



510 Dunbar Road, Byron, GA 31008
1-800-858-3025 • 1-478-956-1423
www.koolerice.com

KOOLER ICE LICENSE AGREEMENT

This LICENSE AGREEMENT (this "Agreement") is made and entered into effective as of the ____ day of _____, **20__** (the "Effective Date"), by and between **KOOLER ICE, INC.** a Georgia corporation ("KI"), with its principal place of business located at:

510 Dunbar Road,
Byron, GA 31008

And:

_____, a ("Licensee"), with his, her or its principal place of business located at:

Street Address: _____
City/State/Zip: _____
Phone Number: _____

RECITALS

A. KI manufactures, distributes and/or sells a machine for the production, packaging and sale of ice (the "Kooler Ice Machine") and related items.

B. KI has adopted the mark "Kooler Ice" and certain other, trademarks, service marks, trade names and other proprietary marks and logos to identify and market Kooler Ice Machines (hereinafter, any such marks or logos currently in use by KI or hereafter adopted or amended by KI shall be referred to, collectively, as the "Trademarks"). The Trademarks currently adopted by KI for use in connection with Kooler Ice Machines are listed on Exhibit A hereto.

C. Licensee has purchased a Kooler Ice Machine ("Licensee's Machine") from KI or one of KI's distributors for installation at the following address (the "Designated Location"):

Street Address: _____
City/State/Zip: _____

and desires to acquire a license to use the Trademarks in connection with the operation of Licensee's Machine at the Designated Location.

AGREEMENT

NOW, THEREFORE, for value received and in consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, KI and Licensee hereby agree as follows:

1. **Grant of License.** Subject to the terms and conditions of this Agreement, KI hereby grants to Licensee a license to use the Trademarks solely in connection with the marketing and operation of Licensee's Machine at the Designated Location. Licensee shall not use any of the Trademarks as any part of the name under which Licensee conducts business or in connection with any other products or for any other purpose. Without limiting the foregoing, Licensee may identify itself as an "Authorized Operator" of a Kooler Ice Machine, but may not otherwise identify itself as affiliated in any way with KI. In no event may Licensee, without the prior written consent of KI, utilize the Trademarks on any site created by Licensee on the World Wide Web, the Internet or any other national or global linkage of individual computers available to the general public. KI shall have the right to amend its list of Trademarks set forth on Exhibit A hereto from time to time to add or remove any of the Trademarks listed thereon, and Licensee shall immediately, or upon receipt of notice of removal of any Trademark (a "Terminated Mark") from the list, cease using the Terminated Mark and remove the Terminated Mark from Licensee's Machine. Licensee acknowledges that KI has applied for, but may have not received as of the date of this Agreement, registration in the United States Patent and Trademark Office of certain of the Trademarks described in Exhibit A hereto; that KI may be unable to obtain registration of some or all of the Trademarks for which application has been made; and that KI shall have no liability to Licensee for any failure to obtain such registration.

2. **Licensee Fee.** In consideration for the license granted hereunder for the Initial Term (hereinafter defined), Licensee shall pay to KI the annual license fee currently in effect (the "Annual License Fee") contemporaneously with the execution of this Agreement, prorated as determined by KI if the Initial Term is less than one full year. It is acknowledged that the Annual License Fee in effect as of the date of this Agreement is \$240.00. The Annual License Fee for each Renewal Term (hereinafter defined) shall equal KI's annual license fee being charged by KI for new licenses similar to the license granted hereunder as of the renewal date. Licensee acknowledges and agrees that the Annual License Fee for the Initial Term and each Renewal Term shall be deemed fully earned by KI as of the first date of the Initial Term and each such Renewal Term and shall not be refundable under any circumstances whatsoever.

3. **Maintenance of Licensee's Machine/Use of KI Bags.**

(a) **Use of KI Bags,** Licensee covenants and agrees that during the Term (hereinafter defined), Licensee shall use only those bags for the packaging of the ice produced by Licensee's Machine that are manufactured by or pursuant to a license agreement with KI, and have affixed thereto in such manner as shall be required by KI from time to time, those Trademarks designated by KI from time to time ("KI Bags").

