

SALE TERMS AND CONDITIONS

MARANA FORNI COMMERCIAL PIZZA OVENS

ABN: 67616311614

T: 1800 MARANA

(1800 627 262)

1. DEFINITIONS

1.1 In this document the following words shall have the following meanings:

- (a) "Contract" means this contract constituted by the Contract Details and these Terms and Conditions
- (b) "Contract Details" means the contract details attached to these Terms and Conditions.
- (c) "Customer" means the organisation or person named as the Customer in the Contract Details
- (d) "Goods" means the pizza oven and/or other items listed in the Contract Details;
- (e) "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable and whether registered or unregistered;
- (f) "Marana Forni" means Marana Forni Australia Pty Ltd ACN 616 311 614 (the importer/distributor)
- (g) "M F Italy" means Marana Forni s.r.l. of Via Turbina 98, Chievo, Italy (the manufacturer)
- (h) "SUNMIX" means Sunmix s.r.l. of Via Lago di Vico, 4, Schio, Italy (the manufacturer)
- (i) "VITELLA" means Vitella by Waico srl of Via dell'artigianato, Marano Vicentino, (the manufacturer)
- (j) "SIGMA" means SIGMA, Via Artiginanto of 85, Torbole Casaglia, Italy, (the manufacturer)
- (k) "LILLY CODROIPO" means Lilly Codroipo of Via Lino Zanussi, 7, Codroipo, Italy (the manufacturer)
- (l) Terms and Conditions means these terms and conditions.
- (m) "TPP" means the Total Purchase Price amount referred to in the Contract Details.

2. GENERAL

2.1 These Terms and Conditions together with the attached Contract Details form the Contract for sale of the Goods by Marana Forni to the Customer, to the exclusion of all other terms and conditions referred to, offered or relied on by the Customer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Customer, unless the Customer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by Marana Forni in writing.

2.2 Any variation to these Terms and Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Marana Forni.

2.3 The Contract commences on:

- (a) the date when this document has been executed by the Customer and provided to Marana Forni; or
- (b) if this document has been provided to the Customer but not executed, and the Customer pays the deposit and orders the Goods, then the Contract commences on receipt of the deposit by Marana Forni.

3. PRICE AND PAYMENT

3.1 The customer shall pay the TPP as follows:

- (a) A deposit of 50% of the TPP is payable when this Contract is signed, unless a due date for payment of the deposit is stated in the Invoice Details.
- (b) On receipt of the deposit Marana Forni will order and outfit the Goods. The Customer acknowledges that the time taken for this may be dependent on outside factors not under Marana Forni's control, such as supply of items or parts.
- (c) The Customer may terminate the Contract after the deposit is paid but before the balance of the TPP is paid. In such case Marana Forni shall refund the Deposit less 20% for costs of administration and loss of order.
- (d) Other than as stated in clause 3.1(c), the deposit is not refundable for a period of 180 days. Thereafter, if the Goods have not been supplied, the Customer may terminate the Contract by notice and receive a full refund of the deposit.
- (e) Marana Forni will notify the Customer when the Goods are ready for delivery. The Customer will then pay the balance of the TPP within 7 days. If not paid within that time, Marana Forni will be entitled to interest under clause 3.5 hereof, and/or to terminate the Contract.

(f) On receipt of the balance (50%) of the TPP, Marana Forni will carry out the following as provided for in the Contract Details: (i) deliver and install the Goods within 30 days, or (ii) notify the manufacturer that the Goods may be collected by the Customer's agent, or (iii) notify the Customer that the Goods may be collected by its agent from Marana Forni's premises.

3.2 The Customer shall not be entitled to set off against or deduct from the TPP or any part thereof any sums owed or claimed to be owed to Marana Forni by the Customer.

3.3 Credit terms may be offered subject to satisfactory credit vetting of the Customer by Marana Forni. Whether an offer of credit is made, and the terms thereof, is in the sole discretion of Marana Forni.

3.4 Marana Forni shall be entitled to charge interest on any amount from the due date until the date of payment at a rate of 2 per cent per annum above the small business loan rate of the Westpac Banking Corporation, compounded daily if applicable.

