



## **Terms and Conditions**

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR (THE "CUSTOMER'S") RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

The following terms and conditions shall apply to all orders by Customer for the purchase of parts, service and/or equipment from FBD Partnership, L.P. ("FBD"). By submitting a purchase order and/or by accepting delivery of the parts, service and/or equipment, Customer agrees to be bound by and accepts these terms and conditions (any invoice, order confirmation, or other acceptance document issued to Customer by FBD shall, by this reference, also be deemed to incorporate all of these terms and conditions). Any additional or different terms or conditions set forth in any such communication from the Customer are hereby objected to by FBD and will not be effective or binding unless assented to in a writing signed by an authorized FBD representative. If there is any inconsistency between this document and the terms of a purchase order, the terms and conditions of this document will prevail. FBD reserves the right to modify these Terms and Conditions at any time, in its sole discretion.

### **1. PARTS AND EQUIPMENT LIMITED WARRANTY**

**What is covered:** FBD warrants new equipment, sealed refrigeration systems (SRS), and replacement parts to be free from defects in material and workmanship under normal use and service, pursuant to the following schedule:

Replacement Parts: Ninety (90) days from date of original installation, or 180 days from date of shipment from a FBD facility; whichever occurs first.

Equipment Parts: One (1) year from date of original installation, or 15 months from date of shipment from a FBD facility; whichever occurs first.

Sealed Refrigeration System (SRS): For the following components of the SRS systems; compressor, condenser, evaporator and filter drier: five (5) years from date of original installation or 63 months from date of shipment from a FBD's facility, whichever occurs first. All other parts of the SRS: One (1) year from date of original installation, or 15 months from date of shipment from a FBD's facility, whichever occurs first.

FBD's obligation, hereunder, shall be limited to repairing or replacing any part, or part of said equipment or system which our examination discloses to be defective.

**What is excluded:** This warranty does not cover any parts or equipment that has been subjected to any accident, negligence, alteration, abuse or misuse, and additionally in the case of refrigeration and/or electrical systems, not subjected to high, low or fluctuating electrical voltage. The warranty does not apply to destruction or damage caused by alterations, using parts other than FBD authorized replacement parts, risks of transportation, damage by fire, flood, or acts of God. Moreover, the warranty does not apply to any damage caused by failure to install machines, parts or equipment in accordance with the applicable FBD manual(s); interruption of electrical power to the FBD machines, or failure to perform cleaning and/or maintenance in accordance with the FBD Service Manual. FBD's obligation does not provide for service calls from factory representatives or from any other agency and shall not include reimbursement for labor charges incident to removal of any parts or the reinstallation of the same.

**EXCEPT AS SPECIFICALLY SET FORTH HEREIN, FBD MAKES NO EXPRESS WARRANTIES AS TO ANY MATTER WHATSOEVER AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL FBD BE LIABLE OR OBLIGATED TO CUSTOMER OR TO ANY THIRD PARTY FOR INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF, OR IN ANY MANNER RELATED TO FBD PARTS, EQUIPMENT, OR SRS, OR ANY DELAY WITH RESPECT TO ITS DELIVERY. This written warranty encompasses the entire warranty extended by FBD, and supersedes all previous understandings and agreements between the parties, whether oral or written.**

Please see the full Warranty provisions and the Warranty Claims Procedures, which can be found at [www.fbdfrozen.com](http://www.fbdfrozen.com), and which are incorporated by reference as if set forth fully herein.

## 2. FREIGHT DAMAGE AND SHORTAGE.

**Freight Damage:** All FBD policies and procedures for freight shortages and damages as described herein are applicable to shipments made to our customers in the USA and CANADA. FBD utilizes two types of shipments:

1) FREIGHT ROUTING THIRD PARTY: Third party or collect shipments are F.O.B. Point San Antonio, Texas with the title (ownership) passing to the customer when signed for by the trucking company; or

2) FREIGHT ROUTING PREPAID: All prepaid and bill shipments are F.O.B. Point San Antonio, Texas. FBD will select freight carrier utilizing as direct as possible to the destination, minimizing bulk break distribution centers and interline carries. Only FBD preferred carriers will be used.

Any claims resulting from lost or damaged merchandise during third party freight routing are the customers' responsibility.

If timely reported, any shipment which is damaged during prepaid routing will be handled by FBD, including concealed damage found after receipt. The customer is required to report the damage within 7 days for all LTL shipments and within 1 day for all small package shipments (UPS, FEDEX, DHL). **IMPORTANT: If FBD is not notified within 7 days from time of receipt on LTL shipments or 1 days from time of receipt on small package shipments, responsibility for freight claims passes to the customer.**

**Freight Shortage:** Customer must immediately notify FBD Customer Service Department of a shortage within 7 days for all LTL shipments and within 1 day for all small package shipments (UPS, FEDEX, DHL). FBD shall not be responsible for shortages that are not timely reported.

Please see the full Freight Damage Policy and Freight Damage Claim Procedures, which can be found at [www.fbdfrozen.com](http://www.fbdfrozen.com), and which are incorporated by reference as if set forth fully herein.

## 3. PRICING AND PAYMENT TERMS.

FBD reserves the right to modify pricing and other terms and conditions applicable to the purchase of parts and equipment in its sole discretion upon reasonable notice to the Customer. To the extent that FBD furnishes pricing to the Customer via a quote, the quote shall not be considered a binding contract but in all other ways shall be subject to these terms and conditions. Payment of 100% of the invoice made by credit card is due prior to or at the time of shipment. Payment made by any other means is due within 30 days of the invoice. The following forms of payment are acceptable: AMEX, Visa, MasterCard, check by fax and/or wire/ACH payments. Customer shall notify FBD within 10 days of any disputed invoice but shall timely pay all other amounts not in dispute on such invoice and all other invoices. Customer expressly waives any right to assert an offset or counterclaim with respect to any amounts due under any invoice issued by FBD. Customer agrees to pay a late payment charge of 1.5% per month, or the maximum amount allowable by law, on all amount not paid in full when due, payable upon FBD's demand.

