

Terms and Conditions of Sale – Milkflo Dairy Systems Ltd

1. DEFINITIONS

- 1.1 “the Company” is Milkflo Dairy Systems Ltd
- 1.2 “the Conditions” means these Terms and Conditions of Sale, and “Condition” shall be construed accordingly.
- 1.3 “the Purchaser” is the individual, company, or firm with whom the Company contracts or does business with.
- 1.4 “Goods” means those goods sold by the Company to the Purchaser
- 1.5 “the Price” is the price for the Goods determined in accordance with clause 8.
- 1.6 “Delivery Address” means the address to which the Company is instructed to deliver the Goods by the Purchaser, or, failing such an instruction, the principal place of business or registered office of the Purchaser.
- 1.7 “writing” will include other written or non-verbal means of communication such as e-mail, text or comparable means of communication.

2. CONDITIONS

- 2.1 No variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Purchaser and the Company.

3. DELIVERY

- 3.1 The Company will try to deliver the Goods as soon as possible, but will incur no liability of any description arising from any delay in delivery and time of delivery shall not be the essence of the contract.
- 3.2 Should the Company attempt to deliver the Goods to the Purchaser and the Purchaser fails to accept delivery then without prejudice to any other rights or remedies the Company may have, the Purchaser shall be liable to pay all and any costs incurred by the Company arising from non-delivery, including by way of example; additional transport costs and storage charges.
- 3.3 The Company is not liable for any loss or damage caused by:
 - 3.3.1 Loading of the Goods by the Purchaser, its agents or servants, if the Goods are collected by the Purchaser; or
 - 3.3.2 Unloading of the Goods if the Goods are delivered by the Company or its carrier; and any loss or damage occurring after collection or delivery – as the case may be.
- 3.4 The Company may make deliveries by instalments.

4. FORCE MAJEURE

If the Company is delayed or prevented from discharging any of its obligations hereunder by any circumstances whatsoever outside its complete control, further performance of the contract shall either be suspended for so long as the Company is prevented, or at its option – cancelled, in which case the Company shall not be deemed to be in breach of the contract and shall not be liable for any loss or damage of any kind whether direct, indirect or consequential arising out of or connected with the suspension or cancellation of the contract. Upon cancellation of the contract, any monies paid in advance for the Goods will be refunded in full to the Purchaser.

5. TITLE

- 5.1 Title to the Goods shall not pass to the Purchaser until all monies owed to the Company by the Purchaser on any account have been received by the Company in cleared funds.
- 5.2 In the case of non-payment on the due date or termination under the provisions of condition 13 (whichever is the earlier), the Company shall be entitled to, and may at any time for the purpose of recovery, enter any premises where they might reasonably be thought to be stored and repossess the Goods.
- 5.3 The Purchaser shall not be entitled to pledge, charge by way of security, or otherwise encumber any of the goods.

6. RISK AND INSURANCE

- 6.1 The risk for the Goods shall pass to the Purchaser on delivery.
- 6.2 The Purchaser shall fully insure the Goods for the Price from the date of delivery or collection – as the case may be – in the joint names of the Company and the Purchaser and shall store the Goods separately and clearly labelled as the property of the Company until all sums due to the Company have been settled in full.

7. PAYMENT

- 7.1 Quotations from the company are valid for 30 days from the date of such quotation. For the purposes of this condition the receipt by the Company of an order in writing for the Goods shall be deemed to be an acceptance of the quotation.
- 7.2 Unless otherwise agreed in writing payment for the Goods shall be made in accordance with the invoice within 30 days of the invoice date. For this purpose, time for the payment shall be the essence of the contract. Receipts for payment will only be issued on request. Any discrepancy associated with but not limited to pricing, charges, invoice address, purchase order numbers etc must be reported to the Company within 10 days of the invoice date. Discrepancies notified after the 10 day period will not be considered by the Company for credit.
- 7.3 If payment is not made as provided for in provision 7.2 the sum shall carry interest at 8% above the Bank of England base rate at the invoice date, calculated on a daily basis from the invoice date until payment is made in full, together with all costs, charges or expenses incurred in recovering any amount due.

