



**ALL QUOTATIONS ARE MADE AND ALL ORDERS ARE ACCEPTED BY  
EVERYTHING ICE, INC. ARE SUBJECT ONLY TO THESE TERMS AND CONDITIONS.**

## **1) MODIFICATION OF SALES TERMS**

Any Terms and Conditions contained in any purchase order or other form of communications from EVERYTHING ICE customers which are additional to or different from these Terms and Conditions shall be deemed rejected by EVERYTHING ICE unless expressly accepted in writing by EVERYTHING ICE. No modification, amendment, waiver, or other change of any of these Terms and Conditions shall be binding on EVERYTHING ICE unless expressly accepted in writing by EVERYTHING ICE authorized officers.

## **2) ACCEPTANCE OF ORDERS**

Acceptance by EVERYTHING ICE of Buyer's purchase order (s) is expressly conditioned upon Buyer's assent to these Terms and Conditions. Buyer will be deemed to have assented to such Terms and Conditions unless EVERYTHING ICE received written notice on any objections within fifteen (15) days after Buyer's receipt of this form and, in all events, prior to any delivery by EVERYTHING ICE of Buyer's order.

## **3) QUOTATIONS**

Quotations by EVERYTHING ICE shall be deemed to be offers by EVERYTHING ICE to sell the equipment described therein subject to these Terms and Conditions, and acceptance of such offers is expressly limited to acceptance by Buyer of all these Terms and Conditions within thirty (30) days from the date of the quotation. Purchase orders submitted by Buyer for the equipment quoted by EVERYTHING ICE shall be subject to and will be deemed to constitute acceptance of these Terms and Conditions. All purchase orders will be subject to approval by EVERYTHING ICE.

## **4) PRICES/PRICE CHANGES**

All prices are F.O.B. shipping point and are subject to change without notice. The prices on accepted orders and covering Seller's manufactured materials are firm for a period of six (6) months from date of acceptance. With respect to those items not of Seller's manufacture on which firm prices have not been obtained, Seller will pass on the same escalation provisions as are made a part of Seller's purchase order. In the event of a change in EVERYTHING ICE prices, the price for equipment not shipped will be the price in effect on the date of shipment.

## **5) TAXES**

In addition to any prices, Buyer shall pay the amount of any present or future manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty custom, inspection or testing fee, or any other tax fee or charge of the nature whatsoever imposed by any government authority, on or measured by the transaction between EVERYTHING ICE and Buyer. In the event that EVERYTHING ICE is required to pay any such tax, fee, or charge, Buyer shall reimburse EVERYTHING ICE; therefore, or in lieu of such payment, Buyer shall provide EVERYTHING ICE, at the time the order is submitted, with an exemption certificate or other document acceptable to the authority imposing such tax, fee, or charge.

## **6) TERMS OF PAYMENT**

Terms of payment are cash in full no later than thirty (30) days from date of shipment, without discount. If Buyer defaults any payment when due, or in the event any voluntary or involuntary bankruptcy or insolvency proceedings involving Buyer are initiated by or against Buyer, then the whole contract price shall immediately become due and payable upon demand, or EVERYTHING ICE, at its option without prejudice to its other lawful remedies, may defer delivery or cancel this contract.

## **7) DELIVERY/RISK OF LOSS**

All sales are F.O.B. EVERYTHING ICE plant or other point of shipment designated by EVERYTHING ICE. Shipping dates are estimates which are not guaranteed and are based upon prompt receipt from Buyer of all necessary shipping and other information. EVERYTHING ICE reserves the right to make delivery in installments, all installments to be separately invoiced and paid for by Buyer when due per invoice, without regard to subsequent deliveries. Upon failure to make prompt payments, interest shall be added to any payment due at the highest rate for which the parties may contract. Delivery of equipment to a commercial carrier at EVERYTHING ICE plant or other loading points shall constitute delivery to Buyer, and any risk of loss and further cost and responsibility thereafter for claims, delivery, loss or damage, including if applicable, placement and storage, shall be borne by Buyer. **When equipment is delivered by EVERYTHING ICE' truck, unloading at Buyer's dock shall constitute delivery to Buyer.** Claims for shortages or other errors in delivery must be made in writing to EVERYTHING ICE within ten (10) days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and waiver of all such claims by Buyer. Claims for loss or damage to equipment in transit by common carrier must be made to the carrier and not to EVERYTHING ICE RINK SUPPLY, INC.

## **8) EXCUSABLE DELAYS/FORCE MAJEURE**

EVERYTHING ICE shall not be liable for any loss or damage as a result of EVERYTHING ICE delay in or failure of installation due to (i) any cause beyond EVERYTHING ICE reasonable control, (ii) an act of God, act of the Buyer, embargo or other governmental act, authority, regulation or request, fire, theft, accident, strike, slowdown or other labor disturbance, war, riot, delay in transportation, or (iii) inability to obtain necessary labor, materials, components, or facilities. If shipping or progress of the work is delayed or interrupted by Buyer, directly or indirectly, Buyer shall pay EVERYTHING ICE for all additional charges resulting therefrom.

## **9) STORAGE**

If the equipment is not shipped within thirty (30) days after notification has been made to Buyer that it is ready for shipping, for any reason beyond EVERYTHING ICE' control, including Buyer's failure to give shipping instructions, EVERYTHING ICE may store the equipment at Buyer's risk and expense in a warehouse or upon EVERYTHING ICE premises, and Buyer shall pay all handling, transportation, and storage costs at the prevailing-commercial rates promptly following EVERYTHING ICE' submission of invoices for such costs.

