacturer and Purchaser.

12. **LIMITATION OF LIABILITY; EXCLUSION OF CONSEQUENTIAL DAMAGES.** SELLER'S TOTAL LIABILITY FOR ALL CLAIMS OF ANY KIND, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY OR OTHER BREACH OF CONTRACT, NEGLIGENCE AND STRICT LIABILITY IN TORT, FOR LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM GOODS BY SELLER, OR THE PURCHASE USE OR PERFORMANCE OF THE GOODS SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID FOR SUCH GOODS. IN ADDITION, IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR THIRD PARTIES FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OR PROFITS OR REVENUE, LOSS OF USE OF THE GOODS, COST OF CAPITAL OR CLAIMS BY PURCHASER, PURCHASER'S CUSTOMERS OR OTHER THIRD PARTIES FOR DAMAGES RESULTING FROM PROPERTY DAMAGES OR PERSONAL INJURY. No liability whatever shall attach to Seller if Seller has not received complete payment for Goods or services provided by Seller. The failure of any of the Goods purchased by the Purchaser to fulfill any applicable warranty shall not affect the liability of Purchaser to Seller with respect to any such Goods or obligation of Purchaser to Seller. Seller shall make commercially reasonable efforts to assist Purchaser in obtaining proper adjustments under any applicable manufacturer's warranty. The foregoing is intended as a complete allocation of the risks between the parties. Because the bargain struck and the price paid reflect such allocation this limitation upon remedies will not have failed of its essential purpose. Some states do not allow the exclusion or limitation of incidental or consequential damages.

13. **Default.** If Purchaser fails to pay when due any amounts owing Seller, or to perform any other obligation to Seller hereunder or otherwise, or if Purchaser admits in writing its inability to pay its debts generally as they become due or if Purchaser becomes insolvent, makes an assignment or liquidation proceedings, or actual or constructive rejection by a bankruptcy trustee, or if there shall be instituted by or against Purchaser any proceeding for the appointment of a receiver for any Purchaser's property, or if Seller reasonably believes that Purchaser is unable to meet its debts as they become due, then Seller may, in addition to all other rights, declare any amounts due Seller to be immediately due and payable. In addition, Seller may, upon notice to Purchaser at any time, terminate all of Seller's obligations under this or any other agreement with Purchaser.

14. **Waiver.** The failure of Seller to insist upon performance of any provision in this contract shall not be construed as waiving the provision and it shall remain in effect.

15. **Notices.** All notices required or permitted in this Agreement shall be in writing and sent by certified U.S. mail, postage prepaid, to Seller or Purchaser at the address stated on the face page of this contract or to the address as either party may from time to time advise in writing.

16. **Modification.** No modification or amendment of this Agreement shall be effective unless written on the Agreement and initialed by Seller's authorized representative or contained in separate writing signed by Purchaser and Seller's authorized representative. Other statements or actions by sales people or others shall not be valid unless and until so written and accepted as required.

17. **Attorney's Fees.** In any action or suit arising out of this Agreement, the losing party shall pay to the prevailing party reasonable attorney's fees and all other costs and expenses.

18. **Force Majeure.** Seller shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of nature, fire, flood, accident, riot, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late deliveries by suppliers or manufacturers or other difficulties which are beyond the control, and without the fault or gross negligence of Seller.

19. **Governmental Regulations.** Any order accepted by the Seller is at all times subject to Governmental proclamations, laws and regulations now or hereafter in effect, pertaining to priorities, allocations, prices and other such acts affecting this transaction or the production or sales by manufacturers of the products.

20. **Governing Law.** All sales will be governed by the laws of the state of Iowa, without regard to its conflict of law provisions. Purchaser consents and agrees to submit to the exclusive jurisdiction of the state and federal courts located in Linn County, the state of Iowa, concerning this sale, and all claims, questions or controversies arising out of this sale and these Terms and Conditions. Any claim brought against Seller by Purchaser must be brought within one year of the date of delivery as provided in Section 6.

21. **Severability.** These Terms and Conditions shall be deemed severable. In the event that any provision is determined to be unenforceable or invalid, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, and such determination shall not affect the validity and enforceability of any other remaining provisions.

22. **Miscellaneous.** These Terms and Conditions, together with terms and conditions set forth on the face page of the conditional sales contract or in the Seller's invoices to Purchaser (a) contain the entire agreement between Seller and Purchaser relating to this sale, and expressly supersede and replace any prior or contemporaneous agreements, whether written or oral, relating to said sale, including any terms and conditions on any of Purchaser's documents or purchase orders, (b) shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the parties. The paragraph headings contained herein are for the convenience of reference only and shall not be construed so as to affect the interpretation or construction of any substantive provision hereof.

Signature \_\_\_\_\_