

## **GENERAL TERMS AND CONDITIONS OF LEKKERKERKER DAIRY & FOOD EQUIPMENT 2022**

### **1. Definitions**

These conditions use the following definitions:

- Supplier:** the limited liability company LEKKERKERKER DAIRY & FOOD EQUIPMENT B.V., established in Lopik and registered with the Chamber of Commerce in Utrecht with number 30138665;
- Purchaser:** any party that concludes an agreement with the Supplier;
- Product:** goods and services;
- Additional Work:** everything delivered and/or installed during the execution of the agreement by the Supplier in consultation with the Purchaser in excess of the quantities explicitly set out in the contract or the order confirmation or any work performed by the Supplier in excess of the work explicitly set out in the contract or order confirmation;
- In Writing:** by letter or by electronic means;
- FAT:** factory acceptance test;
- SAT:** site acceptance test.

### **2. Applicability**

- 2.1 These conditions govern each offer by and any agreement concluded with the Supplier and the resulting deliveries.
- 2.2 Deviations from these conditions will only apply insofar as the parties have explicitly agreed on this in writing. The Purchaser cannot derive any rights from any agreed deviations for future transactions.
- 2.3 Own purchase or tender conditions of the Purchaser or other conditions will not apply.
- 2.4 In case of conflicts between the contents of the contract concluded between the Purchaser and the Supplier or the order confirmation and these conditions, the provisions of the contract or the order confirmation will take precedence.
- 2.5 Insofar as these conditions have been drawn up in a different language than Dutch, the Dutch text will take precedence in case of differences.

### **3. Offer and conclusion of agreements**

- 3.1 Each offer or quotation of the Supplier will be non-binding, unless explicitly determined otherwise in writing.
- 3.2 Prices published by the Supplier in catalogues, offers, quotations, on the website, or otherwise will not be binding to it. All samples, models, images, and data concerning dimensions, weights, or other properties of the Products presented by the Supplier will only be indicative. The Purchaser cannot derive any rights from these with respect to the conformity of the delivered Products.
- 3.3 A compound sales quotation does not require the Supplier to execute a part of the contract at a corresponding part of the quoted price.
- 3.4 Offers or quotations will not automatically apply to future orders.
- 3.5 If the Purchaser provides data, drawings, and the like to the Supplier, the Supplier may assume that these are correct and complete and base its offer on them.
- 3.6 If the Purchaser does not accept the offer by the Supplier, the Supplier has the right to charge the costs it has incurred to make the offer to the Purchaser.
- 3.7 If the Supplier and the Purchaser do not conclude a contract, an agreement will only be concluded by means of a written order confirmation by the Supplier, or through the execution of the agreement by the Supplier.

### **4. Purchaser acceptance procedure and sanctioned countries**

- 4.1 The Supplier has a Purchaser acceptance procedure and reserves the right to revoke quotations and/or order confirmations if the Purchaser is not accepted as a Purchaser by the Supplier.
- 4.2 Supplier acts in accordance with European laws and regulations imposed by OFAC (Chapter 6 of the UN Charter) with regard to sanctioned countries. The Supplier does no or only limited transactions with countries that appear in the list of sanctioned countries.
- 4.3 The Purchaser is not allowed to resell the delivered goods to a sanctioned country that appears in the list of the OFAC, by means of the chain clause of the EU and the OFAC.
- 4.4 The Supplier takes no responsibility in case that Purchaser resells the delivered goods to a sanctioned country.
- 4.5 The supplier has the right to completely withdraw an offer if he suspects that it is in conflict with the European laws and regulations of the OFAC.

### **5. Advice and provided information**

- 5.1. The Purchaser cannot derive any rights from advice and information obtained from the Supplier if these do not concern the engagement.
- 5.2. If the Purchaser provides data, drawings, and the like to the Supplier, the Supplier can rely on the accuracy and completeness of these during the execution of the agreement.

### **6. Prices**

- 6.1 The prices indicated by the Supplier are in euros and do not include VAT and other government tax.
- 6.2 Unless agreed otherwise in writing, the prices are based on Free Carrier, Lopik (FCA, Incoterms 2020), excluding shipping crate for LCL/LTL shipments.
- 6.3 Unless agreed otherwise in writing, the prices do not include:
- a. certificates, such as: Certificate of Origin, EUR1 certificate, ATR, inspection certificate, etc.