## **10) WARRANTIES**

EVERYTHING ICE warrants its equipment to be free from defects in materials and workmanship and to conform to EVERYTHING ICE' written specifications for a period of twelve (12) months from date of first use or eighteen (18) months from date of shipment, whichever period shall expire first. **Warranty Remedies** - If prior to expiration of the foregoing warranty period, any of such equipment shall be proved, to EVERYTHING ICE' satisfaction, to be defective or non-conforming, EVERYTHING ICE will repair or replace such defective equipment or components thereof, F.O.B. EVERYTHING ICE plant or other destination designated by EVERYTHING ICE. Buyer's exclusive remedy and EVERYTHING ICE' sole obligation under this warranty shall be limited to such repair or replacement, F.O.B. EVERYTHING ICE factory or other destination designated by EVERYTHING ICE and shall be conditioned upon EVERYTHING ICE receiving written notice of any defect within ten (10) days after it was discovered or by reasonable care should have been discovered. **Inclusions** - This warranty does not (a) cover shipping expenses to and from EVERYTHING ICE factory or other destination designated by EVERYTHING ICE for repair or replacement of defective parts nor does it cover the costs of removing defective or reinstalling parts or replaced equipment, (b) apply and shall be void with respect to equipment operated in excess of rated capacity. This warranty does not cover ordinary wear and tear, corrosion, abuse, misuse, overloading, alteration in equipment, or materials not of Seller's manufacture. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES (EXCEPT TITLE), INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Any description of the equipment, whether in writing or made orally by EVERYTHING ICE or EVERYTHING ICE' agents, specifications, samples, models, bulletins, drawings, diagrams, engineering sheets, or similar materials used in connection with Buyer's order are for the sole purpose of identifying the equipment and shall not be construed as an express warranty. Any suggestions by EVERYTHING ICE, or EVERYTHING ICE' agents regarding use, application, or suitability of the equipment shall not be construed as an express warranty unless confirmed to be such in writing by a EVERYTHING ICE authorized officer.

## **11) LIMITATIONS OF LIABILITY - CONSEQUENTIAL DAMAGES**

Consequential Damage Disclaimer - EVERYTHING ICE liability, with respect to equipment proved to its satisfaction to be defective within the warranty period, shall be limited to repair, replacement, or refund as provided in Section 10 hereof, and in no event shall EVERYTHING ICE' liability exceed the purchase price of the equipment involved. EVERYTHING ICE shall not be subject to any other obligations or liabilities, whether arising out of breach of contract, warranty, tort (including negligence) or other theories of law, with respect to equipment sold or services rendered by EVERYTHING ICE or any undertakings, acts, or omissions related thereto. Without limiting the generality of the foregoing, EVERYTHING ICE specifically disclaims any liability for property or personal injury damages, special or punitive damages, damages for lost profits or revenues, loss of use of equipment or any associated equipment, cost of capital, cost of substitute products, facilities or services, downtime, shutdown, or slowdown costs, or for any other types of economic loss, and for claims or Buyer's claim for any such damages.

## **12) INDEMNITY AND HOLD HARMLESS**

In further consideration of the purchase of an order placed with EVERYTHING ICE, Buyer hereby agrees to indemnify and hold harmless EVERYTHING ICE, its agents and representatives, from and against all claims, demands, or causes, including claims for contribution or indemnity, and the reasonable and necessary costs, including attorneys' fees incurred in the defense of any such claims, which buyer or any other person or entity in the chain of commerce has or may have arising out of or resulting from the purchase and use of products manufactured and/or sold by EVERYTHING ICE.

## **13) PATENTS**

Seller assumes no liability as to possible patent infringement by virtue of the use of a product in combination with other elements or structures, or the use of a product manufactured to Seller's specifications.

## **14) INSURANCE**

Until payment in full of the purchase price, Buyer shall maintain insurance covering all equipment sold by EVERYTHING ICE to Buyer in such amounts and against such risks as is customary by companies engaged in the same or similar business and similarly located, and shall upon EVERYTHING ICE request, furnish evidence of such insurance satisfactory to EVERYTHING ICE.

## **15) RETURN OF EQUIPMENT**

No equipment or part shall be returned to EVERYTHING ICE without written authorization and shipping instructions first having been obtained from EVERYTHING ICE.

## **16) ASSIGNMENT**

None of the Buyer's rights under any order shall be assigned by the Buyer to any other person, whether by operation of law or otherwise, without EVERYTHING ICE' prior written permission.

## **17) CANCELLATION**

No order submitted to EVERYTHING ICE may be cancelled by buyer without the prior written consent of EVERYTHING ICE, which consent will, at all times, be conditioned on Buyer's agreement to pay EVERYTHING ICE cancellation charge. For finished equipment which in EVERYTHING ICE' judgment is readily resalable to others, the cancellation charges shall be 15% of the invoice price of the equipment. For all other cancellations, the cancellation charge shall amount to all costs and expenses incurred by EVERYTHING ICE and arising out of or in connection with Buyer's order, net of recoverability, but in no event less than 15% of the invoice price of the equipment or more than the invoice price.

## **18) GENERAL**

Governing Law - These Terms and Conditions and the contract of sale between EVERYTHING ICE and the Buyer shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania.

Salvatory Clause - The invalidity, in whole or part, of any of the provisions of these Terms and Conditions shall not affect the enforceability of any of the other provisions thereof.