

# GENERAL TERMS AND CONDITIONS FOR MACHINERY

## 1 - Scope

These general terms and conditions of sale constitute, together with the Special Terms and Conditions (STC), in accordance with Article L 441-1 of the French Commercial Code, the sole foundation of the commercial relationship between the parties.

They are intended to define the conditions under which the company FCD ("The Supplier") supplies the following products to professional Buyers ("The Buyers or the Buyer") who request them, by direct contact or using paper media : "STERISTEP and STERISTIR pasteurisation/decontamination machines, continuous cooling machines, TS and TSB continuous roasting machines, BS milling machines" (The products).

They apply without restrictions or reservations to all sales agreed by the Supplier with Buyers of the same category, regardless of the clauses that may appear in the Buyer's documents, and in particular its general terms and conditions of purchase.

In accordance with the regulations in force, these General Terms and Conditions of Sale shall be systematically passed on to any Buyer who so requests, to enable it to place orders with the Supplier.

They shall also be passed on to any distributor prior to entry into a single agreement referred to in Article L 441-3 of the French Commercial Code, within the legal time limits.

Any orders of Products constitute the Buyer's acceptance, by any written means, of these General Terms and Conditions of Sale.

The information contained in the Supplier's catalogues, brochures and price lists is provided for information purposes only and may be revised at any time. The Supplier is entitled to make any changes it deems necessary.

## 2 - Orders - Prices

### 2-1

The contract is composed of two inseparable parts: The Special Terms and Conditions (or STCs) and General Terms and Conditions (or GTCs).

Depending on the machine concerned, the Special Terms and Conditions include:

- Product specifications
- The recommended machine model
- Content and details of the offer
- Sales conditions (payment, delivery, sketches and commissioning, operating tests, performance guarantee)
- Details of services included or excluded
- Diagrams of machinery operating processes
- Layout of the machine with a description of its components and installation instructions
- Electrical data

The General Terms and Conditions are appended after the Special Terms and Conditions.

The contract is formed by acceptance of the offer submitted by FCD in the Special Terms and Conditions, evidenced by the signing of a written contract comprising the Special Terms and Conditions and these General Terms and Conditions.

The data recorded in the Supplier's computer system, any emails exchanged, the elements contained in the source program or any other computer medium, constitute proof of all transactions and other agreements entered into with the Buyer.

The Products shall be supplied at the Supplier's rates and, where applicable, in the commercial proposal provided to the Buyer. These prices are firm and non-revisable during their period of validity.

## **2-2**

Any changes requested by the Buyer may only be considered, subject to what is possible for FCD and at its sole discretion, if they are notified in writing before validation of the final plans and after the Buyer signs a specific purchase order and any price adjustment.

## **2-3**

In the event of cancellation of the order by the Buyer after its acceptance by FCD for any reason whatsoever except force majeure, FCD shall be permanently entitled to any sums received, which shall be invoiced to the Buyer, by way of damages, as compensation for the loss thus suffered.

## **2-4**

Products shall be supplied at the Supplier's rates in force on the date the order is placed, and, if applicable, in the specific commercial proposal provided to the Buyer. These prices shall be firm and non-revisable during their validity period, as indicated by the Supplier.

These prices shall be net and exclusive of VAT, ex-works. They shall not include packaging (packing into shipping crates if necessary), transport, or any customs fees and insurance that shall be borne by the Buyer.

## **3 - Payment conditions**

### **3.1**

The price breakdown (always given in euros) and the terms of payment are defined in the Special Terms and Conditions.

Payments must be made by bank transfer according to the schedule provided for in the Special Terms and Conditions (STCs). They will only be considered as completed when the FCD account is irrevocably credited.

In the event of late payment and transfer of sums due by the Buyer after the deadline set in the STCs, and after the payment date indicated on the invoice sent to the Buyer, the Supplier shall automatically and as of right be entitled to late-payment penalties calculated at the rate of 15% per annum of the order price including VAT, without any formalities or prior formal notice.

In the event of non-compliance with the payment conditions set out above, the Supplier also reserves the right to suspend or cancel the delivery of orders in progress or to suspend their performance.

Any delay in payment shall result in a delay in delivery at least equal to the delay in payment and possibly longer. The resulting new deadline will be notified within 10 days of receipt of irrevocable payment by FCD.

