

## MACHINE BUNDLE AGREEMENT

This Agreement is between Freezing Point LLC, a Utah Corporation (Freezing Point, The Company, We, Us) and the Customer specified below;

The Customer Billing Information (the Customer, You, Your)			
Account Contact/Title (Owner/Manager/etc.):			
Account Name:	DBA or Trade Name (If Different):		
Street Address:	City:	State:	Zip/Postal Code:
Account Contact Phone Number:	Email:		

Distribution Partner Information (the Distributor)		
Distributor / Division:	Primary Distributor (YES/NO):	Customer Account Number:
Distributor Food Service Manager:	Phone Number:	E-mail:
Distributor Account Manager:	Phone Number:	E-mail:

**PRODUCT.** We desire to sell frozen beverage products under the Frazil trademark (the Product) and You desire to sell the Product at the Location(s) specified in Exhibit A according to the terms and conditions specified below;

**BUNDLE PROGRAM AND PRICING.** We agree to temporarily provide You a Bunn Ultra-2 two bowl frozen beverage machine to be used to sell the Product at the Location(s) specified in Exhibit A and You agree to sell ONLY the Frazil Product through the machine(s) provided by Us. Any use of the machines by You to sell non-Frazil product constitutes a breach of this Agreement and theft of product by You, and subjects You to the penalties and remedies described herein for such breach. You further agree to purchase the Product through the Distributor listed above and pay an up-charged price of \$90.00 for each case of the Product. You acknowledge that all pricing is subject to change and may vary by Distributor;

**MINIMUM PURCHASE.** You agree to purchase a minimum of 20 cases of product annually for each machine provided by Us. We will begin tracking the product purchase minimums starting the first full calendar month after the machine(s) are installed in the Your location(s). In the event that You fail to purchase the annual minimum We will force out the product shortfall through the Distributor at the agreed upon product price, or Invoice You a rental and maintenance fee equal to \$45.00 for each case that you are short of the annual minimum. All rental and maintenance fees will be invoiced within 30 days of the end of the first full year after the product minimum calculations begin and each calendar year thereafter. In the event that this agreement is ever terminated, by either party, You agree to pay Us a prorated rental fee for any shortfall that is owed at the time of termination;

**PROGRAM QUALIFICATIONS.** You acknowledge that each location listed in Exhibit A of this agreement meets the minimum qualification criteria specified below (The Customer must initial next to each requirement);

- \_\_\_\_\_ Each Location has an active food service program, including but not limited to an active fountain machine, roller grill or sandwich program;
- \_\_\_\_\_ Each Location is currently purchasing a minimum of \$1,400 weekly of non-tobacco merchandise from the Distributor or combination of distributors;
- \_\_\_\_\_ Each Location has counter space available that is at least 24" wide by 24" deep and is capable of supporting 200 pounds;
- \_\_\_\_\_ Each Location has a dedicated 120 volt, 20 amp electrical outlet, with 3 prong plug (no extension cords);
- \_\_\_\_\_ Each Location has a health department approved sink that can be used to mix product and clean the machine(s);
- \_\_\_\_\_ Each Location has been approved by the Distributor's General Sales Manager and/or Food Service Manager;
- \_\_\_\_\_ Each Location agrees to exclusively sell Frazil as their FUB program and will discontinue selling any other FUB product and will remove all non-Frazil branded machines and marketing materials upon installation of the Bundle Machine;

**FAILED INSTALLATION.** In the event that any of the qualifications listed above are misrepresented and/or delivery is refused and We are unable to install the machine(s) at Your Location(s) then You agree to pay Us \$450.00 to cover the cost of the failed install;

**MACHINE REPAIR AND MAINTENANCE.** We agree to pay for all repair and maintenance that is required to keep the machine(s) in good working order. All repair and maintenance will be performed by an authorized service provider during normal business hours;

**MACHINE CLEANING AND SANITATION.** You agree to perform all routine maintenance including but not limited to: (1) cleaning the exterior of the machine(s) and emptying the drip tray(s) daily, (2) cleaning and sanitizing the machine(s) at least monthly or as often as may be required by the local health department and (3) cleaning the filter at least monthly or as often as needed. You agree to follow the recommended cleaning and sanitation procedures provided by the machine manufacturer and Us and agree to pay for any repairs that are required because of neglect;

**PRODUCT PREPARATION.** You agree to mix the Product according to instructions provided by Us. You further agree to use Your best efforts to keep the machine full of the Product at all times. We recommend that You keep at least two gallons of mixed Product in the cooler for rapid refill of the machine(s) as needed;

**FRAZIL BRANDED CUPS.** Unless otherwise agreed upon in writing, You agree to use only Frazil branded cups;

**TERM.** This Agreement is effective as of the date mentioned below and will continue for three (3) years or until terminated by either party. At the end of the initial term We may request that You renew the agreement for an additional three (3) years and require You to sign a current agreement and abide by the terms and conditions of the current Agreement. In the event that the agreement is not renewed in writing then this agreement will continue on a month to month basis until

terminated by either party. This agreement may be terminated by either party at any time by providing a written termination notice at least 30 days prior to the desired termination date;

**MARKETING.** Upon the initial installation of the machine(s) at the Location(s) We will provide You with basic marketing materials to promote the sale of the Product. We may from time to time produce additional marketing materials that You can use to promote the sale of the Product at Your Location(s). You agree to use Your reasonable best efforts to promote the Frazil Trademark and Product at Your Location(s);

