



## NATIONAL DAIRY EQUIPMENT (PTY) LTD, Registration No. 1952/001360/07

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### NDE'S STANDARD TERMS AND CONDITIONS OF SALE

**PLEASE NOTE: If you are an individual or a company, CC, partnership, trust or other association of persons which has an annual turnover or asset value below R2 million, you have the rights set out in the Consumer Protection Act, 2008 and certain of these STCs may not apply to you.**

1. All goods which you buy from National Dairy Equipment Proprietary Limited (NDE, we or us) are sold to you in accordance with these Standard Terms and Conditions of Sale ('STCs'). **By ordering goods from us, you are deemed to have accepted, and agreed to be bound by, these STCs.** These STCs cannot be amended other than in writing, which amendments must be signed by both parties.
2. **PRICES: All amounts quoted will vary in direct response to any increases in applicable foreign exchange rates, government import costs and similar levies and charges on or prior to the date on which you accept the quote.**
3. **Our quote is not binding on us unless you accept it in writing by placing an order for the goods within 7 days after the date on which it is issued.** If you do not request a quote, the price of the goods which you order will be the price of those goods on our price list at the time when we receive your order.
4. **All prices (whether in a quote or otherwise) exclude all applicable delivery and freight costs and charges and insurance premiums for which you are liable.** The price of the goods may exclude VAT, which you must pay to us at the applicable rate.
5. **ORDERS: To order goods from us, you must send us a written order for the goods in a format acceptable to us. We are not bound by your order until we have either accepted your order in writing, accepted a deposit or full payment for the goods, or delivered the goods to you. Once we have accepted your order, you may not cancel your order for any reason without our written consent.**
6. We will send you a statement for the amount which you owe us for the goods.
7. **PAYMENT: Payment of the amount on our statement must be made in full within 30 days after the date of our statement. We do not accept any risk relating to payments. It is your responsibility to ensure that we receive your payment. Your liability to us will only be discharged when we receive as freely available funds in our bank account the full amount due.**
8. **DELIVERY: If we (or our agent) deliver the goods to you, delivery takes place as and when you unload the goods at your nominated delivery address. If you (or your agent) collect the goods from our premises, delivery takes place when you begin loading the goods on collection at our premises.**
9. **If we (or our agent) deliver the goods to you, you are liable for any costs which we incur for any delay in offloading the goods due to your acts or omissions, which costs are payable on demand.**
10. **All delivery dates are approximate only. We are not liable for any loss or damages of any nature which you may suffer as a result of any delay in the delivery of the goods which you have ordered. You may not cancel an order as a result of any delivery delay. We may deliver the goods to you in more than one instalment.**
11. **RISK: All risk in, and to, the goods will pass to you on delivery of the goods to you in accordance with these STCs. We retain ownership of all the goods which we supply to you until we receive full payment for those goods, including any delivery or other applicable charges.**
12. **A delivery note which is signed by you, or on your behalf, is proof that the goods have been delivered to, and accepted, by you in good order and condition.**
13. **If you fail or refuse to accept delivery of the goods which you have ordered (whether in part or in full), NDE may claim from you as damages, payment of the price of the goods which you have not accepted. You agree to indemnify NDE for any loss or damages which NDE may suffer as a result of your failure or refusal to accept delivery of the goods.**
14. **DAMAGE AND DEFECTS: Subject to clause 16, you will not have any claim against NDE for any damage to, or defect in, the goods delivered to you unless you notify NDE in writing of the damage or defect within 7 days after the date when the goods were delivered to you.**
15. **We are not liable for any defects of any nature in any goods which you have adapted or changed in any way, or which are sold to you as substandard, rejects or seconds. You may not withhold payment in respect of any goods which you claim are defective.**
16. **If in our opinion, due to our act or omission, the goods delivered are damaged or defective, we may at our election, either repair or replace such goods or refund you the purchase price which you paid for such goods. If we purchased the goods from a third party manufacturer, unless the defect or damage was caused by NDE, you must pursue your claim with the said manufacturer and NDE cedes to you its rights against such manufacturer in relation to the defect or damage complained of.**
17. **Subject to the provisions of clauses 14, 16 and 17, all goods which we sell to you are sold VOETSTOOTS.**