Unless the Supplier gives its express, prior and written consent, and provided that mutual claims and debts are established, in cash and payable, any penalties for late delivery or non-conformity of products ordered by the Buyer cannot be validly offset against sums due by the Buyer to the Supplier in respect of the purchase of said products.

Finally, the Buyer shall be automatically liable, without any prior notice, for fixed compensation of €40 for recovery costs in the event of late payment. The Supplier reserves the right to request additional compensation from the Buyer if the collection costs actually incurred exceed this amount, upon presentation of supporting documents.

### **3.2**

Until the Buyer pays the price in full, the Supplier reserves the right of ownership over products sold, allowing it to take back possession of said products.

If FCD were ultimately to recover a product, all costs for returning machinery to FCD will be borne by the customer including: costs incurred for any personnel required, any necessary operational means (cranes), dismantling, packaging, lifting, staff accommodation and catering, insurance, and transporting machinery and people.

If the price is not paid in full, FCD shall also be entitled to object to the customer initiating production, without incurring any penalties relating to any loss of productivity by the customer.

If the product is delivered and approved, but the price due by the customer is not paid in full, FCD may prohibit the start of production. Should the customer initiate production, it shall be liable to FCD for a penalty of €1,000 per day of operation until full payment of the price is irrevocably received by FCD, FCD has given its authorisation for the start of production, or FCD has recovered the product from the customer.

However, the risk of loss and damage will be transferred to the Buyer as soon as it signs a contract expressing the parties' agreement on the item and on the price.

The Buyer therefore undertakes to take out ad hoc insurance for the ordered product, at its own expense, for the benefit of the Supplier, until complete transfer of ownership and to provide proof thereof to the Supplier at the time of delivery. Failing this, the Supplier shall be entitled to delay delivery until the insurance certificate is presented.

### **3.3**

No discount shall be granted by the Supplier for payment before the date shown on the invoice or within a period shorter than that mentioned in these General Terms and Conditions of Sale.

## **4 – Delivery**

### **4.1**

Delivery methods are set out in the STCs.

FCD shall under no circumstances be held liable in the event of delay or suspension of delivery attributable to the Buyer or in the event of force majeure.

Delivery will be made to the customer's premises by direct handover of products to the Buyer. Parts are transported at the Buyer's risk.

### **4.2**

In the event of special requests from the Buyer concerning packaging or transport conditions for ordered products, duly accepted in writing by the Supplier, the associated costs will be included in a specific additional invoice.

The Buyer shall be required to check the apparent condition of products upon delivery. If no reservations are expressly made by the Buyer at the time of delivery, Products delivered by FCD shall be deemed compliant in quantity and quality with the order.

The Buyer may express reservations until machine start-up tests are carried out by FCD.

No claim may be validly accepted if the Buyer fails to comply with these formalities.

The Supplier shall replace, as soon as possible and at its own expense, any delivered Products or parts of products proven non-compliant by the Buyer.

## **5 - Transfer of ownership - Transfer of risk**

### **5.1- Transfer of ownership**

Ownership of products shall only be transferred to the Buyer after the Buyer pays the price in full, regardless of the delivery date of said products, as mentioned in item **3.2** of these General Terms and Conditions of Sale.

The customer will not be allowed to start production until full payment of the purchase price.

### **5.2 - Transfer of risk**

The EXWORKS INCOTERM in force on the contract signing date shall be applied to the contract and the risk of loss and deterioration shall be transferred to the Buyer from the machine's departure from the manufacturer's factory, unloaded and not customs cleared for export or import.

### **5.3 - Carrier's delivery obligation**

The Buyer acknowledges that it is the carrier's responsibility to perform the delivery, the Supplier being deemed to have fulfilled its delivery obligation once the ordered products have been handed over to and unreservedly accepted by the carrier. The Buyer is therefore not entitled to make any warranty claims against the Supplier in the event of delays or failure to deliver ordered Products or of damage occurring during transport or unloading.

## **6 – Installation of machinery and start-up**

Technical information and drawings required by the purchaser in order to operate and maintain the product are provided by FCD in the STCs.

FCD is not required to provide manufacturing drawings of machinery or spare parts.

As mentioned in the STCs, FCD shall install machinery on the Buyer's premises, commission it, and conduct performance tests.

A test report regarding these tests will be drawn up.

Once the tests have been carried out, no further claims will be accepted.

Should the tests reveal that the machinery is not compliant with the contract, FCD will immediately remedy any duly noted defects.

