

**PROFESSIONAL RESTAURANT SERVICES LLC**  
**GENERAL TERMS AND CONDITIONS OF SALE**  
(the “Terms and Conditions”)

**As of** \_\_\_\_\_ **(date)** \_\_\_\_\_

1. Parties. “Seller” means Professional Restaurant Services LLC, a Michigan limited liability company. “Buyer” means the entity or person listed as the party to whom an applicable invoice or Order is directed, and any such person or entity accepting Equipment under such an invoice.

2. General Terms and Conditions.

(a) These Terms and Conditions apply to all sales of equipment, parts, supplies, materials or other personal property (individually and collectively, “Equipment”) from Seller to Buyer. All proposals, quotes, orders, work orders, forms, documents, invoices, correspondence and communications from an authorized representative of Seller to Buyer regarding the sale of any Equipment (collectively, an “Order”), regardless of how submitted, transmitted, presented, provided or delivered, including by e-mail and/or electronically, are subject to and governed by these Terms and Conditions in all respects and these Terms and Conditions are incorporated by reference into same.

(b) Notwithstanding Section 2(a) above to the contrary, if there is an Order then in effect, then the Order shall govern and control but only for those matters covered or addressed in the Order; otherwise, these Terms and Conditions shall govern and control all other matters not covered or addressed in the Order. If any terms in the Order conflict with these Terms and Conditions, then the Order shall govern and control such terms. On the other hand, if there is no Order, these Terms and Conditions shall govern and control in all respects.

(c) Any portal, mobile software application, link, hyperlink, website, proposal, request for quote, order, purchase order, work order, form, document, correspondence and/or communication from Buyer to Seller or used or maintained by Buyer, regardless of how initiated, submitted, transmitted, presented, provided or delivered, including, but not limited to, any other party’s general terms and conditions of purchase (or those of Buyer), are in each instance, expressly disclaimed and rejected by Seller, are not binding on Seller, are null, void and of no effect whatsoever and may not be used or construed to modify these Terms and Conditions whatsoever even if Seller has or is deemed to have accepted or acknowledged receipt of same unintentionally. No changes or new, additional, inconsistent or different terms or conditions will modify or change these Terms and Conditions unless in an Order.

(d) No Order shall be deemed final until Seller shall have placed an order for the Equipment from its suppliers. Seller has the absolute right in its sole discretion to require that Buyer pay for the Equipment in full and/or establish any credit terms it determines appropriate, notwithstanding any other payment terms for the Equipment to the contrary, prior to any delivery or scheduled delivery of the Equipment to Buyer. Any order that is final shall be fully binding on Buyer and may not be rescinded, added to, subtracted from, altered, amended, changed, or cancelled, in any manner whatsoever without the express written consent of Seller.

3. Lead Times/Delivery. Delivery lead times provided are only estimates, are not guaranteed by Seller, and are subject to change based on market conditions, market dynamics, market volatility, factory schedules, production levels, supply chain issues, raw material shortages, component parts shortages, shipping containers shortages, labor force issues, transportation availability, seasonality, acts of war, acts of God, and other factors beyond the control of Seller including, but not limited to, any force majeure events set forth in Section 25 below. Seller does not assume any liability, and shall have no liability, for failure to

meet any delivery date proposed by Seller or Buyer. If delivery of the Equipment is rescheduled by Buyer, Buyer shall pay to Seller all fees, costs and expenses incurred by Seller as a result of the changed delivery date. Buyer shall pay for all costs of freight and shipping unless otherwise set forth in an Order.

4. Payment Terms. These payments terms will be contained in an Order, subject to Section 2(d) above. Any delays in jobsite readiness do not and will not modify, alter, extend or otherwise affect the payment terms or payment schedules, including any installment payments (if any), between Seller and Buyer with respect to the Equipment. For avoidance of doubt, any delays to Buyer's construction schedule or installation date will not affect the timing of any payments.