3.5 If payment of the TPP or any part thereof is not made by the due date, Marana Forni shall be entitled to:

- (a) require payment in advance of delivery in relation to any Goods not previously delivered;
- (b) refuse to make delivery of any undelivered Goods without incurring any liability whatever to the Customer for non-delivery or any delay in delivery.

4. DESCRIPTION

4.1 Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Customer hereby affirms that it does not in any way rely on any description when entering into the contract.

4.2 Marana Forni may, at its discretion, supply substitute Goods of a similar or superior description, application, specification or otherwise, at the quoted Price or any other Price.

5. SAMPLE

5.1 Where a sample of the Goods is shown to and inspected by the Customer, the parties hereto accept that such a sample is representative in nature and the bulk of the order may differ slightly as a result of the manufacturing process.

6. DELIVERY

6.1 The following shall apply where Marana Forni delivers the Goods to the Customer:

- a) Marana Forni will notify the Customer of the expected date and time of delivery. The Customer is responsible to provide site access and suitable conditions at the expected time so as to allow delivery and installation to take place. If delivery cannot take place due to the Customer's default, Marana Forni is entitled to charge all reasonable costs of delay and, if delay exceeds 3 hours, to cancel the delivery and notify the customer of a new date and time of delivery.
- b) Without limitation to its obligations under clause 6.1(a), Customer acknowledges that any delivery date, either stated or implied, is an estimation only, subject to availability of the Goods, and Marana Forni shall not be liable for any loss or damage arising from delayed or changed delivery date and time of the Goods. Marana Forni in its sole discretion may change the date and time of delivery, including after a specified date and time of delivery has passed.
- c) In the event of delayed delivery, except under circumstances beyond Marana Forni's control (maritime transportation delays or any related maritime issues under Maritime Law), Marana Forni shall lend the Customer Goods of similar size and nature free of charge until the delivery of the original Goods has been satisfied.
- d) If the Customer seeks a change of delivery date or any other change to the details of delivery, it must give Marana Forni at least 7 days' notice of such request;
- e) The Customer will be liable for and agrees to pay all additional delivery costs including but not limited to those due to: (i) site conditions which make delivery difficult such as steep ramps, narrow stairs, or more than five stairs; (ii) remote delivery which require Marana Forni's technicians/contractors to be paid additional expenses including but not limited to meals or accommodation. Marana Forni will invoice the Customer for such costs, which will be payable within 7 days.
- f) Marana Forni will install the Marana Forni pizza oven and connect it to power, whereupon installation is deemed to be complete.
- g) Marana Forni will not carry out or dismantle any building work, nor any work in connection with flues. The design, operation and suitability of chimneys are entirely the responsibility of the Customer and Marana Forni accepts no liability in relation to them.
- h) The Customer acknowledges that the Marana Forni pizza oven cannot be heated until at least 12 hours after installation, or such longer period as stated in the Contract details. Additional visits by Marana Forni's technicians/contractors to assist with heating or other operations of an oven are not included in the TPP, unless expressly stated in the Contract Details.

- i) The Customer is responsible for all aspects of fire safety on and around the oven, including but not limited to ensuring that the oven covering is made from appropriate fire proof material should the Customer wish to customize the covering and thus not purchase a covering from Marana Forni as stated in the Contract Details.
- j) The Customer is responsible for ensuring that the floor on which the oven rests is appropriate in all ways, including load-bearing capacity. The weight of the oven is stated in the Contract Details.
- k) All coverings and embellishments for the oven are the responsibility of the Customer unless expressly stated in the Contract Details.

6.2 If the parties agree in writing that delivery of the Goods will be made direct to the Customer from M F Italy, then the following shall apply:

- a) The Customer will make arrangements direct with M F Italy for delivery on an Ex Works (EXW Incoterms 2010) basis, or as otherwise agreed between the Customer and M F Italy.
- b) Marana Forni will have no responsibility or liability of any kind in connection with (i) delivery arrangements made with M F Italy; (ii) installation of the oven, unless expressly agreed in the Contract Details.
- c) The terms of the freight contract between Customer and M F Italy will take priority over these Terms and Conditions in all applicable respect, e.g. passing of risk, freight insurance, delivery, customs.

