

General conditions - July 2017

General terms and conditions of sale and delivery of Fri-Jado B.V. ("Fri-Jado"), as published with the Netherlands Chamber of Commerce with number 20007518.

1 GENERAL

- 1.1 The next definition will apply:
 - Customer: any (possible) principal or principals of Fri-Jado regarding the sale and delivery of Products;
 - Product(s): moveable good(s), such as food equipment, heated and refrigerated counters, refrigeration packs, spare parts, technical installations and proprietary rights or parts thereof, and/or service(s) such as training, installation, repair and advice.
- 1.2 These terms and conditions apply to all legal relationships in which Fri-Jado acts as (possible) supplier of Products.
- 1.3 Customer explicitly accepts these terms and conditions by placing his purchase order. Fri-Jado explicitly rejects the general terms and conditions of the Customer.
- 1.4 Any deviation from these general terms and conditions is only applicable by written agreement between Fri-Jado and Customer.

2 OFFERS AND AGREEMENTS

- 2.1 Offers of Fri-Jado in any form are free of engagement and valid for a period of two months from the date of issuing.
- 2.2 The agreement between Fri-Jado and Customer shall only become effective after Fri-Jado has sent the written order confirmation, or as soon as Fri-Jado has started the execution thereof.
- 2.3 The agreement can only be adjusted when agreed in writing, unless Fri-Jado starts implementing the adjustment without a written confirmation, or pursuant to the stipulations in article 3.3.
- 2.4 If more than one principal acts as Customer, all of these principals shall be severally liable towards Fri-Jado.
- 2.5 Customer shall not transfer its rights or obligations towards Fri-Jado to third parties without prior written permission from Fri-Jado.

3 PRICES

- 3.1 The prices mentioned in the offer and order confirmation for delivery in the Netherlands are in euros, excluding VAT and other governmental levies payable at sale and delivery and on the basis of Delivery At Place (DAP, Incoterms 2010), unless agreed otherwise in writing.
- 3.2 The prices mentioned in the offer and order confirmation for delivery outside the Netherlands are in euros, excluding VAT and other governmental levies payable at sale and delivery and on the basis of Free Carrier (FCA, Incoterms 2010), unless agreed otherwise in writing.
- 3.3 Fri-Jado is entitled to charge Customer for adjustments in cost-price factors related to the agreement, such as prices of (raw) materials, resources, labour costs, insurances, freightage, exchange rates, taxes, levies or other governmental measures that occur after closing the agreement, even if these result from foreseeable circumstances. Only in case of an increase of the agreed price by more than 10%, Customer shall have the right to fully or partly annul the agreement by means of a written notice to Fri-Jado within fourteen days after being informed in writing by Fri-Jado.

4 DELIVERY

- 4.1 Fri-Jado shall deliver the Products on the delivery date mentioned in the order confirmation, or on another date that has been mutually agreed upon.
- 4.2 Delivery dates issued by Fri-Jado are no deadlines. Fri-Jado shall be in default only (i) after the Customer has declared Fri-Jado in default in writing when after the given reasonable additional lead time beyond the delivery date has expired, Fri-Jado still does not comply with the agreement, and (ii) with written proof of default or written summons or notice.
- 4.3 Exceeding the delivery term shall not entitle Customer to order third parties to still execute obligations without (i) prior written permission from Fri-Jado or (ii) producing an irrevocable court order to this effect.
- 4.4 Irrespective of stipulations elsewhere in these general terms and conditions with respect to extension of the delivery term, this will be extended by the delay that Fri-Jado is faced with as a result of non-compliance by Customer or third parties called in by Customer with any obligations pursuant to the agreement or non-cooperation by it or by third parties called in by Customer that may be required for execution of the agreement.
- 4.5 Fri-Jado is entitled to deliver in parts and to separately invoice these parts.
- 4.6 With respect to determination of weight, dimensions, number and assembly of the Products delivered, the weightings, measurements, counts and analyses according to the methods used by Fri-Jado are normative subject to proof to the contrary.
- 4.7 Fri-Jado shall not be obliged to ask Customer about the intended use of the Products or the conditions of use of the Products.
- 4.8 Products will be regarded as being delivered in accordance with the stipulations in article 3.1 and 3.2.
- 4.9 If Fri-Jado has taken on the installation of the Products on-site at Customer or end user, these Products will be regarded as being delivered when they or the most important parts thereof – all this entirely and exclusively at the reasonable discretion of Fri-Jado – have been installed at the intended place, are ready for use or as much earlier when Customer or end user has started using the Products.

