

Terms & Conditions of Supply

1 Applicability

1.1 These general terms and conditions of supply of Koledo International B.V. ("General Terms and Conditions of Supply") are applicable to and form an integral part of all offers and proposals of Koledo International B.V. ("Koledo"), of every acceptance, confirmation and ratification by Koledo of orders placed by Buyer and of all Agreements ("Agreement") concerning the sale by Koledo and purchase by Buyer of goods and services ("Products"), unless and insofar as expressly agreed otherwise with Koledo.

1.2 Any Terms and Conditions and conditions mentioned in any document or documents issued by Buyer before or after Koledo issues any document containing these General Terms and Conditions of Supply or which refer to the General Terms and Conditions of Supply, are hereby expressly rejected and discarded by Koledo. The Terms and Conditions and conditions concerned will not apply at all to any sale by Koledo to Buyer and are in no way binding on Koledo.

2 Offer and acceptance

2.1 Every offer is entirely without obligation, unless explicitly stipulated to the contrary, and must be taken up in its entirety.

2.2 Buyer may accept an offer within a period of 14 (fourteen) days from the date thereof, unless a different acceptance period is expressly mentioned.

2.3 Koledo may withdraw or revoke any offer at any time prior to receiving notice of acceptance thereof from Buyer.

2.4 An Agreement only comes into existence after acceptance of the offer by Buyer and written confirmation of the order by Koledo, or after Koledo commences the execution of the order.

2.5 If no order confirmation is sent due to circumstances including the nature, size or urgency of the order, Koledo's invoice must be regarded as the order confirmation.

2.6 Every Agreement is entered into by Koledo under the suspensive condition that Buyer "at Koledo's sole discretion" proves to be sufficiently creditworthy for the fulfilment of the financial obligations under the Agreement.

2.7 Amendments to the Agreement must be agreed to by the parties in writing. These amendments, as well as additional necessary work as the result of inaccurate or incomplete information or inadequate cooperation from Buyer, constitute contract extras and are therefore payable by Buyer.

2.8 The Agreement may only be cancelled or annulled by Buyer if Koledo agrees thereto in writing. In that case, Buyer will be obliged to compensate the costs incurred by Koledo for preparation and partial execution, as well as the adverse financial consequences for Koledo as a result of the non-performance of the Agreement. This compensation may not collectively be less than 10% of the agreed contract value amounts.

2.9 All documents relating to offers made by Koledo are and will remain its property and may not be passed on to third parties, made available for inspection, reproduced or copied in any way whatsoever without its written consent.

3 Price

3.1 The prices mentioned in an offer, order confirmation or Agreement are in euros and exclude taxes, fees or comparable levies that statutorily apply now or in the future to the Products.

3.2 Prices and rates that are not expressed in euros are based on the exchange rates that apply in the Netherlands at the time of the offer. If an exchange rate changes to Koledo's detriment, it will be entitled to increase the prices or rates agreed with Buyer accordingly, without any obligation to notify Buyer of any alteration in advance.

3.3 The stated prices are based on delivery ex-works (INCOTERMS AND CONDITIONS, latest version) from Koledo's production location or another location to be designated by Koledo, unless otherwise agreed in writing between Buyer and Koledo.

3.4 Koledo will increase the selling price with taxes, fees or comparable levies if it is obliged by law to do so, or if it has the opportunity to deduct or collect these and Buyer must pay these together with the price.

3.5 Koledo is entitled to separately charge Buyer costs associated with work performed by third parties which is not expressly included in its stated price.

4 Payment

4.1 Unless agreed otherwise in writing between Koledo and Buyer, Koledo may charge Buyer the price of the applied Products after delivery thereof in accordance with the applicable INCOTERMS AND CONDITIONS.

4.2 Net payment is due within 30 (thirty) days of the invoice date, unless expressly agreed otherwise between Koledo and Buyer.

4.3 Koledo is at all times entitled to request advance payment or cash payment of the goods and/or services to be delivered and/or security for the payment thereof.

4.4 All payments must be made to Koledo's designated address.

4.5 Every payment will be deemed to be payment of any due interest and/or costs and thereafter of the oldest outstanding invoice, regardless of whether Buyer indicates differently, expressly or otherwise, at the time of payment.

4.6 In case of partial deliveries, each partial delivery can be charged and must be paid on the due date. No discount will be granted for early payment, unless Koledo has agreed to such a discount in writing.

4.7 If Buyer has failed to comply, has not complied punctually, or only partially complied with its payment obligations, it will be deemed to be in default by operation of law, the amount due to Koledo will then be immediately due and payable without any further notice of default, and Buyer will also be liable for interest, equal to statutory commercial interest, on the due amount. Where appropriate, Koledo is entitled to suspend performance of the Agreement until payment is received.