- b. any legalization costs of invoices, contracts, certificates, and the like;
  - c. installing the Products at the location;
  - d. the costs of connecting water/electricity;
  - e. technical assistance with the installation at the Purchaser;
  - f. untrained work for the installation, such as: levelling, wiping the floor, connecting water, deacidifying welds.
- 6.4 Each price indicated by the Supplier is based on cost-price-determining factors such as the current monetary conditions, labour costs, (raw) material prices, duties, taxes, other levies, grants, and the like that apply at the moment on which the agreement in question is concluded. If one or more of the cost-price-determining factors increase after the conclusion of the agreement but before the goods in question have been delivered, the Supplier has the right to pass each reasonable price increase on to the Purchaser.
- 6.5 The Supplier can charge additional work separately. Paragraphs 1 to 4 of this article equally apply for Additional Work.
- 6.6 If one or more of the following activities have been agreed upon: assembly, commissioning, training and/or repair, the corresponding prices will not include visa, (plane) ticket(s), travel costs from and to airports, and hotel and accommodation expenses at the location for the staff of the Supplier, unless agreed otherwise in writing.

## **7. Reservation of ownership**

- 7.1 The Supplier will remain the owner of the delivered Products as long as the Purchaser:
- a. fails or will fail to fulfil its obligations arising from this agreement or other agreements;
  - b. has not paid claims that arise from the failure to fulfil the agreements set out above, such as damage, fines, interest, and costs.
- 7.2 As long as the delivered Products are subject to a reservation of ownership, the Purchaser may not encumber or sell them outside of its regular business operations.
- 7.3 The Purchaser will be required to inform the Supplier immediately should any third-party levy attachment or desire to establish or assert any right on the Products delivered subject to a reservation of ownership.
- 7.4 If the Purchaser fails to fulfil its payment obligations towards the Supplier or if the Supplier has reasonable grounds to fear that this will be the case, the Supplier will have the right to disassemble and retrieve the Products delivered subject to a reservation of ownership. The Purchaser will fully cooperate with this.
- 7.5 The Purchaser undertakes to insure the Products delivered under reservation of ownership and to keep them insured against fire, explosion and water damage and theft, and to provide the policy of this insurance to the Supplier for inspection following its first request. The Supplier will be entitled to any payments made under the insurance.

## **8. Intellectual property rights**

- 8.1 Unless agreed otherwise in writing, the Supplier will retain all intellectual property rights related to the drawings, calculations, software, descriptions, models, tools, and the like and the information contained therein created or provided by it, irrespective of whether costs are or will be charged for these.
- 8.2 The Purchaser guarantees that the information referred to in paragraph 1 will only be shown or disclosed to third parties or copied or used with the written permission of the Supplier, except for the execution of the agreement.

## **9. Delivery period/delivery**

- 9.1 The delivery period will be deemed an estimate and can never be considered a deadline. The Supplier will only be in default in relation to the delivery period once it has been held in default by the Purchaser in writing, it has been given the opportunity to complete the delivery within a reasonable period, and the Supplier has not observed this notice.
- 9.2 The delivery period is based on the (work) conditions in effect at the time of the conclusion of the agreement and on the timely delivery of the materials ordered for the execution of the work by the Supplier. If delays occur as a result of changes to the mentioned (work) conditions or because materials ordered for the execution of the work in a timely fashion are not delivered on time, the delivery period will be extended insofar as possible.
- 9.3 The delivery period will only start once an agreement has been reached concerning all commercial and technical details, all necessary data and all final and approved drawings are in the possession of the Supplier, the Supplier has received (partial) advance payment and/or once a bank guarantee has been obtained and/or once the Supplier has accepted an irrevocable (confirmed) L/C in writing, and the necessary conditions for the execution of the engagement have been met.
- 9.4 Unless agreed otherwise in writing, deliveries will take place based on 'Free Carrier', Lopik, Netherlands (FCA, Incoterms 2020).
- 9.5 If the Supplier has accepted the obligation to assemble the Products, these will be considered to have been delivered once they or their main components have been installed at the agreed delivery location in an operable state.
- 9.6 If the delivery period is exceeded, the Purchaser will not have the right to perform or commission work to execute the agreement that must be performed by the Supplier. The Purchaser will only have the right to dissolve the agreement if the agreed delivery period is exceeded to an excessive extent (by over 12 weeks) if this is caused by force majeure. The Purchaser will never be able to claim any fine or compensation.
- 9.7 The Supplier reserves the right but is not required to deliver the Products by means of partial deliveries, in which case the (payment) conditions described out below also apply to each partial delivery.
- 9.8 The failure of the Purchaser to fulfil any payment obligation (in a timely fashion) will suspend the delivery obligation of the Supplier.
- 9.9 In case of delivery including assembly, commissioning of the installation and/or training, the Purchaser will sign a Certificate of Acceptance to demonstrate that the Products have been delivered in a complete and operable state at the request of the Supplier.
- 9.10 The Purchaser is required to accept the Products that are the subject of the agreement on the agreed date and at the agreed place.
- 9.11 The Purchaser must grant all cooperation that can be reasonably demanded of it in order to enable the Supplier to complete the delivery.