Further tests will be carried out after the defect has been corrected to validate the compliance of the machinery.

The customer shall make an advance payment covering all direct and indirect costs of the validation tests carried out, in particular the cost of: injecting the necessary quantities of product at a controlled level in accordance with the specified procedure, analyses, travel, accommodation and catering for any FCD personnel coming to perform these tests.

## **7 - Supplier's liability – Warranty**

### **7.1**

The manufacturer's contractual warranty is applicable to machinery delivered by FCD for a period of one year from the delivery date, covering non-compliance of machinery with orders

and any hidden defects, resulting from material, design or manufacturing defects affecting the delivered machinery and rendering it unfit for use.

The warranty forms an indivisible whole with the machinery sold by FCD. The machinery cannot be sold or resold altered, transformed or modified.

This warranty is limited to the replacement or reimbursement of non-compliant or defective parts of the machinery.

Any warranty is precluded in case of misuse, negligence or failure to perform maintenance by the Buyer, normal wear and tear of the Product, or force majeure.

The warranty disclaimer applies to the source program if the customer or any other party outside FCD were to make changes to, modify or open this program.

In order to assert its rights, the Buyer must, under penalty of forfeiture of any action relating thereto, inform the Supplier, in writing, of the existence of any defects within a maximum period of one week from their discovery. It shall provide any evidence of the genuine existence and extent of the defects observed.

## **7.2**

FCD shall replace or have repaired any parts under warranty that are found to be defective. This warranty also covers labour costs.

Repairs shall take place at the site in which the machinery is located. FCD will perform repairs if they require special knowledge. If no special knowledge is required, FCD shall fulfil its obligation with respect to defects by handing over duly repaired or replaced parts to the Buyer.

FCD and its partners are the only parties permitted to work on FCD units or machinery. Any work on units without FCD's prior written approval will immediately void the warranty and any FCD liabilities.

The Buyer shall be responsible for any measures relating to equipment other than the machinery that may be necessary to remedy observed defects.

The replacement of defective parts shall not have the effect of extending the warranty period set out above.

## **7.3**

Parts required for repairing defects covered by the warranty shall be transported at FCD's risk and expense. The Buyer shall comply with FCD's instructions regarding transport.

Unless otherwise agreed, the Buyer shall bear any additional costs incurred by the Supplier for repairs, dismantling, installation and transport, where products are reinstalled in a location other than the destination indicated in the contract.

Defective parts that have been replaced are the property of FCD and must be made available to it.

FCD shall not be liable for defects arising from a design stipulated or specified by the Buyer.

If the Buyer reports defects and no defects are actually observed or FCD is not liable for them, FCD shall be entitled to compensation for the costs it incurs as a result of such reports.

## **7.4**

The warranty shall not apply if the machine has been used abnormally, or under conditions different from those for which it was manufactured, in particular in the event of non-compliance with the conditions set out in the operating manual.

It shall also not apply in the event of wear and tear or accidents resulting from impact, falls, negligence, lack of supervision or maintenance, or in the event of transformation of the Product.

## **8 – Intellectual property – Confidentiality**

FCD shall retain all industrial and intellectual property rights relating to Products, photos, drawings and technical documentation passed on before or after the formation of the contract. They may not be used for any purpose other than that for which they were provided, nor may they be copied, reproduced, transmitted or passed on to third parties without the prior written consent of FCD.

Commercial offers are considered to be confidential documents and if all or part of such offers are passed on to third parties without the prior written authorisation of FCD, this shall give rise to a fixed penalty of €50,000, which shall be payable on receipt of the invoice.

The parties jointly undertake to maintain the utmost confidentiality for the entire duration of this contract and without limitation of time after it expires, regardless of the grounds for expiry.

They shall refrain from disclosing, directly or indirectly, any information, knowledge or know-how concerning the co-contractor and its operating procedures, to which they may have had access in the context of the performance of this contract, unless said information, knowledge or know-how is in the public domain or its disclosure is made necessary by virtue of a particular regulation or an administrative or judicial injunction.

## **9 – Unforeseeable events**

In the event of a change in circumstances that is unforeseeable at the time of entry into the contract, in accordance with the provisions of Article 1195 of the Civil Code, the Party that has not agreed to assume an excessively costly performance risk may request from its co-contractor that the contract be renegotiated.

However, if the change in circumstances that is unforeseeable at the time of entry into the contract is permanent or lasts longer than 30 days, these general terms and conditions of sale shall be unconditionally terminated in accordance with the procedures defined in the item on "Termination for Unforeseeable Events".