4.8 All judicial and extrajudicial costs associated with the collection of any amount due from Buyer are payable by Buyer. In each case, this includes the fees due to collection agencies, bailiffs, lawyers and experts. The extrajudicial costs are moreover deemed to be at least 15% of the claimed amount, subject to a minimum of EUR 750.00.

4.9 If Buyer fails to pay any due costs or expenses, or is otherwise in default, Koledo will be entitled to refuse performance of the Agreement and/or delivery of Products until Buyer has paid the due amounts and Koledo may proceed to suspend, postpone or end the granting of credit, delivery or any other act or transaction from its side under the Agreement. All costs of storage, as well as other costs that arise in this regard will be payable by Buyer. This right will apply in addition to and not substitute any other rights and remedies which apply or are available under the Agreement or by law.

4.10 All deliveries that Koledo has agreed to make are at all times dependent on it confirming Buyer's required creditworthiness. If Koledo is of the opinion that Buyer's financial situation at any time is such that it would not be responsible to produce or deliver the products on the basis of the aforementioned payment Terms and Conditions, Koledo may insist on full payment, partial payment or other payment Terms and Conditions as a condition for delivery and may proceed to suspend, postpone or end the granting of credit, delivery or any other act or transaction from its side under the Agreement.

4.11 Buyer will never be entitled to suspend payment of any invoices or to apply set off with any claim against Koledo.

5 Delivery

5.1 Products are delivered ex-works (INCOTERMS AND CONDITIONS, latest version), as indicated by Koledo, unless otherwise agreed in writing. Transport costs and insurance are payable by Buyer. Risk passes to Buyer at the moment of delivery as this ought to take place under these General Terms and Conditions of Supply.

5.2 The delivery period commences after confirmation of Buyer's order by Koledo, but not earlier than Koledo's receipt of all information needed for the performance of the Agreement and if agreed payment by Buyer of the purchase price, agreed instalment(s) or bank guarantee.

5.3 Delivery periods are only provided as estimates and do not serve as strict deadlines. Koledo cannot be held liable for this or deemed to be in breach of its obligations towards Buyer on the basis thereof.

5.4 Koledo may at its own discretion deliver a portion of the order that is already complete or wait until the entire order is complete.

5.5 If Buyer fails to comply, or does not comply punctually with any obligations arising from this or another Agreement associated with the order, Koledo will be entitled to suspend performance without it being able to be held liable for any compensation. The delivery period will be extended by the time that the Agreement is thus suspended.

5.6 Buyer must immediately notify Koledo in writing if delivery has not taken place and give Koledo a period of 30 (thirty) days to remedy the situation. If Koledo does not make delivery within this period of 30 (thirty) days, Buyer's sole and exclusive legal remedy is the option to cancel the relevant parts of the Agreement that have not been performed.

5.7 If the delivery period is exceeded as a result of force majeure, neither of the parties will be entitled to compensation, not to perform any obligation arising from this or another Agreement associated with the order, or to cancel the Agreement.

5.8 If the delivery period is exceeded, other than by force majeure, compensation may be claimed from the party responsible for the delay or at whose risk the delay has taken place with due observance of the following:

a) the compensation due by Koledo will be fixed at the amount of the direct damage actually suffered by Buyer, insofar as this is adequately proven; and

b) the total compensation due by Koledo will not in any case exceed 10% of the price agreed for the relevant order.

5.9 If Buyer states an anticipated purchase volume and Koledo reserves production capacity for that purpose, Buyer will be obliged to actually purchase at least 75% of the anticipated purchase volume. If Buyer purchases less than the aforementioned stated minimum, Koledo will be entitled to charge Buyer for the difference.

5.10 Products that are not collected by Buyer on expiry of the delivery period will remain at the disposal of Buyer and be stored by Koledo at Buyer's risk and expense. Products will be stored for a maximum period of 6 (six) months. After the expiry of this period, Koledo will be entitled to destroy or reuse the products in the manner it determines. However, this does not affect Buyer's payment obligation.

5.11 If Koledo's production capacity is restricted for any reason, it will be entitled to apportion the available production capacity and products among its customer portfolio, at its sole discretion, which may lead, depending on the given situation, to less products being sold

and delivered to Buyer than stipulated in the Agreement.

5.12 Buyer must notify the carrier of any transport damage immediately after receipt of the products and send a copy of the notice to Koledo.

6 Retention of title

6.1 Ownership of the products passes to Buyer after Buyer pays everything that Koledo can claim as consideration for the products delivered or to be delivered to Buyer under the Agreement, including interest and costs, as well as for any breach of performance of the Agreement by Buyer.

6.2 Buyer is obliged to keep and/or make identifiable the goods in respect of which Koledo has retention of title and to separate these goods from the other goods on its premises.