- 9.12 Products that are not picked-up will be stored at the risk and account of the Purchaser. In this case, the Purchaser will owe additional costs, at least including the storage costs of EUR 10,- per m2 per month, excluding VAT, as of 8 weeks after the notice that the Products are available for pick-up.
- 9.13 If the Products are not retrieved, the Supplier will have the right to dissolve the agreement without notice of default and judicial intervention being required, without prejudice to its right to claim full compensation for any costs incurred and/or damage suffered (including potential loss of turnover).

#### **10. Assembly, commissioning, training and repairs**

If the Supplier and the Purchaser have agreed on assembly, commissioning, training and/or repairs, the following provisions will apply:

- 10.1 The Purchaser is required to store the Product in a correct and orderly manner at a suitable location during the period from the arrival at the Purchaser and the arrival of the staff of the Supplier for the work.
- 10.2 The Purchaser is responsible towards the Supplier for the correct and timely implementation of all installations, facilities and/or conditions required for the placement and/or operation of the Product to be assembled in an assembled condition.
- 10.3 The Purchaser guarantees to the Supplier that the assembly/commissioning can start on the agreed date.
- 10.4 The Purchaser will also be responsible for the following at its own risk and account:
- The staff of the Supplier must be able to perform their work during the regular working hours, as well as outside of the regular working hours, provided that the Supplier informs the Purchaser about this in a timely fashion;
  - The provision of suitable accommodation and all facilities for the staff of the Supplier required based on government regulations, the agreement, and common practice;
  - The access roads to the location where the installation will be placed must be suitable for the required transport;
  - The designated location must be suitable for storage and assembly;
  - The necessary lockable storage sites for materials, tools, and other goods must be available;
  - The necessary and regular ancillary workers, ancillary tools, tools, and company materials and the regular measurement and testing equipment of the company of the Purchaser must be available to the Supplier in a timely fashion and at the right location at no cost;
  - All the necessary safety measures and precautions must have been taken and must be observed, and all measures for the assembly, commissioning and/or training must have been taken and must be observed to meet the applicable government regulations;
  - The shipped Products must be available at the right location at the start of and during the assembly.
- 10.5 Damage and costs arising from the fact that the conditions laid down in this article are not met in a timely fashion will be for the account of the Purchaser.

#### **11. Inspection and testing, FAT and SAT**

- 11.1 The Purchaser will inspect the Product at its own expense within 14 days of the moment of delivery. If this period is exceeded without the submission of written and specified complaints, the Product will be deemed to have been accepted.
- 11.2 If a FAT has been agreed on at the Purchaser, the Supplier will be given the opportunity to take samples. The Purchaser will provide the tools, ancillary and company equipment, water, electricity, heating, and lighting necessary for this in a timely fashion and at its own account.
- 11.3 The Supplier will be given the opportunity to resolve objections of the Purchaser in response to the sampling before the Product can be refused by the Purchaser.
- 11.4 If the testing has been completed without a valid and specified complaint or in case of minor shortcomings, specifically those that do not or only hardly affect the foreseen use of the Product, the Product will be deemed to have been accepted. Nevertheless, the Supplier will resolve any minor shortcomings as soon as possible.
- 11.5 The acceptance excludes any claim of the Purchaser in relation to a shortcoming in the performance by the Supplier, without prejudice to the obligation of the Supplier to fulfil its warranty obligations.
- 11.6 The costs of the testing will be borne by the Purchaser.
- 11.7 If (partial) payment after delivery has been agreed on, the Purchaser is required to sign a Certificate of Acceptance.