6.3 If the parties agree that the Customer will itself collect the Goods from Marana Forni, then Marana Forni will make the Goods available on an EXW Incoterms 2010 basis and shall have no obligation to install the Goods unless expressly provided in writing.

6.4 If Marana Forni is unable to deliver the Goods or the Goods are not collected because of actions or circumstances under the control of the Customer, then Marana Forni shall be entitled to place the Goods in storage until such times as delivery may be effected and the Customer shall be liable for any expense associated with such storage at \$200.00 +gst per week or part of.

6.5 Any damages, shortages, over-deliveries or duplicated orders should be reported to Marana Forni within 14 days of signed receipt to enable replacement or refund.

7. RISK

7.1 Risk in the Goods shall pass to the Customer upon receipt of the goods.

7.2 Where the Customer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

8. TITLE

8.1 Title in the Goods shall not pass to the Customer and clause 13 shall apply until Marana Forni has been paid in full for the Goods.

9. RETURN OF UNUSED GOODS

9.1 Subject to clauses 10 and 11, all Goods are sold on a firm sale basis, i.e. Marana Forni will not take back any Goods not required or sold by the Customer, unless expressly agreed in writing by Marana Forni, in which case the following terms apply.

9.2 Any returns must be authorised by a representative of Marana Forni before any credit will be given.

9.3 Where Marana Forni agrees to accept the return of Goods that are not damaged the Customer will be responsible for the cost of carriage and will ensure that they are carefully packaged to avoid any damage in transit. Marana Forni will not be obliged to accept any Goods that are damaged in any way.

9.4 Credit of amounts due or paid in will only be given for Goods that are in saleable condition.

10. CONSUMER SALES

10.1 If the Customer is a Consumer within the meaning of section 3 of the Australian Consumer Law, then the following provisions shall apply:

- a) The Goods come with warranties and guarantees that cannot be excluded under the Australian Consumer Law (Consumer Guarantees).
- b) The Customer is entitled to a replacement or a refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer 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.
- c) Liability in relation to a consumer guarantee (other than a guarantee under sections 51, 52 or 53 of the Australian Consumer Law) in relation to goods other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption is limited to (a) the replacement of the goods or the supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or (d) the payment of the cost of having the goods repaired, at Marana Forni's discretion.

11. WARRANTIES

11.1 **Marana Forni Pizza Ovens** - Marana Forni warrants for a period of 12 months on electrical components and 5 years on concrete walls from the date of delivery that it will replace or repair the Goods or any part thereof found to be defective. This warranty does not apply to:

- a) Defects arising from failure to follow instructions for use or operation of the Goods, or from negligent or careless behaviour by the Customer, its servants or agents;
- b) Defects arising from failure to properly maintain the Goods, or their use by unqualified personnel;
- c) Defects arising from mains power issues including but not limited to insufficient capacity, surges or irregular voltage.
- d) Defect relating to items which should be replaced according to the maintenance requirements of the item, which may include switches, lamps, controls, exterior walls, glass, plastic, rubber, thermostats, pyroelectric and electrical parts.
- e) Defects arising as a result of delivery or installation not carried out by Marana Forni;
- f) All warranties and guarantees are excluded in relation to the Goods, save as specifically stated herein, or which by legislation cannot be excluded

11.2 SUNMIX - warrants for a period of 12 months on faulty parts, excludes electrical components and motors.

11.3 Vitella – warrants for a period of 12 months on faulty parts, excludes electrical components and motors.

11.4 SIGMA – warrants for a period of 12 months on faulty parts, excludes electrical components and motors.

11.5 LILLY CODROIPO – warrants for a period of 7 days against defects

12. GST

12.1 For the purposes of this Clause the following expressions shall have the following meanings:

- a) "GST" means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law
- b) GST LAW - means A New Tax System (Goods and Services Tax) Act 1999 (as amended) and all related ancillary legislation which provides for a broad based consumption tax on the supply of Goods and Services which becomes operative in respect of the provisions of this Contract.

12.2 If this Contract or any supply under or in respect of this Contract becomes subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Contract, the parties agree that the amount payable for any supply under or in respect of this Contract by any party shall be adjusted by the amount of the GST.

12.3 Each party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other party/ies to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Contract or in respect of any supply under this Contract.