5. Price Quotes and Changes. Due to instabilities market conditions, market dynamics, market volatility, factory schedules, production levels, supply chain issues, raw material shortages, component parts shortages, shipping containers shortages, labor force issues, transportation availability, seasonality, acts of war, acts of God, and other factors beyond the control of Seller including, but not limited to, any force majeure events set forth herein, Seller is not able to maintain pricing beyond the earlier of: (a) the date specified in any Order relating to the Equipment; or (b) fourteen (14) days from the date of any Order relating to the Equipment; or (c) manufacturer published price increases; or (d) changes necessitated by a job walk, site inspection and/or site condition as determined by Seller in its sole discretion. In addition, Seller reserves the right to make any corrections to prices quoted due to clerical errors or errors of omission. In the event of any specific requirements (including without limitation any design, specification, ordered quantity, or shipment changes) representing a price increase, Buyer will be responsible for payment of same.

6. Pricing Confidentiality. Proposals, quotes, invoices and pricing terms are negotiated and may be unique to Buyer, and, therefore, except as otherwise provided by law, Buyer agrees to keep confidential all pricing proposals, quotes, invoices and pricing terms received from Seller. Buyer shall not use, disseminate or disclose, directly or indirectly, this confidential pricing information in furtherance of its business, or the business of anyone else, whether or not in competition with Seller.

7. Acceptance of Equipment; Waiver of Claims. Upon delivery of the Equipment, Buyer shall have the obligation to fully inspect the Equipment, and unless an objection is noted and delivered to Seller in writing at the time of delivery, any claim that the Equipment is defective, not matching required specifications, or any other claim regarding, connected with, or related the Equipment shall be irrevocably and forever waived.

8. Warehousing. In the event that the jobsite is not ready for installation of the Equipment, Buyer shall nonetheless be deemed to have accepted delivery without objection (unless a written objection is provided, as set forth in section 7 above) even though Buyer is not able to take physical delivery of the Equipment. Under such conditions, Seller may, at its option, agree to warehouse the Equipment at Buyer's sole cost and expense (including, without limitation, all costs of delay, carriage, transportation, insurance, handling or any other cost) beginning on the initial delivery date. Any Equipment that is warehoused for more than thirty (30) days beyond the initial delivery date will be subject to monthly storage charges to be determined by Seller on an item by item basis, and Seller shall be entitled to a reasonable mark up of all such costs. Any Equipment that is warehoused by Seller regardless of the length of time will also be subject to a redelivery fee from the warehouse to the jobsite. Such monthly storage charges, as well as the redelivery fee, are payable by Buyer to Seller in full before the Equipment is released from the warehouse. Such monthly storage fees are deemed earned by Seller on the first day of each 30-day cycle (after the initial 30 day period) and will not be prorated.

9. Freight or Shipping Charges. Freight or shipping charges provided in any Order for the Equipment are drop-ship estimates only and will be finally calculated upon receipt of manufacturer's invoice(s). Buyer shall be responsible for payment of all such freight or shipping charges.

10. Changes. Any changes to any order for Equipment will result in change fees and charges to be determined on an item by item basis and Buyer shall be responsible for the payment of same in addition to any price increases for the Equipment.

11. Default. A "Default" shall exist by Buyer upon the happening of any one or more of the following: (a) Buyer does not make payment in full if required by Seller at the time of the acceptance of any Authorized Seller Writing, or (b) Buyer does not pay any invoice in full in accordance with its terms upon receipt, or (c) Buyer does not pay any invoice in full in accordance with its terms (if other than upon receipt), or (d) Buyer does not make any installment payment or balloon payment or down payment under any invoice in full in accordance with its terms upon receipt, or (e) Buyer does not make payment in full for the Equipment if required by Seller under Section 2(d) above, or (f) Buyer breaches the terms of any Order, or (g) Buyer's breach of these Terms and Conditions, or (h) any inaccuracy of any representations or warranties made by Buyer under these Terms and Conditions. In the event of a Default by Buyer, then the total amount owing by Buyer for the Equipment, less any payments made, shall automatically accelerate and become immediately due and payable without any demand or notice, and Seller shall immediately be entitled to exercise all rights and remedies, take all actions and initiate all proceedings available to it to collect the indebtedness owing to it, whether under these Terms and Conditions and/or any Order, whether at law and/or in equity, including, but not limited to, the exercise of all rights and claims under its purchase money security interest ("PMSI") in and to the Equipment and the proceeds thereof, the exercise of all of its rights and claims under its lien against real property where the Equipment has been installed, and the collection of Service Charges (as defined below), and Attorney's Fees and Costs (as defined below), which shall be added to and become part of the indebtedness owing to Seller by Buyer and are immediately due and payable. Seller reserves the right to claim any and all lien rights whether provided by the PMSI or any other statute, including the Michigan Construction Lien Act, or similar applicable law.