#### **12. Payment**

- 12.1. Unless agreed otherwise in writing, the following payment conditions will apply:
- for a Product in an "as it is, where it is" condition: 100% advance payment when granting the engagement;
  - for a Product in a "good running" condition: 50% advance payment when granting the engagement and 50% before the delivery;
  - for a Product in a "reconditioned" condition: 50% advance payment when granting the engagement and 50% before the delivery;
  - for spare and wear parts, repairs and/or maintenance work: 100% advance payment when granting the engagement.
- 12.2 All payments must be made to an account to be indicated by the Supplier without any deduction or settlement.
- 12.3 Irrespective of the agreed payment conditions, the Purchaser is required to provide sufficient security for the payment at the request of the Supplier, such at the discretion of the latter, upon or after the conclusion of the agreement and before the time of delivery. If the Purchaser fails to comply with this obligation within the defined period, it will be immediately in default. In this case, the Supplier will have the right to suspend the agreement and to ultimately dissolve it without notice or judicial intervention being required, and to recover any damage from the Purchaser.
- 12.4 If payment using a Letter of Credit (hereinafter "LC") has been agreed on, the following conditions will apply:
- the Purchaser must open an irrevocable LC, confirmed by the bank of the Supplier or a 1st class European bank, equal to the agreed amount;
  - the LC must contain the elements indicated by the Supplier.

- 12.5 Any objections to an invoice must be submitted and substantiated to the Supplier in writing within 8 business days following the invoice date. After this period, complaints will no longer be accepted and the Purchaser will have lost its corresponding rights. Objections to the amount of the submitted invoices will not suspend the payment obligation of the Purchaser.
- 12.6 If any payment period is exceeded, the Purchaser will be in default, and the Supplier will have the right to charge an interest of 1.5% per month or any part thereof on the amount due without any notice of default being required. All costs of judicial measures (including bailiff costs, costs of custody, procedural costs, and prosecutor costs) incurred by the Supplier as a result of the failure of the Purchaser to fulfil its payment obligations will be borne by the Purchaser. The Purchaser will also owe the Supplier compensation for extrajudicial collection costs to the amount of at least 15% of the invoice amount due (excluding sales tax), which compensation will amount to at least EUR 250 per claim.
- 12.7 The Supplier has the right to suspend the fulfilment of its obligations until the Purchaser has met all its exigible payment obligations.

### **13. Warranty**

- 13.1. The Purchaser is aware of the fact that the Product is second-hand, unless explicitly agreed otherwise in writing.
- 13.2. The Purchaser can claim the following warranty:
- no warranty applies for a Product sold in an “as it is, where it is” condition and a Product in a “good running” condition;
  - a Product in a “reconditioned” condition is covered by a warranty on the operation of mechanical components for a period of 6 months following the moment of delivery or no more than 9 months after the Supplier has issued an availability (for transport) notice to the Purchaser, whichever comes first, unless agreed otherwise in writing;
  - the warranty offered by the manufacturer applies to new electronic components in revised Products and to spare and wear parts ordered separately;
  - consumables, such as gaskets and seals, will never be covered by a warranty.
- 13.3. If a warranty complaint is submitted on time and accepted by the Supplier, the Supplier will, at its discretion, only be held to still deliver the missing component, to repair or replace the component, or to retrieve the component and credit the Purchaser the invoice amount in question, in which case the transport costs for the return will be borne by the Supplier. The Supplier will never be required to reimburse any other costs and/or damage. If the complaint is not accepted by the Supplier, the transport costs for the return will be borne by Purchaser.
- 13.4. The warranty set out in paragraph 1 will not apply if:
- The matter concerns components subject to regular wear and tear;
  - The shortcoming in the Product has not been reported to the Supplier in writing within 5 business days following the discovery thereof;
  - The shortcoming in the Product could have reasonably been discovered by the Purchaser during the inspection;
  - The shortcoming is the result of incorrect, incompetent, or careless use or insufficient maintenance;
  - Work has been carried out on the Product by third parties or by the Purchaser without the written permission of the Supplier;
  - The manual or instructions of the Supplier have not been observed;
  - The Purchaser has failed to fulfil one or more of its obligations towards the Supplier.
- 13.5. No warranty is offered on components delivered but not installed by the Supplier if it is demonstrated that these were installed incorrectly.
- 13.6. The Products to be repaired or replaced based on the warranty will be returned to the Supplier at its request. The warranty will not be extended because of the repair or replacement; the original warranty period will continue. The Purchaser must always give the Supplier the opportunity to repair a possible defect.
- 13.7. Any components made available as a result of the replacement will become or remain the property of the Supplier.
- 13.8. If the Supplier must ship new components to the Purchaser, these components will first be invoiced to the Purchaser. The Supplier can demand advance payment in this respect. If the inspection at the Supplier shows that the defect component is covered by the warranty offered by the Supplier, the Supplier will credit the invoice of the new components to the Purchaser.