5 OBLIGATIONS OF CUSTOMER WITH RESPECT TO INSTALLATION

- 5.1 Customer shall ensure correct and timely purchase and/or correct and timely performance of all installations, deliveries and/or conditions required for placing the Product to be installed and/or the correct functioning of the Product after installation. All costs resulting from non-compliance with these obligations by Customer shall be at the expense of Customer.
- 5.2 Without prejudice to the stipulations in article 5.1, Customer shall in any case ensure at its own expense and risk that all necessary conditions precedent on delivery are met – all this entirely and exclusively at the reasonable discretion of Fri-Jado – including, but not limited to, timely and suitable access to the site of Customer or end user, suitable access to electrical installations and/or plumbing and the adaptation thereof, all required permits, exemptions, orders or approvals and all necessary safety measures and precautions.

6 RISK AND TRANSFER OF PROPERTY

- 6.1 The Products sold or the parts thereof shall be at the expense and risk of Customer as from the moment of delivery in conformity with article 4.8. Also in view of the property condition these Products are subject to, the Customer shall be obliged to insure the Products at its own expense with an insurer of good reputation, as from the moment of transfer of the risk.
- 6.2 Without prejudice to the stipulations in articles 4.8, 4.9 and 9.2, Fri-Jado shall retain her property rights regarding the Products it has delivered and will deliver to Customer, until Customer has fully complied with all (payment) obligations for all delivered or to be delivered Products pursuant to the agreement, and with all claims because of failure to comply with such obligations.
- 6.3 When Customer has not timely complied with its (payment) obligations towards Fri-Jado, Customer shall irrevocably authorise Fri-Jado to retrieve the delivered Products belonging to Fri-Jado without any proof of default or settlement by the court. Fri-Jado shall keep these Products in its possession. All costs regarding this retrieving of Products shall be at the expense of Customer.

7 PAYMENT

- 7.1 Customer shall pay the invoice to Fri-Jado within 30 days after the invoice date, unless explicitly agreed otherwise in writing.
- 7.2 In case of exceeding the payment term, Customer shall, without prejudice to the other rights of Fri-Jado and without requiring prior proof of default, be due the legal interest increased by one percent (1%) over the unpaid invoice amounts until the time of full payment. All not yet paid invoices shall immediately be payable and all consequences of non-compliance shall immediately come into effect.
- 7.3 Payment shall take place without any discount, postponement or settlement.
- 7.4 All payments by Customer shall in the first place be used for settlement of all costs and due interest and then of those invoices that are open for the longest time, even if Customer indicates the invoice of a later date at the payment.
- 7.5 In case of annulment, (petition in) bankruptcy or (application for) a moratorium of Customer, all of its obligations to Fri-Jado shall become payable immediately.
- 7.6 If Customer is in default or fails to comply with one or more of its obligations, all extrajudicial costs, explicitly including the costs regarding summons, carrying on settlement negotiations and other activities for the preparation of a possible legal procedure, as well as all judicial costs that Fri-Jado must incur, shall be at the expense of Customer. In that case Customer shall be due at least 15% of the total amount due for coverage of extrajudicial costs. If Fri-Jado proves that additional costs did incur than were reasonably necessary, these will also be considered for compensation by Customer.

8 INTELLECTUAL PROPERTY

- 8.1 All (parts of) Products subject to an intellectual property right that are made available to Customer by (mediation of) Fri-Jado, shall remain subject to the intellectual property right of the original owner. Customer is bound to handle all information and knowledge made available to it by (mediation of) Fri-Jado confidentially and to respect all intellectual property rights. Customer is obliged to return to Fri-Jado all documents and other data carriers containing information subject to intellectual property rights, as referred to in the previous clause, insofar as these are not required with respect to the execution of the agreement involved at first request.
- 8.2 Fri-Jado shall make manuals of equipment of its own manufacture available to Customer in only Dutch, English, German, French or Spanish.

9 COMPLAINTS

- 9.1 If a Product does not comply with the agreement, Fri-Jado shall only be bound to deliver the missing part, to replace or repair the delivered Product or to pay back the price to Customer at returning the Product, all this at the discretion of Fri-Jado. Customer is bound to follow the instructions of Fri-Jado with respect to storage or return of the Product to be replaced or repaired.
- 9.2 If defects are not immediately observable at delivery, Customer shall be bound to immediately inform Fri-Jado after discovery of these in writing and with an explanation, but not later than fifteen days after the date of delivery of the Products, or in case of invisible defects, after the defect should reasonably have been discovered.

