



EQUIPMENT SALES AGREEMENT

1. The PASMO equipment that you are purchasing will give you many years of trouble free service if you follow the instructions contained in the Machine Owner's Manual. The Machine Owner's Manual contains specifications and procedures that are necessary for the efficient operation of the equipment and would be needed for any other equipment of this nature. It is the responsibility of the Buyer to follow the instructions of the Machine Owner's Manual, take advantage of PASMO's online video tutorials, and learn to operate the equipment correctly, and train all employees to operate the equipment correctly.

2. During the first year of ownership our Buyers have access to our highly trained service specialists by calling 1-844-52-PASMO - **please refer to the Limited Seller's Warranty**

which is expressly incorporated in this Agreement as if fully set forth herein, to see what is covered. It is a condition of your Limited Seller's Warranty that you contact PASMO **BEFORE** you contact a service provider for covered repairs. If you contact a service provider before contacting PASMO, or if you contact a service provider for an issue that is not covered by the Limited Seller's Warranty, your Warranty will be voided and you will be responsible for all charges from the service provider. In addition, the Limited Seller's Warranty may be voided at any time due to operation of the equipment inconsistent with the Machine Owners Manual, such as, but not limited to:

1. Improper room conditions - operating the machines outside the temperature range specifications.
2. Installing machines too close together - inappropriate ventilation.
3. Operating machine with incompatible products.
4. Neglecting to inspect, clean and maintain the machine on a regular basis.

NOTE - Condensers must be cleaned annually (at a minimum) and documented by Buyer in order to maintain the compressor warranty.

3. **PAYMENT AND DELIVERY** - Contingent upon full and complete payment to PASMO for all equipment in the amount shown on the Equipment Invoice, which is expressly incorporated in this Agreement as if fully set forth herein, shipment of the equipment shall be made not later than the date shown on the Invoice. PASMO makes no warranty or representation as to the date upon which Buyer will receive the equipment. PASMO shall provide the Buyer a tracking number for the shipment of the equipment Buyer purchases. PASMO shall not under any circumstances ship the equipment to the Buyer prior to receiving payment in full from the Buyer. PASMO shall not be liable for any failure to deliver that does not result from a failure of PASMO to ship the equipment from the F.O.B. location in Calabasas, CA and/or if the failure is occasioned by fire, embargo, strike, inability to secure materials or any other circumstances beyond the control of PASMO that hinders PASMO's performance of this Agreement. PASMO offers a full refund of the cost of the machines at the Buyer's request prior to the opening of, or operation of the machine(s) in the Buyer's store. **ONCE THE MACHINES ARE SHIPPED AND/OR OPENED AND/OR PUT INTO OPERATION ALL SALES ARE FINAL AND THERE IS NO REFUND.**

4. **CLAIMS** - Buyer waives any claim or defense based on the quality of the Goods unless such claim is made within three (3) weeks after Buyer receives the Goods at their destination. All claims of Buyer shall be made in writing by certified mail, return receipt requested, addressed to Seller at its address set forth below, accompanied by photographs and other reasonable proof that the Goods alleged to be defective are in fact defective. **LIMITATION OF ACTIONS** - No action whatsoever shall be maintained by Buyer against Seller unless written notice of any claim alleged to exist is delivered by Buyer to Seller within three (3) weeks after Buyer receives the Goods at their destination, and an action is commenced by Buyer within six (6) weeks after such notice.

5. **LIMITATION OF LIABILITY** - TO THE MAXIMUM EXTENT PERMITTED BY LAW, PASMO DISCLAIMS ALL LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND FURTHER DISCLAIMS ALL LOSSES, INCLUDING WITHOUT LIMITATION INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE EQUIPMENT OR THIS AGREEMENT, EVEN IF PASMO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, PASMO AND AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS



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AGREEMENT AND/OR BUYER'S USE OF THE EQUIPMENT SHALL NOT EXCEED THE AMOUNT OF MONEY PAID BY BUYER TO PASMO.

6. DISPUTE RESOLUTION AND GOVERNING LAW – Buyer and Seller agree to resolve disputes in the following way:
- a) **Binding Arbitration.** If Buyer and Seller are unable to resolve any controversy or claim related to this Agreement (each a "Dispute"), both parties agree that, except for those Disputes expressly excluded below, such Dispute shall be finally and exclusively resolved by binding arbitration. Buyer understands that absent this provision, buyer would have the right to sue in court and have a jury trial. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). For the convenience of the parties, the arbitration may be conducted in person, through the submission of documents or by phone. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so.
 - b) **Restrictions.** Buyer and Seller agree that any arbitration shall be limited to the Dispute between Seller and Buyer individually. To the full extent permitted by law: (1) no arbitration shall be joined with any other; (2) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (3) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.
 - c) **Exceptions to Arbitration.** Buyer and Seller agree that the following Disputes are not subject to the above provisions concerning binding arbitration: (1) any Disputes seeking to enforce or protect, or concerning the validity of, any of Seller's intellectual property rights; (2) any claim for injunctive relief; and (3) any attempt to collect funds due to Seller under this Agreement.
 - d) **Location.** Any arbitration will take place in Calabasas, CA. Any Dispute not subject to arbitration (other than claims proceeding in any small claims court) shall be decided by a court of competent jurisdiction within Calabasas, CA, and Buyer and Seller hereby submit to the personal jurisdiction of that court.
 - e) **Governing Law.** Except as otherwise provided for herein, this Agreement shall be governed by, and will be construed under, the laws of the State of California, without regard to choice of law or conflict of laws principles.
 - f) **Attorneys Fees, Costs, and Expenses.** In any dispute between the Buyer and Seller, whether in arbitration or court, the Court and/or the arbitrator shall award to the substantially prevailing party its reasonable attorneys fees, costs of court, arbitration administration fees, arbitrator fees, expenses of litigation or arbitration including but not limited to all out of pocket costs, food, lodging, parking, witness fees, expert witness fees.