**TRADEMARK.** You acknowledge that the Frazil trademark is a federally registered trademark and can only be used for the sale and distribution of the Frazil Products. All marketing materials, advertising materials or printed cups bearing the Frazil trademark must be provided by Us, or approved by Us in writing. You acknowledge that federal trademark law gives Us the right to control the nature and quality of the products associated with the trademark and agree to allow Us to conduct the necessary inspections, tests and audits to ensure compliance with the standards specified by Us. You are not entitled, either by implication or otherwise, to any title or interest in any trademark, trade name, logo, design, or copyright materials created by Us. In the event that You ever discontinue selling the Frazil Product You agree to remove and destroy all Frazil branding and marketing materials from the Location(s) listed in Exhibit A. You further agree that you will not alter or remove the Frazil trademark from the machines or other Frazil products provided to You, nor rebrand or use any trademark other than Frazil in connection with the use and operation of the machines and other Frazil products;

**PRODUCT WARRANTY.** We represent and warrant that the Products provided by Us complies with Federal, State, and Local laws and will be of merchantable quality. If any Products do not conform to such warranty and You report such nonconformity to Us within ten (10) days of delivery, We will replace the nonconforming Product, through the Distributor without cost to You. Any liability for consequential and incidental damages is expressly disclaimed. Our liability in all events is limited to the purchase price paid;

**MACHINE OWNERSHIP.** We maintain ownership of the Bunn Ultra-2 Machine(s) provided to You and ownership NEVER transfers to You without a written sales agreement. We maintain the right to remove the machine(s) from Your location(s) for any reason. The machine(s) may not be relocated, or removed from the Location(s) without written consent from Us. The machine(s) may not be sold, bartered, rented or sub-leased. You agree to notify Us immediately of any Location(s) that are closing or transferring ownership;

**DAMAGE, THEFT OR LOSS.** In the event of damage, theft or loss, You are responsible to pay Us the full replacement value of the machine(s) provided;

**REMEDIES.** Any breach or default by You of any representation, warranty, covenant or agreement in this Agreement will entitle Us to pursue all legal remedies available to Us at law or in equity. Without limiting the foregoing, upon any such breach or default by You, You agree that We are entitled to take any one or more of the following actions: (i) immediately terminate this Agreement; (ii) take possession of the machines and any other Frazil product in Your possession; (iii) upon written notice to You, cause all of Your payment obligations under this Agreement for the remainder of the initial 3 year Term to be accelerated and become immediately due and payable; (iv) recover from You all of Our costs and expenses (including attorneys fees) incurred on account of Your breach or default and Our efforts to enforce our remedies; (v) recover from You all profits you received for improper use of the machines (including rebranding of the machines or selling of non-Frazil products in the machines, or selling or conveying the machines themselves); and (vi) obtain injunctive relief against You to prohibit your further breaches and defaults under this Agreement. All of Our remedies are cumulative, and may be exercised concurrently or separately.

**PROPERTY TAX.** You are responsible to pay any applicable property tax that may be charged by the city, county or state on the machine(s) provided by Us. We reserve the right to invoice You for any property tax that may be levied upon Us;

**PAYMENT TERMS.** You agree to pay all invoices from Us within ten (10) days of receiving them. Overdue amounts are subject to collection and carry a service charge of 1.5% per month, 18% per year, or the maximum legally allowable rate. You agree to pay Us all legal costs and expenses that We may incur when collecting overdue account balances;

**GOVERNING LAW.** This Agreement shall be governed exclusively by the laws of the State of Utah. If litigation results, we both agree to reimburse the prevailing party reasonable attorney's fees, court costs, and all other expenses;

**INDEMNIFICATION.** You accept all responsibility of risks of loss, injury or damage caused by the machine(s) or by the operation of the machine(s) and shall indemnify Us for all liabilities, claims, suits, damages and losses arising from the same. This indemnity will continue even after this Agreement has ended;

**FAILURE TO ENFORCE.** The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such Party's right to demand strict compliance in the future;

**CONFIDENTIALITY.** All information concerning the Product, Trademarks and distribution system that is not intended for public display shall be considered confidential and You agree not disclose this information to others;

**ELECTRONIC SIGNATURES.** Freezing Point and the Customer both agree that electronic signatures will be considered as good as original signatures and admissible in court as conclusive evidence of this Agreement. This Agreement is not binding until signed by Freezing Point;

**ASSIGNMENT.** You shall not assign or otherwise transfer any of Your rights or obligations under this Agreement;

**INDEPENDENT CONTRACTORS.** Freezing Point, The Customer and the Distributor are independent contractors and nothing contained in this Agreement should be construed to create a partnership joint venture, an employer-employee relationship; This Agreement constitutes the entire agreement between Freezing Point and the Customer and is executed as of \_\_\_\_\_ (Day/Month/Year).

**Freezing Point LLC:**

**The Customer:**

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

\_\_\_\_\_

\_\_\_\_\_

Title:

Title:

\_\_\_\_\_

\_\_\_\_\_

Signature:

Signature:

**Exhibit A**

The Customer Location Information (the Location)			
Store Contact/Title (For Installs and Service):			
Store Name:			
Street Address:		City:	State: Zip/Postal Code:
Store Contact Phone Number:		Email:	
# of Machines Requested?	New Total # of Machines at Location:	Best time to contact?	
<i>Internal Use Only – To be completed by the Distributor</i>			
Does this location meet the qualification criteria?		Average weekly non-tobacco purchases for this Location?	
Additional comments and information about this account:		GSM or FSM Signature:	

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**Note:** For more locations, make additional copies of this page.