### **14. Liability**

- 14.1 If the Supplier is found to be liable, this liability will be limited by the provisions of previous article on warranty.
- 14.2 The Supplier will not be liable for damage of any nature whatsoever resulting from the use of incorrect and/or incomplete data provided by or on behalf of the Purchaser. If the Supplier is found to be liable for damage, this liability will be limited to 50% of the net invoice value of the order, at least to the part of the order to which the liability relates. A series of related events leading to damage will be considered a single (damage) event for the applicability of this article.
- 14.3 The Supplier will only be liable for direct damage. Direct damage only means the reasonable costs incurred to determine the cause and extent of the damage, insofar this relates to damage within the meaning of these conditions, any reasonable costs to investigate the poor performance of the Supplier, insofar as this can be attributed to the Supplier, and reasonable costs incurred to prevent or limit damage, insofar as the Purchaser demonstrates that these costs have led to limitation of direct damage within the meaning of these general terms and conditions. The Supplier will never be liable for indirect damage, including consequential damage, loss of revenue or profits, lost savings, and damage due to business standstill, or damage as a result of liability towards third parties.
- 14.4 All claims for compensation will expire if these are not submitted to the Supplier in writing within 1 year following the delivery of the Products.
- 14.5 The Supplier will not be liable for damage arising from unlawful acts by the Supplier, its employees, or its subordinates for which the Supplier can be held liable by law, unless this is the result of intent or gross negligence.
- 14.6 The Purchaser must indemnify the Supplier against all claims:
- Arising from the use of goods belonging to the Purchaser by the Supplier;

- b. Caused by a lack of sufficient safety measures at the location of the Purchaser;
- c. By third parties for compensation for damage for which the liability of the Supplier is excluded in these conditions in the relationship with the Purchaser;
- d. Due to violations of patents, licences, and other rights of third parties as a result of data provided by or on behalf of the Purchaser.

#### **15. Force majeure**

- 15.1 The Supplier has the right to suspend the fulfilment of its contractual obligations if it is temporarily unable to do so due to force majeure.
- 15.2 The following circumstances, among others, are defined as force majeure for the Supplier: strikes, traffic disruptions, transport disruptions, company disruptions, unrest, war, machine breakdown, sanctions, embargoes, boycotts, theft or loss of tools and materials, or failure by the suppliers of the Supplier.
- 15.3 The Supplier will no longer have the right to suspend its obligations if the temporary inability to fulfil its obligations has lasted for more than 26 weeks. The Purchaser and the Supplier can terminate the agreement with immediate effect after the end of this period, but only for that part of the obligations that has not yet been fulfilled.
- 15.4 In case of force majeure, and if fulfilment has or will become permanently impossible, both parties will have the right to terminate the agreement with immediate effect with respect to that part of the obligations that has not yet been fulfilled.
- 15.5 The Purchaser is not entitled to compensation for damage (to be) suffered as a result of the suspension or termination within the meaning of this article.

#### **16. Suspension or dissolution of an agreement**

- 16.1 The Supplier has the right to suspend or dissolve an agreement with Purchaser without judicial intervention and notice of default being required within a reasonable period without being required to pay compensation if at least one of the following events occurs:
  - a. The Purchaser fails to fulfil one of its obligations towards the Supplier;
  - b. There are reasonable grounds to fear that the Purchaser will fail to fulfil one of its obligations towards the Supplier;
  - c. If attachment is levied on the assets of the Purchaser, if the Purchaser is granted suspension of payments, or if the Purchaser is rendered bankrupt;
  - d. A change occurs to the control over the company of the Purchaser.
- 16.2 Suspension and dissolution will not affect the payment obligation for any Products that have already been delivered. The Supplier will also have the right to claim damage, costs, and interest, including loss of profits, from the Purchaser in this case. These claims will be immediately exigible.

#### **17. Disputes and applicable law**

- 17.1 These conditions, all offers made by the Supplier, and all agreements between the Purchaser and the Supplier are governed exclusively by the laws of the Netherlands. The applicability of the Vienna Sales Convention is excluded.
- 17.2 Only the Dutch civil court in Utrecht will hear disputes, without prejudice to the right of the Supplier to submit the dispute to a different competent court at its discretion.
- 17.3 Disputes between the Supplier and purchasers located outside of the EU will be permanently settled by means of arbitration by the International Chamber of Commerce ("ICC") in accordance with the Arbitration Regulations of the ICC by one or more arbiters appointed in accordance with these regulations. The language of the proceedings will be English. The arbitration proceedings will take place in Utrecht (Netherlands).

#### **18. Location of and amendments to the conditions**

- 18.1 These conditions have been filed with the Chamber of Commerce in Utrecht. They can also be consulted on the website of the Supplier at [General Terms and Conditions](#).
- 18.2 The last filed version or the version in effect when the legal relationship with the Purchaser was concluded will apply.