(b) **Machine Maintenance.** Licensee covenants and agrees that during the Term, it will (a) maintain in full force and effect a Preventive Maintenance Agreement for Licensee's Machine with KI or a preventive maintenance service provider approved by KI, or strictly comply with the Maintenance Term and Conditions (hereinafter defined); and (b) otherwise maintain Licensee's Machine in good operating condition and repair consistent with the guidelines established by KI from time to time. For purposes hereof, the following shall constitute the "Maintenance Terms and Conditions:"

(1) Licensee will perform all preventive maintenance and cleaning requirements established by KI from time to time to ensure Licensee's Machine is at all times cleaned and sanitized properly and otherwise complies with KI's maintenance guidelines and requirements in

effect from time to time (the "Maintenance Requirements"); and

(2) Licensee shall (i) complete and maintain all maintenance forms, records and reports (the "Maintenance Records") required by KI from time to time to document that the Maintenance Requirements have been satisfied and (ii) send copies of all such Maintenance Records to KI as may be requested by KI from time to time as proof that the Maintenance Requirements have been completed and complied with; and

(3) Licensee shall grant KI access to and the right to inspect Licensee's Machine at any time and from time to time to determine whether Licensee's Machine is maintained and operated in compliance with all Maintenance Requirements.

(c) **Breach of Covenants.** A breach by Licensee of any provision of this Section 3 shall be deemed a material breach of this Agreement and entitle KI to exercise all rights and remedies hereunder and under applicable law (including, without limitation, the right to terminate this Agreement as contemplated by Section 6 below).

4. **Ownership.** Licensee acknowledges that KI is the owner or licensee of the Trademarks and Licensee shall acquire no right, title or other interest therein by virtue of the license granted herein or by use of the Trademarks. Licensee shall not (i) register or apply to register the Trademarks or any derivative or similar trade names, service marks or trademarks in its own right, (ii) use the Trademarks in a manner inconsistent with KI's rights thereto, (iii) take any action which shall lessen or impair the value of the Trademarks, or (iv) alter Licensee's Machine (or any related parts or products including without limitation the KI Bags) or any of the Trademarks in any way. Licensee agrees to cooperate with KI, to the extent reasonably requested by KI (including without limitation by executing and recording any documents that are deemed necessary by KI), in connection with the registration and protection of the Trademarks and the maintenance of their continued validity and enforceability by KI.

5. **Infringement.** If Licensee becomes aware of any infringement of any of the Trademarks by any person or entity or of any potential infringement or alleged infringement by the Trademarks of the rights of any other person or entity, Licensee shall promptly notify KI of such infringement or alleged infringement. KI shall have the sole and exclusive right, at its discretion, to conduct any proceeding or undertake the settlement of any such infringement or alleged infringement; and Licensee shall, at the request and expense of KI, furnish such assistance, as KI reasonably requires in connection therewith.

6. **Terms and Termination.**

(a) **Term.** Unless sooner terminated as provided herein, the term of this Agreement (the "Initial Term") shall commence on the Effective Date hereof and shall end on the first 31st day of May following the Effective Date. Thereafter, the term of this Agreement shall automatically be renewed for one year periods commencing on June 1 of each year ending in May 31 of the following year (each, a "Renewal Term") provided that Licensee pays the Annual License Fee for each such Renewal Term on or before the later of the first day of such Renewal Term or thirty (30) days following the date of the invoice therefor. Hereinafter, the Initial Term and the Renewal Terms are collectively referred to as the "Term".

(b) **Termination for Cause.** KI shall have the right, in its sole discretion and in addition to any other remedies available hereunder or at law and/or in equity, to terminate this Agreement and the License granted hereunder if any of the following occurs (each a "Licensee Default"): (i) Licensee breaches any provision of this Agreement and fails to cure such breach within ten (10) days after receipt of notice

from KI; (ii) Licensee sells, transfers, conveys, or otherwise disposes of Licensee's Machine or any interest therein without proper notice and prior written consent of KI, which shall not be unreasonably withheld; (iii) Licensee moves the Licensee's Machine from the Designated Location without the prior written consent of KI, which shall not be unreasonably withheld; or (iv) Licensee uses any of the Trademarks or Licensee's Machine in a manner that may jeopardize the reputation of KI or the Kooler Ice Machine or the goodwill associated with any of the Trademarks, as determined by KI in its sole judgment.

(c) **Effect of Termination.** If KI should elect to terminate this Agreement upon the occurrence of a Licensee Default or upon any other termination or expiration of this Agreement, including without limitation nonrenewal by reason of Licensee's failure to pay the renewal Annual License Fee for any Renewal Term as and when due (collectively, a "Termination"), KI and Licensee acknowledge and agree that Licensee shall, effective upon such Termination, immediately (i) cease all further use of, and remove from Licensor's Machine, the Trademarks and any of items of trade dress claimed by KI; and (ii) take no action which is likely to cause confusion, or mistake or which implies any continuing relationship whatsoever with KI or that Licensee's Machine is a Kooler Ice machine. In addition, upon any Termination, Licensee will no longer be permitted to (i) purchase or use KI's ice bags with Licensee's Machine; (ii) receive any support from KI with respect to Licensee's Machine on the KI customer support hotline or otherwise; or (iii) receive the IceTalk subscription.