- 7.4 If payment is not received by the due date by the Company and without prejudice to the provisions of 7.3 and the Company's other rights and remedies, the Company reserves the right to suspend further deliveries of Goods to the Purchaser and/or terminate all contracts between the Company and the Purchaser and the Company shall have no liability to the Purchaser for such suspension or termination.
8. PRICES
- 8.1 The Price charged for the Goods will be the price ruling at the date of acceptance of the order or as provided for in the quotation (if any) subject to condition 7.1
9. VAT
- 9.1 Unless expressly stated otherwise, all prices quoted are exclusive of VAT (value added tax). Goods will be sold and supplied subject to the rate of VAT prevailing at the time of supply (tax point)
10. WARRANTIES AND REPRESENTATIONS
- 10.1 Goods supplied will comply in all material respects with the description given in the Company's quote and or product catalogue in respect of dimensions, capacity, materials and product features.
- 10.2 Faulty goods will be replaced with the same or equivalent product, any replacements will be invoiced with a credit raised on receipt of the faulty goods following inspection and if necessary returning the Goods back to the original manufacturer or supplier.
- 10.3 The warranty period for new parts guaranteed to be free from manufacturing and workmanship defects for a period of 1 year from the date of supply or installation.
- 10.4 Second hand / used parts carry no warranty unless previously agreed in writing by the Company to the Purchaser.
- 10.5 Exclusions to warranty – the warranty as mentioned in conditions 10.1 to 10.3 inclusive does not cover –
- 10.5.1 Normal wear and tear parts such as milk pump seals, diaphragms, rubber / silicone products where there are no material or workmanship defects apparent.
- 10.5.2 Modifications of the Goods by the Purchaser or any other party from the original supplied condition
- 10.5.3 Use of the Goods for abnormal conditions or for purposes other than those for which the Goods were designed
- 10.5.4 Damage caused by operator error or failing to follow the operator's manual
- 10.5.5 Labour charges for supply and fitting of replacement Goods
11. RETURN OF GOODS, NOTIFICATION OF LOSS, NON-DELIVERY, DAMAGE
- 11.1 If the Goods are delivered to the Purchaser then any notice of claim arising from the delivery shall be made within 5 working days of the date of the delivery. Such notice must be made in writing by the Purchaser to the Company, and the delivery advice note should be returned to the Company where possible. If the Company has not been given notice of any claim within the specified period, the Goods will be deemed to have been accepted by the Purchaser.
- 11.2 If the Goods are delivered to the Purchaser then any request for return of Goods arising out of that delivery must be made to the Company within 5 working days of the date of the delivery, after which period the Goods will be deemed accepted by the Purchaser.
- 11.3 If the Goods are collected by the Purchaser, the Company will not be liable for any loss, shortage or damage once the Goods are removed from the premises by the Purchaser.
- 11.4 It shall be the Purchaser's sole responsibility to inspect the Goods in order to comply with the provisions of condition 11. To 11.3 inclusive.
12. LIABILITY
- 12.1 The Company shall not be liable to the Purchaser for any loss of profit, income or other indirect special or consequential costs (including milk), whether caused by the negligence of the Company or its employees or agents or otherwise.
- 12.2 The Company's maximum aggregate liability under, arising from, or in connection with the contract (whether in contract, for negligence or otherwise), shall be limited to a sum equivalent to the Price of the Goods in respect of which such a liability arises.
- 12.3 Without prejudice to the provisions of 12.2 the liability of the Company to the Purchaser for any loss of damage to property (other than the Goods) shall not exceed £1,000,000.
- 12.4 The Purchaser shall keep and hold the Company, its servants and agents fully indemnified in respect of any claim, loss, damage or injury whether arising in contract tort or otherwise arising from any act or omission whether deliberate, accidental or negligent of the Purchaser its servants or agents.
- 12.5 The Purchaser is recommended to insure against any loss or damage in respect of which the liability is excluded or limited under these Conditions.
13. TERMINATION
- 13.1 The Company may at its own discretion terminate any contract for the Goods, or suspend any further delivery of the Goods without any liability to the Purchaser upon any of the following events occurring:
- 13.1.1 The Purchaser entering into any voluntary arrangement with its creditors or becoming subject to an administrative order; or
- 13.1.2 Being an individual or a firm having a bankruptcy petition served against it; or
- 13.1.3 Being a Company, having a winding-up order served on it; or
- 13.1.4 Going into liquidation for any purpose other than amalgamation or reconstruction; or
- 13.1.5 Any of its property or assets being possessed under the provisions of any encumbrance, mortgage, loan or charge upon them; or