12. Service Charge. In the event of a Default by Buyer, beginning from the date of such Default, Buyer shall be responsible for payment to Seller a service charge equal to 1.5% per month (18% annually) on the unpaid indebtedness owing to Seller (collectively, "Service Charges").

13. Attorney's Fees and Costs. In the event of a Default by Buyer, beginning from the date of such Default, and in addition to the Service Charges, Buyer shall be responsible for payment to Seller of all fees, costs and expenses incurred by Seller in connection with its collection efforts against Buyer, regardless of whether any action, suit or proceeding is brought or initiated, including all attorney's fees, costs and expenses of Seller (collectively, the "Attorney's Fees and Costs").

14. Risk of Loss. Unless otherwise agreed to in an Order, risk of loss of the Equipment shall pass to Buyer at the time the Equipment is tendered to any transportation carrier for shipment to Buyer. Seller does not assume any, and shall have no, liability or obligation to Buyer or otherwise for loss, damage or other casualty to the Equipment while in transit to Buyer.

15. PMSI. Buyer hereby grants to the Seller a purchase money security interest in and to the Equipment to secure payment of any indebtedness owing by Buyer to Seller with respect to the purchase of the Equipment, including any and all applicable taxes, and accrued but unpaid Service Charges and Attorney's Fees and Costs. Buyer authorizes Seller to file financing statements and any amendments and continuation statements to perfect and maintain Seller's PMSI in and to the Equipment including all accessions, parts, additions, attachments, replacements and substitutions, now or hereafter affixed or used in connection with the Equipment and all proceeds (cash and non-cash) and products of any of the Equipment, including,

without limitation, insurance proceeds. Until the Equipment has been paid for in full, Buyer agrees not to remove the Equipment from its premises, or sell, assign, dispose of or otherwise encumber the Equipment as collateral, or materially depreciate the value of the Equipment or otherwise waste the value of the Equipment, without the express prior written consent of Seller, which consent may be withheld, conditioned, or delayed in its sole and absolute unfettered discretion. Nothing shall preclude Seller's right to proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Buyer of the applicable covenants and terms of these Terms and Conditions and any Order.

16. Warranty. The Seller is the reseller, not the manufacturer, of the Equipment. Equipment may or may not have a manufacturer's warranty. Buyer's sole and exclusive warranty for the Equipment is that provided by the manufacturer (if any), unless otherwise specified in an Order. Seller does not authorize any person to assume or create for it any liability or obligation or liability in connection with the Equipment. SELLER MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE EQUIPMENT, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

17. Indemnification. Buyer shall indemnify, defend and hold Seller and its affiliates, directors, officers, shareholders, members, managers, employees, attorneys, representatives and agents (collectively, the "Seller Indemnified Parties") harmless from and against any and all claims, causes of action, proceedings, damages, demands, losses, liabilities, obligations, injuries, costs, fees and expenses, including attorney's fees and costs, that are asserted against and/or incurred by Seller Indemnified Parties, or any one or more of them, in any way arising out of or attributable to (a) a Default by Buyer, or (b) the Equipment, or (c) Buyer's use or modification of the Equipment, or (d) any third party claims relating to the Equipment. The Seller Indemnified Parties (other than Seller since it is a direct beneficiary) are intended third-party beneficiaries of these Term and Conditions and are entitled to enforce the provisions hereof.

18. No Special, Consequential or Other Damages. IN NO EVENT SHALL SELLER AND ITS AFFILIATES, DIRECTORS, OFFICERS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, ATTORNEYS, REPRESENTATIVES OR AGENTS BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY, PUNITIVE OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO, FOR LOSS OF BUSINESS, HARM TO BUSINESS, LOSS OF REVENUES, LOSS OF PROFITS OR BUSINESS INTERRUPTION, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHER THEORIES OF LAW, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT, IN ANY WAY ARISING FROM RELATING TO OR IN CONNECTION WITH THESE TERMS AND CONDITIONS AND ALL MATTERS RELATING TO THE EQUIPMENT AND ANY ORDER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

19. Limitation of Liability. THE TOTAL LIABILITY OF SELLER TO BUYER FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, OTHER THAN SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, SHALL NOT EXCEED THE LESSER OF TEN THOUSAND DOLLARS (\$10,000) OR THE TOTAL FEES PAID BY BUYER FOR THE EQUIPMENT.