10 WARRANTY

- 10.1 Without prejudice to the stipulations and limitations mentioned in this article, the Products that are defective or not properly functioning as a result of a material or manufacturing fault shall generally be repaired or replaced at the expense of Fri-Jado.

- 10.2 In case of installation of new Products on-site at Customer or end user within the period of three months after the invoice date as mentioned in article 7.1, the warranty period is set at twelve months. In all other cases regarding new Products, the warranty period is set at fifteen months after the invoice date as mentioned in article 7.1. With respect to used Products, in all cases the warranty period is set at three months after the invoice date as mentioned in article 7.1.
- 10.3 In case Customer has the intention to resell the Products, the warranty shall be limited to subsequent delivery of the parts in which a material or manufacturing fault occurs, whereas other repair or replacement costs are outside the warranty conditions. The subsequent delivery shall take place in conformity with the stipulations of article 4. Only Customers or end users that are the first users of the Products are entitled to warranty.
- 10.4 The warranty does not apply to:
 - A defect with respect to glass, lamps, gaskets or services;
 - A defect resulting from transportation of the Products to Customer or end user, except with respect to deliveries in the Netherlands;
 - A defect resulting from improper use and/or incorrect maintenance;
 - A defect caused by materials prescribed or made available to Fri-Jado by or on account of Customer;
 - A defect resulting from activities performed by Customer or third parties on Products without written permission from Fri-Jado;
 - A defect resulting from a Customer's default of compliance with any obligation pursuant to the agreement (including its (payment) obligation) and it has not as yet complied with its obligations within a reasonable term as laid down in a summons.
- 10.5 If a material or manufacturing fault occurs in a part that is outside the Netherlands, Customer shall be obliged to send this part to Fri-Jado at its expense. In such a case Fri-Jado shall only pay the material costs related to the repair or replacement of that part. The labour costs as well as all additional costs, including transport and insurance costs, shall be at the expense of Customer. If sending the part in which a fault occurs is impossible and Customer requires on-site repair or replacement of that part, the travelling and accommodation costs of employees of Fri-Jado shall be at its expense.
- 10.6 The repair of faults does not result in extension or renewal of the term of warranty. Replaced parts shall become the property of Fri-Jado.
- 10.7 Customer shall inform Fri-Jado in writing about all faults of any nature that become apparent during the applicable term of warranty. In case of visible defects this shall be done within six working days after delivery of Products by Fri-Jado in conformity with article 4.1 and otherwise within six working days after discovery of such a defect. In case of exceeding this term, any right of claim of the Customer shall become null and void. No appeal can be made to the obligation to remedy faults if not all required information can be provided to Fri-Jado at the same time and Customer does not give Fri-Jado the opportunity to conduct an investigation itself.

11 LIABILITY

- 11.1 The stipulations included in this article shall not affect the liability based on imperative Dutch law.
- 11.2 Irrespective of the legal basis a claim is based on, Fri-Jado shall only be liable for compensation of damage up to the amount paid by Customer with respect to the Products that have caused the damage.
- 11.3 Irrespective of the legal basis a claim is based on, Fri-Jado shall never be liable to indirect and/or consequential damage, including – but not limited to – loss of profit or earnings, missed orders and missed savings, damage as a result of liability towards third parties, damage as a result of exceeding the term of delivery, damage caused by manufacturing and/or business interruptions or stagnation. If these risks can be insured, Customer shall be obliged to take out insurance for this at its own expense.
- 11.4 Fri-Jado shall not be liable for damage caused by intent or conscious recklessness of subordinates and/or non-subordinates involved in the execution of the agreement, except for damage caused by intent or conscious recklessness on the side of Fri-Jado and/or its management.
- 11.5 Fri-Jado shall require all legal and contractual rights that it can appeal to in order to ward off its own liability, also for the benefit of all those – including both subordinates and non-subordinates – involved in the execution of the agreement and for whom it is legally liable.
- 11.6 Customer shall indemnify Fri-Jado against all liabilities of third parties with respect to the Products if Customer has assembled, machined or processed, packaged and/or completed the Products itself in any way. Such liabilities include, but are not limited to, claims, costs, legal costs and liabilities based on or pursuant to article 6:162 or 6:185-193 of the Civil Code (product liability) or similar legal stipulations in the laws of any other jurisdiction.
- 11.7 Fri-Jado shall not be liable for violation of patents, permits or other rights of third parties as a result of the use of materials provided by or on behalf of Customer, or damage or loss, resulting from whatever cause, of (raw) materials, half-finished products, models, tools or other matters made available by Customer.
- 11.8 If Fri-Jado offers assistance and support of any nature with regard to the installation without having received an order to do so, this will be at the risk of Customer.
- 11.9 Customer shall be responsible and liable for the construction part not made available by Fri-Jado and/or for the adverse consequences of the condition of the soil and Customer shall be obliged to compensate Fri-Jado for all damage that Fri-Jado may suffer as a result of faults in the construction part and/or the condition of the soil.