18. **RETURNS POLICY:** Except as otherwise provided in these STCs, goods sold by NDE cannot be returned to NDE without its prior agreement. If we agree to the return of any goods, those goods must be returned at your risk and expense, with NDE's original invoice for those goods, complete, clean, saleable and undamaged and in their original packaging, subject to a handling fee of 10% of the invoiced price of the goods, payable to NDE on demand.
19. **SPECIAL ORDER GOODS:** If we agree to stock and supply to you any particular goods which we do not generally supply to our customers in the ordinary course of our business, and we do not receive any order from you for such goods for a period of 30 consecutive days, we may invoice you at the prevailing purchase price (plus applicable delivery and freight costs and charges and insurance premiums), for the quantity of such goods which we have in stock, and which we have ordered but have not yet been delivered, which goods will be delivered to you on receipt of full payment.
20. **CESSION OF CLAIMS:** You may sell the goods which you have received from NDE before you have paid NDE for those goods. You hereby cede to NDE as security for payment of the goods which you have purchased or may in the future purchase from NDE, your right to claim payment ("Claims") of any amount from any third party.
21. If you have already ceded the Claims to a third party, if at any time, the rights to those Claims revert from the third party back to you, this cession will immediately apply to the rights in respect of the Claims which have reverted to you.
22. You agree that NDE may at any time notify any third party of this cession and request the third party to pay all amounts directly to NDE if you fail to make payment of any amount which you may owe to NDE in accordance with these STCs. NDE may also require you to collect payment of any amounts owing by third parties on NDE's behalf. You agree to give NDE access to your books and records for the purpose of this cession.
23. A certificate signed by any director of NDE (whose appointment need not be proved) shall be proof until proven otherwise, of any amounts which you owe to us and the fact that such amounts are due, owing and payable.
24. **INDEMNITY:** You indemnify us against any claims made against us by any third party arising out of, or in connection with, any goods which we supply to you, and/or the use and/or consumption of those goods, to the extent that any such claim arises out of:
  - 24.1 your breach of these STCs;
  - 24.2 any negligent or intentional act or omission by you or your directors, officers, members, employees, agents or subcontractors;
  - 24.3 your failure to provide a purchaser of the goods with the relevant instructions for using the goods, which instructions we have supplied to you; or
  - 24.4 your sale of any goods which you knew, or ought reasonably to have known, were defective at the time when you sold them.
25. **BREACH:** We may suspend any delivery of goods to you, cancel any order and/or stop granting you credit and claim payment of all amounts which you owe to us, if:
  - 25.1 you fail to pay any amount which is outstanding within 7 days after receipt from us of a notice requesting payment;
  - 25.2 you take steps to place yourself, or are placed, in business rescue proceedings as contemplated in section 129 of the Companies Act, 2008;
  - 25.3 you take steps to place yourself, or are placed, in sequestration or liquidation, whether voluntary or compulsory and whether provisionally or finally;
  - 25.4 you commit any act of insolvency listed in section 8 of the Insolvency Act, 24 of 1936, or what would be an act of insolvency if committed by a natural person; or
  - 25.5 you breach any other material provision of these STCs.
26. **NO LIABILITY:** We are not liable to you for any consequential, special or indirect damages which you may suffer in any way arising from, or in connection with, these STCs or the goods which we supply to you. Any other claim which you may have against us arising in any way from, or in connection with, the goods supplied, is limited to the cost of replacing those goods or refunding you the price which you paid for them.
27. **GENERAL:** These STCs constitute the whole agreement between the parties containing all of the express provisions agreed on by the parties with regard to the subject matter hereof.
28. No cancellation of these STCs (including this clause) or waiver of any right under these STCs is effective unless in writing and signed by or on behalf of both parties.
29. **NO CESSION:** NO CESSION: You may not without NDE's prior written consent, cede, assign or otherwise transfer any of your rights or obligations in terms of these STCs to a third party.
30. **LEGAL COSTS:** If you breach these STCs, whether or not we institute legal action against you, you undertake to pay, on demand, all legal and administrative costs which we incur in attempting to recover any late payment from you, on an attorney and own client scale.
31. **JURISDICTION:** You consent to the jurisdiction of the Magistrate's Court in respect of any action arising out of these STCs or the goods which are supplied to you.
32. **ADDRESS FOR NOTICES:** Unless the parties agree otherwise in writing, all notices and documents must be delivered by hand or email to you at the address set out in your credit application form (if applicable) or otherwise selected by you on written notice to the Credit Controller at your NDE branch. Any notice or communication shall if delivered by hand during business hours at that party's selected physical address, be deemed to have been received on the date of delivery, or emailed to the selected email address, be deemed to have been received on the first business day following the date of transmission.