

General terms of delivery, payment for the Netherlands and for export.

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Supply of Dairy and total food processing systems

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Preamble

These general terms are applicable to quotations submitted and agreements concluded by Den Hollander Engineering B.V., hereinafter referred to as SELLER, including agreements associated with the latter, except for such modifications as are explicitly agreed to in writing between both partners.

1. Quotation and Acceptance of Order

Quotations submitted by SELLER are without engagement. An agreement is only concluded through SELLER'S written acceptance of order. The contents of the agreement are determined exclusively by this acceptance of order. Any alterations in and/or additions to this agreement must also be agreed to in writing.

2. Price

2.1

Prices are based on the agreed scope of supply, delivery time, mode of delivery, and terms of payment.

2.2

SELLER reserves the right to modify the prices if any changes occur in the factors referred to in 2.1 above (regardless of whether such changes were foreseeable or not at the time of mailing of our acceptance of order) through causes for which the principal is responsible. Moreover, SELLER reserves the right to adjust the prices if any changes arise in:

a. wages and allowances, including National Insurance contributions,

b. prices of materials, raw materials and parts procured from third parties, if, and as far as, these changes can be determined on the basis of the official index figures in the Netherlands.

2.3

Price modifications under the provisions of Clause 2.2 will be communicated to the principal with the least possible delay and in writing, whereupon these modifications shall become binding.

3. Conditions of payment

3.1

Unless specifically stated otherwise in SELLER'S quotation, quotations submitted by SELLER are based on the following conditions of payment:

- 30% of the purchase amount to be paid within one month after the order has been formally accepted;

- 70% of the purchase amount to be paid on delivery within one month following upon the date on SELLER'S relevant invoice, even if the principal does not take delivery of the goods.

3.2

All payments shall be made into an account to be specified by SELLER, without any deduction or compensation.

3.3

All costs associated with giving security for payment shall be payable by principal.

3.4

If in deviation of Clause 3.1, payments must be made on presentation of transport documents, such payments may also be collectable on presentation of a warehouse receipt, if transport cannot be affected due to circumstances beyond SELLER'S control. For this purpose, the principal shall make proper arrangements with his bank.

3.5

If the principal fails to make payment at the appointed dates, the amounts due shall be increased by the European Central Bank Inter Banking rate effective at the time of default, plus 2%. The increase will be charged over the period during which the principal remains in default.

4. Time of delivery

4.1

The time of delivery indicated in our acceptance of order commences at the date at which we have received from the principal at the first installment as provided in Clause 3.1., payment securities for the remaining installments, as well as all information and materials required to initiate and proceed with execution of the work, including any sample materials required. If the commencing date is postponed, the time of delivery will be adapted accordingly. If the first installment is not been received within three months from the date on the acceptance of order, SELLER shall have the right to terminate the agreement, regardless of his entitlement to compensation.

4.2

If, owing to circumstances beyond SELLER'S control, SELLER is unable to meet delivery deadlines, he shall ensure that the goods are expertly stored for the principal's account and risk, without prejudice to the principal's obligation regarding timely payment of any installments due.

5. Delivery

5.1

Delivery is affected "ex works" unless agreed otherwise.. The conditions underlying any mode of delivery shall be established in accordance with the ICC Incoterms, effective at the date of the acceptance of the order.

5.2

a. if not with standing the provisions of Clause 3.1 of the present general terms, delivery has been completed before the total amount due under the agreement has been paid in full, or if for any amount payable no security has yet been received by us, the goods delivered shall remain SELLER'S property.

b. if in deviation from the provisions of Clause 15, the agreement should not or not wholly be subject to the Law of the Netherlands, and if the Law then applicable does not allow such property proviso, SELLER shall enjoy all other

rights granted to us under the said Law, with priority over any other rightful claimants to the goods. The principal shall at all times give full cooperation, and offer unhindered access to the goods delivered, in enabling SELLER to record and exercise these rights. The principal shall, in any case until full payment of the amount due has been made to SELLER, maintain the goods delivered in good condition and have them covered by adequate insurance.

c. the principal shall not have the right to pledge the goods, or give them as a security to third parties, before full payment of the amounts due has been made to SELLER.

5.3

If after having been declared in default by SELLER the principal fails to make payment in full of the total amount due under the agreement, SELLER shall have the right to repossess the goods without judicial interposition.

6. Acceptance and guarantee

6.1

The principal shall be deemed to have accepted the goods as soon as the goods have been delivered as agreed and, if so agreed, have been commissioned by SELLER, and as soon as any agreed acceptance tests (for the purpose of which the principal shall provide SELLER with all the necessary auxiliary materials, raw materials and other materials of adequate quality and in sufficient quantities, without any cost to SELLER) have been successfully completed or, in case such acceptance tests have been agreed on and the principal fails to provide the above-mentioned materials, three months after SELLER has notified the principal of the goods being ready to undergo the acceptance tests.

6.2

SELLER guarantees the soundness of the construction of all goods supplied by us, and of the materials used in their manufacture, for the period mentioned in 6.3 below. Any defects covered by this guarantee shall be repaired by SELLER free of charge and SELLER shall reimburse the labor costs which the principal at SELLER'S written request, has incurred in connection with such repair. The guarantee does not cover parts and components that are subject to normal wear, routine change parts and electrical components. This guarantee shall come into effect as soon as erection and assembly operations have been completed.