12 FORCE MAJEURE

- 12.1 Force majeure in these general terms and conditions shall mean any circumstance that occurs independently of the desire of a party – even if this was already foreseeable at the time of entering into the agreement – and that permanently or temporarily hampers execution of the agreement, such as: regulations issued or to be issued by the government that hamper or limit the use of the delivered or still to be delivered Products, lack of raw materials and additives for the manufacturing of the Products, lack of labour forces, working strike, prohibition of import, export and/or transfer, transport problems, non-compliance with the obligations by subcontractors of Fri-Jado or transport companies, failures in the production, natural and/or nuclear disasters, war and/or threat of war, terrorist actions and/or attacks, fire, riot and uprising.
- 12.2 If as a consequence of force majeure the Delivery shall be delayed by more than two months, both Fri-Jado and Customer shall be entitled to terminate the agreement with immediate effect by means of a written notice addressed to the other party and sent by registered mail, without being bound to damages.
- 12.3 If force majeure occurs at the moment that a part of the agreement has been executed already, Customer shall, if the remainder of the Delivery is delayed by more than two months as a consequence of this force majeure, be entitled to (i) keep the already delivered parts of the Products and pay the purchase price of these or (ii) annul the agreement, including the already performed part, by notice of annulment with the obligation to return the already delivered Products at the expense and risk of Customer to Fri-Jado and on the condition that Customer can demonstrate that Customer can no longer effectively use the already delivered part of the Products due to non-delivery of the other Products.

13 ANNULMENT OF THE AGREEMENT

- 13.1 If Customer fails to comply with its obligations to Fri-Jado pursuant to the agreement or in case of (application for) a moratorium, (petition in) bankruptcy of Customer, Customer makes a settlement with its creditors or takes other steps in view of restructuring its debts, or control of its capital is otherwise limited or lost, terminates its business activities or transfers them to another country, or is liquidated or annulled, merges or is split up or a decision for this is taken, or a change occurs in the (legal) persons authorised to control the management and the policy of Customer by means of ownership of voting shares by agreement or otherwise, Fri-Jado is entitled to fully or partly annul the agreement with immediate effect, all this without prejudice to all its other rights and without being bound to damages.
- 13.2 If the agreement is annulled as a consequence of the stipulations in article 12.1 or because of a judicial sentence, Fri-Jado shall be entitled to full compensation. Unless Fri-Jado wants to calculate the damage in a different way, the damage will be fixed on 75% of the amount due with respect to the (not yet performed part of the) agreement without obliging Fri-Jado to demonstrate the existence of any loss or damage. This leaves intact the right of Fri-Jado to claim additional damages from Customer. Fri-Jado shall be entitled to take back the Products delivered in connection with the not yet fully performed agreement against crediting of the price that Customer has paid for this reduced by all costs incurred by Fri-Jado.
- 13.3 In the cases referred to in article 12.1 Fri-Jado may also postpone the performance of the agreement and immediately claim full payment of all that must be paid or will still be due pursuant to the agreement. In this case Fri-Jado shall be entitled to claim compensation of the damage it suffers as a result of the postponement and the consequences thereof.

14 PARTIAL NULLITY/CONVERSION

- 14.1 If stipulations in the general terms and conditions or the agreement shall be invalid, illegal, not binding or (fully or partially) impracticable, the other stipulations will remain in force. Parties shall undertake all they can to reach agreement about a new stipulation that deviates as little as possible from the invalid, illegal, non-binding or impracticable stipulation, taking into consideration the contents and the objectives of these general terms and conditions and the agreement.

15 APPLICABLE LAW

- 15.1 All legal relationships between Fri-Jado and Customer shall be subject to Dutch law, with the exception of the United Nations Convention on Contracts for the International Sales of Goods (CISG).

16 DISPUTES

- 16.1 The Court of Justice of Breda, the Netherlands, shall be exclusively authorised to settle all disputes that may occur between Fri-Jado and Customer pursuant to or in connection with the (performance of the) agreement as well as in connection with these general terms and conditions.