- 13.1.6 Ceasing, or threatening to cease to carry on business; or
- 13.1.7 The Company reasonably believes or suspects that any of the above mentioned events are about to occur in relation to the Purchaser; or
- 13.1.8 The Purchaser failing to make payment on the due date under any contract between the Company and the Purchaser.
- 13.2 Notwithstanding the right of the Company to terminate under the provisions of this condition on occurrence of any of the events referred to in 13.1, any sums due to the Company and not yet paid (irrespective of any payment terms contained in these Conditions of otherwise agreed in writing between the parties) shall become immediately due and payable, and the Company shall be entitled to charge interest at the rate of 8 percent above the Bank of England base rate on such outstanding amount from the date of notification of the same to the date of payment.
- 13.3 Without prejudice to any other rights and remedies of the Company, in the event that the Purchaser seeks to cancel and order for the Goods after despatch by the Company of any consignment of the Goods, the Company reserves the right at its absolute discretion to charge the Purchaser a cancellation fee of a sum equivalent to 15% of the value of the Goods.
- 13.4 Any goods returned must be in new re-saleable condition with retail packaging intact where provided. Costs for return carriage or transport will be the Purchasers responsibility and insurance to cover the value of the goods should be provided.
14. SERVICE AND MAINTENANCE CONTRACTS (REFRIGERATION)
- 14.1 The Company will maintain a service engineer on call at all times and to will aim to attend to a fault or breakdown as soon as is practically possible. In the event of multiple breakdowns it is the Company's right to prioritise the urgency of each breakdown to decide which to attend first.
- 14.2 The Company will maintain adequate stock of spares enabling plant to be returned to a working standard within a reasonable period.
- 14.3 The Company will provide two types of service and maintenance contracts as follows:
- 14.3.1 Service Contract Only. The Company will carry out two maintenance visits per year at approximately six monthly intervals, with no more than seven months between each service visit. The Company reserves the right to carry out a service visit in conjunction with a call out if it is made in the period of one month either side of the scheduled service date. Travel and labour for call outs will be charged at the current rates.
- 14.3.2 Service and Maintenance Contract. The Company will carry out two maintenance visits per year at approximately six monthly intervals, with no more than seven months between each service visit. The Company reserves the right to carry out a service visit in conjunction with a call out if it is made in the period of one month either side of the scheduled service date. All call-outs and breakdowns are free of labour and mileage charges apart from the out of hours callout charge as mentioned in 14.4
- 14.4 Both contracts as set out in 14.3 cover travel and labour charges only, any materials used will be charged for at the current prices. Call outs for breakdowns outside of normal working hours (Monday to Friday 8am to 5pm) will be subject to a fixed additional call out charge at the current rate.
- 14.5 The Company shall not be liable to the Purchaser for any loss of profit, income or other indirect special or consequential costs (including milk), whether caused by the negligence of the Company or its employees or agents or otherwise.
- 14.6 All service requirements originating from causes not covered by the contract as detailed in 14.9 will be charged for.
- 14.7 The Purchaser agrees to protect equipment adequately from vermin, weather and physical damage where possible.
- 14.8 The Purchaser must allow access by authorised Company staff or agents to the equipment in normal business hours and whenever necessary in the event of a breakdown out of hours.
- 14.9 Exclusions to contract – the following work is not covered by the service and/or maintenance contract:
- 14.9.1 Repair of defects or damage caused by rodents, fire, water or extreme weather / ambient conditions
- 14.9.2 Repair of defects or damage caused by an electrical fault on the mains side of the isolator or a timeclock malfunction
- 14.9.3 Repair of defects which can't be successfully carried out at the Purchasers premises. In the event of equipment being removed for workshop repair a quotation will be supplied for the work required.
- 14.9.4 Any work required for repositioning of equipment due to alterations being carried out by the Purchaser
- 14.9.5 Work required modifying or replacing existing equipment as a result of new legislation or Goods becoming obsolete.
- 14.9.6 Repair of defects or damage caused by the Purchaser, not following the operator's manual or by any other third party interfering with the equipment.
- 14.9.7 Repairs to water heaters.
- 14.9.8 Repair of defects or faults relating to the installation of the equipment where it has not been originally installed by the Company. Including but not limited to; electrical wiring, water connections, drains / drain lines.
- 14.9.9 Repairs to vessels.
- 14.9.10 Repairs of defects present prior to commencement of the contract.
- 14.10 Payment of the yearly maintenance fee shall be made in advance of the contract start date. The Company reserves the right to alter the yearly maintenance fee for the following year by giving the Purchaser no less than 14 days' notice in writing prior to contract renewal.