6.3

All guarantee periods expire six months after the erection and assembly operations have been completed and in any case twelve months after delivery of the goods. The principal shall be notified by SELLER in writing of the completion of the erection and assembly operations.

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6.4

Any delays in the execution of the agreement which are attributable to the principal, shall not constitute a reason for extending the periods mentioned in 6.3 above.

6.5

The guarantee provisions shall only be applicable if:

- the payment obligations are fulfilled;
- the operating instructions are strictly observed;
- proper maintenance is affected;
- the principal or a third party does not mount and/or repair the goods supplied and/or does not put them into operation without SELLER'S written permission.
- SELLER is notified in writing of any claims under the guarantee, immediately after a defect has occurred.

6.6

The guarantee given by SELLER for parts and components procured from third parties does not exceed the guarantee given to SELLER by these third parties.

7. Liability

7.1

If SELLER is held liable for any damage, such damage shall at all times be limited to the invoice value of the relevant parts or components, with due observance of the usual depreciation procedures.

7.2

SELLER shall on no account be liable for:

- any claim from third parties concerning a violation of their patent, license, trademark, model and other rights howsoever named relating to goods supplied by SELLER, if and as far as SELLER has violated such rights by utilizing information made available to SELLER by or on behalf of the principal for the purpose of carrying out the order;
- any indirect and/or consequential damage such as, but not limited to, trading loss, loss of profits, devaluation of or damage to items of property, loss of goodwill and reputation, suffered by the principal and/or by third parties as a result of non-delivery and/or non-functioning or late delivery and/or improper functioning of the goods;
- damage to other properties of the principal;
- any damage or physical injury resulting from plant management or maintenance operations performed by the principal contrary to our operating or maintenance instructions, or resulting from any alteration made to the goods without SELLER'S explicit written consent. The principal shall indemnify SELLER fully against any liability for such damage or physical injury.

8. Termination or nullity of the agreement

In the event of termination or nullity of the agreement for any reason whatsoever, the present General Terms shall remain in force in so far as they are of independent significance

and/or in so far as they have been specifically stipulated for the purpose of setting the consequences of such termination or nullity, non-restrictive examples in point being the stipulations and provisions made in connection with delivery, penalty clauses, liability, jurisdiction and applicable law.

9. Penalty clauses

If and as far as the agreement includes any penalty clauses, these shall be deemed to be the instruments for the complete and only possible settlement of any loss or damage suffered.

10. Force majeure

10.1

Force majeure shall be understood to be any condition (irrespective as to whether or not this situation was foreseeable at the time of acceptance of the order) due to which parties are prevented, either permanently or temporarily, from meeting their obligations, including such conditions as strike, lock-out, casting faults, government intervention, state of war, state of siege, fire, catastrophes, epidemics and similar conditions, or conditions imputable to sub-contractors.

10.2

All cases of force majeure shall be reported by the party affected within two weeks of their occurrence, and shall constitute a reason for the suspension of mutual obligations. In case the force majeure situation continues for a period exceeding twelve months, both parties have the right to dissolve the agreement.

11. Drawings and documentation

11.1

Any illustrations, catalogues, technical specifications and computer programs supplied by SELLER, shall remain SELLER'S property and shall not be binding, unless explicitly agreed otherwise in the acceptance of order. The principal shall be responsible for preventing these documents from being copied and/or being handed over or given for inspection to third parties without SELLER'S prior consent. SELLER shall not be under an obligation to provide detailed drawings.

11.2

Any illustrations, catalogues, drawings, size and weight specifications, supplied by the principal to SELLER shall remain the principal's property. They shall not be copied and/or handed over or given for inspection to third parties if so requested by the principal.

11.3

The installations to be supplied shall be designed and manufactured on the basis of Dutch standards and regulations. Any adaptations to standards and regulations applicable at the principal's place of business can be made by SELLER for the principal's account and at his risk, provided such standards and regulations are made known to SELLER in good time.

12. Erection and commissioning

12.1

If and as far as it has been agreed by SELLER to carry out the erection and/or commissioning operations, or to supervise and/or assist in the erection and/or commissioning operations, SELLER'S General Conditions governing technical assistance and erection, commissioning and servicing operations shall be applicable.

12.2

Servicing operations performed by SELLER shall not imply any obligation for SELLER other than the performance of said operations in a professional manner, nor shall they imply any guarantee as regards completeness of the inspection or servicing work or overall operation of the installation.

13. Parts

13.1

The present terms shall also apply to the supply of parts, as far as these general terms are not explicitly overruled by what follows.

13.2

SELLER undertakes to supply parts to his principals for a period of six years from the date of the original supply.

13.3

SELLER has the right to supply parts that are different from the parts ordered from SELLER, on condition that such parts will be at least equivalent to the parts supplied originally.

13.4

The installation of the parts is not included in the price.

13.5

Parts are supplied under a guarantee which expires six months after the date of ex-works shipment.

13.6

Any parts found defective on receipt, may be returned to us. They will be credited to the principal on condition that:

- the defect has been notified to SELLER within ten days after receipt of such parts and SELLER agrees to these parts being returned;
- the parts have not been used;
- the principal has procured all documents required to effect the return;
- the order number is stated on the documents.

14. Disputes

Any disputes shall be adjudged exclusively by the competent Court in Amsterdam.

15. Applicable law

The present general terms shall be governed by the Law of the Netherlands.