## **10 - Compulsory performance in kind**

Should either Party breach its obligations, the Party affected by the breach shall be entitled to demand the compulsory performance in kind of obligations arising from these general terms and conditions of sale. In accordance with the provisions of Article 1221 of the French Civil Code, the creditor of the obligation may pursue such compulsory performance after a simple formal notice, sent to the debtor of the obligation by registered letter with acknowledgement of receipt, has remained without effect, unless this proves to be impossible or if its cost for the debtor is, in good faith, disproportionate to its benefit to the creditor.

By way of express derogation from the provisions of Article 1222 of the French Civil Code, should either Party breach its obligations, the Party affected by the breach may not itself have the obligation performed by a third party at the expense of the defaulting Party. The creditor of the obligation may, however, file a lawsuit to have the defaulting Party advance the sums necessary for this performance.

The Party affected by the breach may, in the event of non-performance of any of the obligations incumbent on the other Party, request termination of the contract in accordance with the arrangements set out in the item "Termination of the contract".

## **11 - Defence of non-performance**

It should be noted that, pursuant to Article 1219 of the French Civil Code, each Party may refuse to perform its obligations, even though they may be due, if the other Party does not perform its obligations and if this non-performance is sufficiently serious, i.e. liable to jeopardise the continuation of the contract or fundamentally disrupt its economic balance. The suspension of performance shall take effect immediately upon receipt by the defaulting Party of notification of the breach sent to it for this purpose by the Party affected by the breach, indicating its intention to apply the defence of non-performance until such time as the defaulting Party has remedied the observed breach. It shall be served by registered letter with acknowledgement of receipt or by any other durable written medium providing proof of dispatch.

This defence of non-execution may also be used as a preventive measure, in accordance with the provisions of Article 1220 of the French Civil Code, if it is clear that one of the Parties will not perform its obligations on the due date and that the consequences of such non-performance are sufficiently serious for the Party affected by the breach.

This option shall be used at the risk of the initiating Party.

The suspension of performance shall take effect immediately, upon receipt by the Party presumed to be in breach of notification of the intention to apply the preventive defence of non-performance until the Party presumed to be in breach fulfils the obligation for which there will clearly be a future breach. It shall be served by registered letter with acknowledgement of receipt or by any other durable written medium providing proof of dispatch.

However, if the impediment is permanent or lasts longer than 30 days from the date on which the impediment is ascertained by registered letter or by writ, these general terms and conditions of sale shall be unconditionally terminated in accordance with the arrangements set out in the item "Termination on the grounds of a party breaching its obligations."

## **12 - Force majeure**

The Parties may not be held liable if the non-performance or delay in the performance of any of their obligations, as described herein, results from a case of force majeure, within the meaning of Article 1218 of the French Civil Code.

The Party reporting the event must immediately inform the other party of its inability to perform its service and provide evidence thereof to the other party. The suspension of obligations may not under any circumstances be a cause of liability for non-performance of the obligation in question, or give rise to the payment of damages or penalties for delay.

Performance of the obligation shall be suspended for the entire duration of the force majeure event if it is temporary. Consequently, once the cause of the suspension of their mutual obligations has come to an end, the Parties shall make every effort to resume normal performance of their contractual obligations as soon as possible. To this end, the impeded Party shall notify the other Party of the resumption of its obligation by registered letter with acknowledgement of receipt or any extrajudicial document.

If the impediment is permanent or exceeds a period of 30 days, these terms and conditions of sale shall be unconditionally terminated in accordance with the arrangements set out in the item "Termination due to force majeure".

During this suspension, the Parties agree that the costs generated by the situation shall be shared equally.

### **13 - Termination of the contract**

#### *13.1 – Early termination by the Buyer*

In the event of early termination of the contract on any grounds whatsoever:

- Before manufacturing of machinery is initiated: 60% of the order amount including VAT will be retained as compensation for the loss suffered.
- After manufacturing of machinery is initiated: the entire amount already paid will be retained by FCD as compensation for its loss.

#### *13.2 - Termination for unforeseeable events*

Termination on the grounds of inability to perform an obligation that has become excessively costly may only take place 30 days after receipt of a formal notice declaring the intention to apply this clause notified by registered letter with acknowledgement of receipt or any extrajudicial deed, notwithstanding the clause entitled "Termination on the grounds of a party breaching its obligations" set out below.

