



PITCO FRIALATOR, INC./MAGIKITCH'N INC.

TERMS AND CONDITIONS

- 1. Delivery.** Unless otherwise specified in the order acknowledgement, if this order covers multiple units, Seller shall not be required to deliver in any month more than the monthly pro data amount of the whole quantity covered by this contact in the event of failure of Buyer to take a pro rata quantity in any month. If Buyer fails to fulfill terms of purchase or payment under this contract, Seller may defer further shipments without notice until such default is made good, or may treat such default as a final refusal by buyer to accept further shipments hereunder.
- 2. Shipment.** The method, routing and agency of transportation shall be selected by Seller unless specified to the contrary on the face hereof. Seller reserves the right to ship freight collect.
- 3. Payment.** Unless otherwise specified herein, all accounts are payable in United States funds, free of exchange collection, or other charges. If Buyer fails to fulfill the terms of payment, or if Seller shall have any reasonable doubt at any time as to Buyer's financial responsibility, Seller may suspend production and/or decline to make shipment of delivery except upon receipt of cash or security satisfactory to Seller.
- 4. Force Majeure.** Seller shall not be liable for any delay due to fire, explosion, flood, accident, acts of God, strike, shortage in transportation, breakdown, compliance with or other action taken to carry out the intent or proposes of any laws or regulation, acts of any government authority or its agents, or any other causes or contingencies whether similar or dissimilar beyond Seller's reasonable control. Seller shall have such additional time for performance as may be reasonably necessary under the circumstances and may cancel, suspend or reduce affected deliveries, but the contract shall otherwise remain in force. Seller shall have the right to apportion its production among its customer in such manner as it may deem equitable.
- 5. Patents.** Seller will defend, at its own expense, any suit or legal proceeding against Buyer, and will pay any damages and costs awarded therein against Buyer, insofar as the same are based on a claim that any product furnished hereunder, except as excluded below, in itself constitutes an infringement of any United States patent, provided Buyer gives Seller prompt written notice of such infringement claim, the institution of such suit or proceeding, and all necessary authority, information and reasonable assistance to enable Seller to settle or defend the same at Seller's option. In case any said product is held in such suit to constitute an infringement and its use is enjoined, Seller at its own expense will either procure for Buyer the right to continue using said product, or modify same so that it becomes noninfringing, or replace it with noninfringing product, or remove the product and refund the purchase price paid by the Buyer. The foregoing states Seller's entire obligation and liability with respect to patent infringement claims. Seller does not assume any obligation and liability with respect to products furnished in accordance with particular designs, specifications, or instructions furnished by or expressly or implicitly prescribed by Buyer and not customarily followed by Seller in the course of its general business, and Buyer shall indemnify and hold harmless Seller from and against all loss cost, expense, damage, liability of any kind for or on account of any patented or unpatented inventions or trade secret which is embodied in any product furnished hereunder in compliance with any such designs, specifications, or instructions.
- 6. Proprietary Information.** The products covered by this contract and the accompanying drawings and other descriptive materials incorporate certain proprietary information of Seller. Seller hereby grants Buyer a non-transferable, non-exclusive, single use license for the use any such proprietary information contractors to the extent required in the installation, use and servicing of said product(s). Buyer shall safeguard all such proprietary information against unauthorized disclosure.

Entire Agreement. This contract which includes all terms, conditions, and provisions contained herein, constitutes a final, complete, and exclusive expression for the entire agreement between the parties with respect to the transaction or transactions covered hereby and cannot be supplemented, modified, discharged, extended or renewed, except by further agreement in writing signed by both parties. Any terms and conditions stated by Buyer which are in conflict with the terms and conditions stated herein are expressly waived, unless specific written notice of Buyer's objection to such terms, conditions, and provisions is received by Seller within fourteen (14) days after the Acknowledgement herein appearing.