7. INTEGRATION OF AGREEMENTS; SOPHISTICATION OF PARTIES; LEGAL COUNSEL - This Agreement, contains the complete agreement of the parties regarding the subject matter and will supersede any and all other agreements, negotiations, understandings and representations by and between the Parties relating to such, written or verbal. The Parties affirm that they are sophisticated, that this is a fully-integrated agreement, that it is not a contract of adhesion, that it was freely negotiated for value, that each Party had ample bargaining power, that no parol evidence shall be admissible or useable for any purpose in any dispute arising under this agreement, and that each has either had advice of legal counsel regarding the propriety of entering into this agreement, or has had ample time to attain such counsel and has freely elected to proceed without it.

By Use of machine Buyer acknowledges they have viewed the start up video, spoken with a PASMO Tech, received and read the Machine Owner's Manual, the Limited Seller's Warranty, and that they agree to be bound to the terms of this Agreement.



PASMO

Scope of Service and Limited Warranty

PASMO's warranty obligations are limited to the terms set forth below:

I. From the date of delivery, PASMO shall provide its end customers with a one-year non-wearable parts warranty (the "Limited Warranty") with respect to the PASMO Frozen Yogurt Machines (the "Equipment"). PASMO's sole obligation during the one-year warranty period is limited to repairing or, at PASMO's sole option, replacing non-wearable parts in accordance with this Limited Warranty. The Limited Warranty shall not apply to wearable parts. Wearable parts include but are not limited to: hand screw, distribution handle, distribution lever, pivot pin, draw valve O-ring, draw valve, center draw valve, center draw valve O-ring, O-rings, discharge body door, pivot pin nut, design cap, ripple ring, beater, air tubes, drip tray cover, drip tray, drip tray anchor point, drip pan, caster swivel (front and back), emergency switch, control panel, stopples, stopple O-rings, belts, and hopper covers.

II. The Limited Warranty applies to the compressors, motor, gear box, condensers, fans, electric boards and panels. In addition, PASMO shall provide an additional four-year extended warranty (excluding labor) for a total warranty period of one (5) Year from the date of delivery with respect only to the Equipment's compressor, shell, and hopper and no other part(s) of the Equipment.

III. The Limited Warranty is only valid for normal mechanical wear-and-tear that requires that a non-wearable part be replaced or repaired for the Equipment to resume normal operational functions. This Limited Warranty does not apply if any of the non-wearable parts are damaged due to negligent use, abnormal use, misuse or abuse, use of improper voltage or electrical connection, use contrary to the operating instructions, modification, disassembly, repair or alteration by anyone other than authorized service providers, or any outside circumstances beyond normal mechanical wear-and-tear; and in such circumstances, PASMO shall not be responsible, financially or otherwise, to replace the non-wearable part(s) regardless of how long the end customer has had physical possession of the Equipment. The Limited Warranty also does not cover lightning, fires, floods, hurricanes, tornadoes, damage caused by or during shipping or transportation of the Equipment, or any other Acts of God or nature.

IV. If the end customer believes that the Equipment requires repair of a non-wearable part during the one-year warranty period, the end customer shall first contact PASMO to troubleshoot potential problems with the Equipment. If PASMO is unable to resolve the end customer's problem with the Equipment then PASMO shall contact a service provider or give the end customer written authorization to contact a service provider. If the end customer directly contacts a service provider, without first contacting PASMO, then PASMO shall not be responsible for any repairs to the service provider or end customer and this Limited Warranty shall be immediately void and unenforceable. In no way does this imply there is a contract covering labor for warranty work as this is a parts only warranty.

V. If the reason for the Equipment's malfunction is anything other than normal mechanical wear-and-tear or the malfunction of a non-wearable part, then PASMO shall not be responsible for any repair, and/or any replacement of the part(s) in question or the Equipment in question.

VI. This Limited Warranty is only valid for end customers who purchase the Equipment directly through PASMO USA or its direct Resellers, and have signed an Equipment Sales Agreement, and is not transferable or assignable.

VII. THE LIMITED WARRANTY SET FORTH ABOVE IS THE SOLE AND ENTIRE WARRANTY PERTAINING TO THE NON-WEARABLE PARTS, AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER EXPRESSED, IMPLIED OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. THIS LIMITED WARRANTY DOES NOT COVER OR PROVIDE FOR THE REIMBURSEMENT OR PAYMENT OF DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY TYPE, MANNER, OR DEGREE, AND ANY LIABILITY BY PASMO FOR SUCH DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES IS HEREBY EXPRESSLY DISCLAIMED. SOME STATES DO NOT ALLOW THIS EXCLUSION OR LIMITATION OF WARRANTIES AND/OR DAMAGES, SO

THE ABOVE LIMITATIONS AND/OR EXCLUSIONS MIGHT NOT BE APPLICABLE TO YOU.

PASMO USA ■ 23961 Craftsman Road Ste E ■ Calabasas, CA 91302 ■ 844-52-PASMO