**4. TAXES.**

Prices are stated in U.S. Dollars and do not include any federal, state or local taxes, which are in addition to the purchase price and must be paid by the Customer. All foreign duties and taxes are the responsibility of the Customer. Unless Customer furnishes FBD with a tax exemption certificate, Customer will pay to FBD any tax on the goods sold, levied or based by any taxing-authority, whenever FBD must pay the tax for the Customer according to applicable law.

**5. RETURNS/CREDITS.**

Parts and equipment may be returned within 30 days and only with the prior approval of FBD in its sole discretion. Such approval may be conditioned upon Customer paying freight costs, restocking fees of up to 20%, and an allowance for FBD's overhead and profit. Parts and equipment returned without such approval, or with such approval but not delivered by Customer to FBD in saleable condition, will not be accepted by FBD and no credit will be issued to Customer. Credits must be used within 3 months or else they will automatically be removed from the customer's account.

**6. CANCELLATION OR TERMINATION.**

Orders cannot be canceled, terminated or modified, or shipment deferred after acceptance of Customer's order by FBD, except with FBD's written consent and subject to conditions then agreed upon which shall indemnify FBD against liability and expense incurred and commitments made by FBD and which shall provide for profit on work in process and contract value of products or parts completed and ready for shipment.

**7. LIMITATION OF LIABILITY.**

**IN NO EVENT SHALL FBD BE RESPONSIBLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, ECONOMIC, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING THOSE ARISING OUT OF A CAUSE OF ACTION BASED ON STRICT LIABILITY) AND IN NO EVENT SHALL FBD BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY AMOUNT EXCEEDING THE PURCHASE PRICE OF THE PARTS OR EQUIPMENT SOLD HEREUNDER.**

**8. UNIT DISPOSAL.**

Products that are purchased from FBD, or those that are returned to FBD for service, repair or any other reason, that are left at FBD without arrangements for repair/delivery of the machine by and to the Customer for a period in excess of 60 days shall be disposed of by and at the sole discretion of FBD. The Customer shall receive a unit Disposal Notification form that will set forth (i) the relevant timeline for determining the appropriate action and (ii) the unit disposal date. If a Purchase Order is not received by FBD from the Customer on or before the unit disposal date, Customer acknowledges and agrees that FBD may dispose of the unit or product in its sole discretion.

**9. DISPUTES AND APPLICABLE LAW.**

These terms and conditions, and the contract of sale between FBD and Customer, shall be governed by and construed in accordance with the laws of the State of Texas. FBD and Customer hereby agree that any legal action deemed necessary by either party hereto shall be brought in the federal or state courts of San Antonio, Bexar County, Texas and hereby consent to the personal jurisdiction of such courts in any such action over the parties hereto. If any legal action is necessary to enforce the terms contained herein, the prevailing party shall be entitled to recover its expenses of litigation, including reasonable attorney's fees, expert witness fees, and costs of court, in addition to any other relief which may be granted.

**10. CONFIDENTIAL INFORMATION.**

Unless otherwise specifically agreed in a separate writing, FBD is not obligated to keep confidential any commercial or technical information transmitted by Customer to FBD. Unless otherwise agreed in a separate writing, any and all commercial or technical information (including but not limited to specifications, drawings, designs, and manufacturing processes) disclosed in any manner or at any time by FBD to Customer shall be deemed secret and confidential and FBD expressly reserves all right with respect thereto as they may exist under applicable law. Customer shall not copy, reproduce, distribute, publish or communicate to any third party such information without the prior, written permission of a properly authorized representative of FBD.

**11. INTELLECTUAL PROPERTY.**

FBD has exclusive rights, title and interest in and to all patents, copyrights and all other proprietary rights in and to its equipment. Customer shall not use any trademark, service mark, logo, symbol or other proprietary material of FBD without the prior written consent of FBD.

**12. INDEMNIFICATION.**

Customer assumes and shall defend, indemnify and hold FBD, its parent, affiliated companies, and their respective directors, officers, employees, successors and assigns harmless from all responsibility, any and all losses, costs and expenses to Customer and third parties for personal injury and property damage arising from or relating in any way to Customer's use of the equipment.

**13. FORCE MAJEURE.**

FBD shall not be responsible for delay in delivery or failure to fill orders due or other default or damage where such has been caused by factors beyond its control, including but not limited to an act of God, war, major disaster, terrorism, third-party criminal acts, insurrection, riot, flood, fire, delay by carrier, strikes or lockouts, shortage of fuel, power, materials or supplies, or acts of Government. FBD will notify Customer of such causes within a reasonable amount of time after FBD learns of such causes. The foregoing extension will apply even though such causes may occur after FBD's performance has been delayed for other causes. In the event of a delay in delivery, failure to fill orders or other default or damage caused by any of the foregoing, FBD may, at its option and without liability, prorate its deliveries, cancel all or any portion of the contract and/or extend any date upon which performance is due hereunder.

**14. MISCELLANEOUS.**

The invalidity, in whole or in part, of any of the provisions of these terms and conditions, shall not affect the enforceability of any of the other provisions thereof. FBD reserves the right to correct clerical errors contained herein. No provision of the terms and conditions between Customer and FBD shall be deemed to have been waived, modified or rescinded except in a writing signed by an authorized representative of FBD. The failure of FBD at any time to enforce any of its rights shall not be deemed a waiver of such rights. This contract shall be binding upon and shall inure to the benefit of the successors, and assigns of Customer and FBD, provided, however, that Customer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of FBD.