20. Force Majeure. Notwithstanding any other provisions in these Terms and Conditions to the contrary, under no circumstances shall Seller be liable or otherwise responsible to Buyer for any failure or delays in manufacturing and/or shipment or delivery of the Equipment or services relating to the installation of the Equipment resulting from any cause beyond Seller's reasonable control, including, but not limited

to, provisions of law or governmental rules, orders or regulations, epidemic, pandemic, COVID-19 and its variants, any other virus and its variants, accident, explosion, fire, windstorm, flood or other casualty, acts of war, acts of God, strike, lockout or other labor difficulty, riot, war (whether declared or not), terrorism, bioterrorism, insurrection, raw materials shortages or technical failure.

21. Non-Solicitation. Buyer shall not directly or indirectly recruit or solicit any person who is employed by Seller or its affiliates, or induce or influence or attempt to induce or influence, or take any action which is intended to induce or influence, any employee of to terminate his or her employment with, or otherwise cease his or her relationship with, Seller or its affiliates, or interfere in any manner with the contractual or employment relationship between Seller or its affiliates and any employee, consultant, advisor, contractor, agent or representative of same.

22. Assignment. Buyer cannot assign its rights and obligations to buy the Equipment, or its rights and obligations under these Terms and Conditions, without the prior written consent of Seller, which consent may be withheld in Seller's sole and absolute discretion. Seller may assign its rights and obligations to sell the Equipment, or its rights and obligations under these Terms and Conditions, to any affiliate of Seller, without Buyer's consent or notice of any kind.

23. Disputes/Governing Law/Applicable Venue/Waiver of Jury Trial. Buyer shall make no set-off, retention, or other deduction from amounts to be paid to Seller for the Equipment without the express prior written consent of an authorized representative of Seller. These Term and Conditions, and all matters relating to the Equipment and any Order, shall be governed by and construed in accordance with the laws of the State of Michigan without regard to principles of conflicts of laws. All actions, suits or proceedings arising in connection with these Term and Conditions, and all matters relating to the Equipment and any Order, shall be brought exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in or for Oakland County, Michigan. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, these Term and Conditions, and all matters relating to the Equipment and any Order, in any jurisdiction other than that specified in this section. Buyer and Seller waive any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section. SELLER AND BUYER EACH IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS AND ALL MATTERS RELATING TO THE EQUIPMENT AND ANY ORDER WITH RESPECT THERETO.

24. Buyer Authorized Signatory. Buyer represents and warrants to Seller that: (a) it has reviewed, fully understands, acknowledges, accepts and agrees to be bound by these Terms and Conditions in all respects; (b) the person signing these Terms and Conditions on behalf of Buyer, including any Orders, is an authorized signatory for Buyer and is able to execute and bind Buyer to same; (c) no further approvals, actions or ratifications are needed for the full enforceability of these Terms and Conditions, and all matters relating to the Equipment and any Orders; and d) Buyer is financially solvent and able to proceed with the purchase(s) of the Equipment by and between Seller and Seller in accordance with these Terms and Conditions and any Order.

25. Amendment. No salesperson, employee, agent or other representative of Seller is permitted or otherwise authorized to make any verbal contract, promise, writing or agreement that in any way amends, modifies or otherwise conflicts with these Terms and Conditions unless in an Order; otherwise it shall be null, void and of no effect whatsoever and may not be used or construed to modify these Terms and Conditions which shall govern and control in all respects. Seller reserves the right to change these Terms and Conditions at any time, for any reason, and without any notice to any Buyer. Nevertheless, the Terms and Conditions in effect at the time of an Order shall continue to govern for that Order unless the Buyer

and Seller agree otherwise in writing, or as otherwise provided herein (including, without limitation, if alternative terms appear in an Order).