7. General.

(a) **Entire Agreement.** This Agreement constitutes the entire understanding of the parties with respect to the subject matter contained in this Agreement and supersedes and terminates any prior agreement or understanding between the parties. The parties may modify, vary, or alter the provisions of this Agreement only by an instrument in writing duly executed by authorized representatives of both parties and specifically entered into with the express intent to modify, vary, or alter the provisions of this Agreement.

(b) **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia (except to the extent Federal law applies). In any legal action relating to this Agreement, Licensee agrees (i) to the exercise of jurisdiction over it by a state or federal court in **Byron, Georgia or Peach County, Georgia**; and (ii) that if Licensee brings the action, it shall be instituted in one of the courts specified in subparagraph (i) above. KI may institute legal action in any appropriate jurisdiction.

(c) **Severability.** If any term, clause, or provision of this Agreement shall be judged invalid for any reason whatsoever, the invalidity thereof shall not affect the validity or operation of any other term, clause, or provision of this Agreement, and such invalid terms, clauses, or provisions shall be deemed deleted from this Agreement.

(d) **Waiver.** The failure of KI at any time to require performance by Licensee of any provision of this Agreement shall in no way affect its full right to require such performance at any time thereafter. The waiver by KI of a breach of any provision of this Agreement shall not constitute a waiver of any succeeding breach of the same or any other provision or constitute a waiver of the provision itself.

(e) **Notices.** Any and all notices required or permitted under this Agreement shall be in writing, in the English language, and shall be delivered by any means which will provide evidence of the date received to the respective parties at their respective addresses set forth in the first paragraph of this Agreement unless and until a difference address has been designated by written notice to the other party at

their respective notice addresses. All written notices shall be deemed delivered **(i)** at the time delivered by hand; or **(ii)** if sent by registered or certified mail or by other means which affords the sender evidence of delivery, on the date and time of receipt or attempted delivery, if delivery has been refused or rendered impossible by the party being notified.

(f) Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permissible assigns. Licensee may not assign this Agreement or any of its rights hereunder without the prior written consent of KI, which consent will not be unreasonably withheld (but shall be conditioned upon the assignee signing a new License Agreement in the form currently in effect and complying with such other conditions as may be reasonably imposed by KI). Any attempted assignment by Licensee or unapproved assignment by Licensee shall constitute a Licensee Default and give KI the rights set forth in Section 6(b) and (c) above.

(g) Execution of Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and, together, shall constitute one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. This Agreement, and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or e-mail of a PDF file containing a copy of an executed agreement, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

(h) Headings. The headings or titles of the sections or subsections of this Agreement are for convenience only and are not a part of this Agreement and shall not be used as an aid in the construction of any provision hereof.

(i) ACKNOWLEDGEMENTS AND DISCLAIMERS. LICENSEE ACKNOWLEDGES THAT THE SUCCESS OF LICENSEE'S MACHINE INVOLVES SUBSTANTIAL BUSINESS RISKS AND WILL BE LARGELY DEPENDENT UPON THE ABILITY OF LICENSEE AND ITS PRINCIPALS AS INDEPENDENT BUSINESS PEOPLE. KI EXPRESSLY DISCLAIMS THE MAKING OF, AND LICENSEE ACKNOWLEDGES NOT HAVING RECEIVED, ANY WARRANTY OR GUARANTY, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL VOLUME, PROFITS, OR SUCCESS OF LICENSEE'S MACHINE. IN ADDITION, LICENSEE ACKNOWLEDGES THAT LICENSEE HAS RECEIVED A COPY OF KI'S LIMITED WARRANTY AND THAT KI HAS MAKES NO OTHER WARRANTIES WITH RESPECT TO LICENSEE'S MACHINE WHETHER EXPRESS OR IMPLIED, STATUTORY, WRITTEN OR ORAL, AND THERE IS NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

IN WITNESS WHEREOF, the parties have executed this License Agreement as of the date set forth above.

KOOLER ICE, INC.

By: _____

Jeff Dyson

Title: Vice President

Date: _____

LICENSEE:

By: _____

Date: _____

Printed Name: _____

Title: _____