#### *13.3 - Termination due to force majeure*

Notwithstanding the clause regarding termination on the grounds of a party breaching its obligations set out below, automatic termination due to force majeure may only take place 30 days after receipt of formal notice served by registered letter with acknowledgement of receipt or any extrajudicial deed.

However, this formal notice must state the intention to apply this clause.

#### *13.4 - Termination on the grounds of a party breaching its obligations*

Should the Buyer fail to meet the following obligation referred to in the clauses of this contract, the contract may be terminated at the discretion of the injured party:

- Payment by the customer of invoices by their scheduled due dates

It is expressly understood that such termination on the grounds of a party breaching its obligations will occur automatically 30 days after receipt of a formal notice to perform that has remained fully or partially without effect. Formal notice may be served by registered letter with acknowledgement of receipt or any extrajudicial document.

Such formal notice shall state the intention to apply this clause.

#### *13.5 - Common provisions in the event of termination*

It is expressly agreed between the Parties that the debtor of an obligation to pay under the terms of this agreement shall be validly required to pay solely by virtue of the obligation being payable, in accordance with the provisions of Article 1344 of the French Civil Code.

Since the services exchanged between the Parties from the time of entry into the contract until its termination are useful from time to time during the reciprocal performance of the contract, they shall not give rise to restitution for the period prior to the last service not having received its consideration.

In any event, the injured Party may apply to the courts for damages.

## 14 – Protection of personal data

In accordance with the *Loi Informatique et Libertés* (the French Data Protection Act) of 6 January 1978, as amended, and the General Data Protection Regulation (GDPR no. 2016/679) you are entitled to query, access, modify, object to, rectify, limit and transfer your personal data. By adhering to these general terms and conditions of sale, you consent to our collection and use of these data for the performance of this contract. They will only be sent to service providers whose intervention is necessary for the proper performance of the contract. Your data will be stored for 5 years and subsequently deleted.

FCD is the Controller and for any requests relating to your rights you can write to the following address:

- **Email address:** [f.cheinet@fcdsystem.fr](mailto:f.cheinet@fcdsystem.fr)

- **Postal address:** FCD – “ZI sycala” 46230 FONTANES.

You will receive a reply within one month of receiving the request.

## 15 – Disputes

With a view to jointly identifying solutions to any disputes that may arise in the performance of this contract, the contractors agree to meet, if necessary, by means of a video conference, within 15 days of receipt of a registered letter with acknowledgement of receipt served by one of the two parties.

This out-of-court settlement procedure is a mandatory prerequisite for the initiation of legal action between the parties. Any action brought in court in breach of this clause shall be declared inadmissible.

However, if, after a period of 30 days, the parties are unable to agree on a compromise or a solution, the dispute shall then be submitted to the competent court specified below.

For any disputes or differences of interpretation relating to the performance or termination of this contract, the parties agree to appoint an expert by mutual agreement. If, after a period of 30 days, the parties are unable to agree on the choice of expert, the expert shall be appointed by the presiding judge of the Commercial Court of Cahors (*département* of Lot, FRANCE) ruling on interim measures in response to the first party to file an application.

Within 15 days of his/her appointment, the expert shall provide each of the parties with a report on the various aspects of the dispute falling within his/her remit.

This expert's costs and fees shall be divided equally between the parties.

## 16 - Jurisdiction

All disputes to which this contract and the agreements arising from it may give rise, concerning their validity, interpretation, performance, resolution, consequences and repercussions shall be submitted to the Commercial Court of Cahors (*département* of Lot, region of Occitanie - FRANCE).

## 17 - Language of the contract - Applicable law

By express agreement between the parties, these General Terms and Conditions of Sale and the resulting purchase and sale transactions shall be governed by French law.

They are written in French. If they are translated into one or more languages, only the French text will be deemed authentic in the event of a dispute.

## **18 – Nullity and independence of clauses**

Any cancellation of one or more clauses of this contract shall not affect its other stipulations, which shall continue to have full effect provided that the general economics of the agreement can be preserved.

## **19 - Customer Acceptance**

These General Terms and Conditions of Sale are expressly approved and accepted by the Customer, which declares and acknowledges that it is fully aware of them, and therefore waives the right to rely on any contradictory document and, in particular, its own general terms and conditions of purchase, which shall be unenforceable against the Service Provider, even if it is aware of them.