12.4 As required by any applicable legislation, where identifiable cost savings are realised by virtue of the enactment of the GST LAW, those cost savings will be reflected in the calculations of the consideration under this Contract.

13. AGREEMENT TO CREATE PURCHASE MONEY SECURITY INTEREST IN UNPAID AMOUNTS AFTER DELIVERY

13.1 In this clause, "full purchase price" means the TPP and any other amounts which are payable as the price of the Goods.

13.2 Marana Forni claims a purchase money security interest ("PMSI"), as defined in the Personal Property Securities Act 2009 (Cth) or the Personal Property Securities Act 1999 (NZ) as may be applicable (in either case "the PPS Act") in the Goods including but not limited to pizza ovens, so as to secure payment of the full purchase price of such items as are delivered from time to time.

13.3 The Customer grants to Marana Forni a PMSI in the Goods and any proceeds of their sale to secure payment of the purchase price of the Goods delivered from time to time.

13.4 The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to Marana Forni to rank or to be subjected to priority to any other Personal Property Security Interest in favour of any other party.

13.5 The Customer agrees to take such further steps which may be required by Marana Forni to take additional or better security under the PPS Act over the Goods and the proceeds of their sale, or to maintain the ability to claim and realise the Security Interest, including its priority, pursuant to the PPS Act or by reason of the financing statement (in order to avoid any doubt, this obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the customer, any financier to the Customer, a lessor or landlord of the Customer or any third party having a claim or interest over land or a building in respect of which the Goods are located at present or at any time in the future).

13.6 The Customer agrees to provide to Marana Forni when requested all details of the location of the Goods.

14. LIMITATION OF LIABILITY

14.1 In the event of any breach of this Contract, or of any other liability in connection with this Contract, on the part of Marana Forni the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the TPP.

14.2 Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of Marana Forni for death or personal injury as a result of Marana Forni's negligence or that of its employees or agents.

14.3 Marana Forni shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Marana Forni of this Contract, or arising out of any other liability in connection with this Contract.

14.4 The provisions of this clause are to be read subject to clause 10 (Consumer Sales).

15. TERMINATION

15.1 Except as otherwise provided in these Terms and Conditions, if either party (the First Party) believes that the other party is in material breach of this Contract then the First Party must give notice to the other party setting out details of the breach and giving the other party a period of at least 14 days in which to remedy the breach, unless the breach is incapable of remedy or the requirement for remedy is urgent. If the other party does not remedy the breach within the period stated in the notice, the First Party may terminate the Contract by further notice with immediate effect.

15.2 Marana Forni may terminate this Contract with immediate effect if the Customer being a corporation goes into external administration under Chapter 5 of the Corporations Act 2001, or being a natural person takes any step under Part IX or X of the Bankruptcy Act 1966 or is subject to any steps taken under Part IV of the Bankruptcy Act 1966 or commits any Act of Bankruptcy, or being a person of any kind informs Marana Forni that it is unable to pay its debts as and when they fall due.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 All intellectual property in the Goods and any designs or drawings associated with them shall remain the absolute property of Marana Forni.

16.2 All Intellectual Property Rights produced from or arising as a result of the performance of this Contract shall, so far as not already vested, become the absolute property of Marana Forni, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in Marana Forni by the execution of appropriate instruments or the making of agreements with third parties.

17. FORCE MAJEURE

17.1 Marana Forni shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and in such case Marana Forni shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as Marana Forni considers unreasonable, it may, without liability on its part, terminate the contract by notice with immediate effect.

18. RELATIONSHIP OF PARTIES

18.1 Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

19. ENTIRE AGREEMENT

19.1 This Contract is the entire agreement between the parties in relation to the subject matter and replaces all previous representations or proposals not contained in this Contract.

20. ASSIGNMENT AND SUB-CONTRACTING

20.1 The Customer shall not assign or transfer the Contract nor any obligation or benefit under it without the prior written consent of Marana Forni.

21. WAIVER

21.1 The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

22. SEVERABILITY

22.1 If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

23. GOVERNING LAW AND JURISDICTION

23.1 This Contract shall be governed by and construed in accordance with the laws of the State of New South Wales and the parties hereby submit to the exclusive jurisdiction of the courts of that State.