6.3 If and for as long as Koledo reserves title to the delivered goods, Buyer may not dispose of these goods, other than in the normal course of its business, or establish any limited real right thereon. The normal course of business does not however include liquidation sales, selling at dumping prices and similar activities.

6.4 Buyer has a duty of care with regard to the goods and the retention of title and must insure and keep these goods insured against the usual risks in its line of business, including theft, damage and destruction. When this insurance is taken out, a pledge will be established in favour of Koledo on payments made in respect of loss and damage of the products that are subject to a retention of title, which payment will take the place of these products.

6.5 If Buyer fails to fulfil its payment obligations towards Koledo or Koledo has good grounds to fear that Buyer will not fulfil the payment obligations, Koledo will be entitled to repossess the goods delivered subject to a retention of title.

6.6 In order to enable Koledo to exercise its right to repossess the goods, as referred to in the previous paragraph, Buyer henceforth grants Koledo consent to enter or have a third party enter the land and buildings where the goods are situated for that purpose. The cost of repossessing the goods are payable by Buyer.

6.7 If Buyer refuses to cooperate in the repossession of the delivered goods, notwithstanding a written demand to do so, it will be in breach in that regard and forfeit an immediately due and payable penalty of EUR 500.00 per day that it is or remains in breach.

7 Warranty

7.1 Koledo warrants that the products will be free from defects and can be used for the purpose for which they were manufactured at the time of delivery to Buyer and for a period of 12 (twelve) till 60 (sixty) months from the delivery date as specified in the warranty directions. Used parts comply with the standards laid down for that purpose and are in accordance with any provided or known specifications.

7.2 Buyer is obliged to carry out an inspection of the supplied products to determine whether there are any defects within 24 hours of delivery and to communicate these in writing by registered post to Koledo immediately, or at least within 3 (three) days of delivery, failing which Koledo will be deemed to have fully complied with its obligations and Buyer's rights in that regard will lapse.

7.3 Hidden defects must be communicated in writing by Buyer to Koledo within 5 (five) days of the date on which the defects are discovered, or within 5 (five) days of the date on which the defects reasonably ought to have been discovered.

7.4 If and insofar as a complaint is lodged on time for which purpose the burden of proving punctual submission and accuracy of the complaint rests with Buyer and this complaint is accepted by Koledo and found to be well-substantiated, Buyer must return the products to Koledo within 8 (eight) days of acceptance of the complaint, accompanied by a return note stating the date and number of the delivery invoice and the reason why the products are being returned. Koledo will be obliged to either replace the originally delivered products with products of the agreed quality, repair the products, or award compensation, at its discretion. Any other or more far-reaching liability of Koledo is excluded.

7.5 Koledo must be given a reasonable period for repairs, replacement or awarding compensation. The non-compliant or defective Products will become the property of Koledo once these are replaced or compensation has been awarded.

7.6 If complaints prove to be unfounded, the costs of investigation, testing, transport and dealing with the complaint may be charged to Buyer and Buyer will be obliged to take back the products it complained about at its own expense and risk.

7.7 Complaints concerning invoices or the scope of deliveries must be sent to Koledo in writing, precisely detailing the nature and grounds for the complaint(s), within 14 (fourteen) days of the invoice date.

7.8 Complaints with regard to defects and damage to a consignment received by or on behalf of Buyer must be noted on the waybill, failing which any complaint in that regard will lapse.

7.9 In case of a complaint, Buyer is not entitled to suspend the fulfilment of its obligations towards Koledo.

7.10 Notwithstanding the above, Koledo has no obligations under the warranty if it turns out that the alleged defect or non-compliance with specifications can be limited to testing under exceptional operating conditions, incorrect use, use in a different manner to that described in the users' manual, inadequate care, an accident, unsound adaptations or alterations, storage, incorrect transport or wrong handling of the product.

7.11 The explicit warranty as set out above applies directly to Buyer, not to its customers, agents or representatives, and replaces all other warranties of an explicit or implicit nature, including but not limited to any implicit warranties relating to suitability for a specific purpose, marketability or lack of infringement of intellectual property rights. All other warranties are hereby expressly rejected by Koledo.

8 Liability

8.1 Koledo's total liability on account of attributable breach of performance of the Agreement is limited to the compensation of material and direct damage up to a maximum of 10% of the amount of the prices separately agreed on for the relevant products.

8.2 Koledo may only be held liable for the direct damage in respect of which it has expressly accepted liability in these General Terms and Conditions of Supply.

8.3 Koledo does not accept any liability for standard components or parts of products that are produced by a third party on Buyer's instructions, if and insofar as this inferiority is the result of inaccuracies in or incompleteness of the design provided by Buyer to Koledo, or for infringements of third-party rights caused by the design.

8.4 Buyer indemnifies Koledo against all third-party claims for product liability as a result of a defect in a product that is supplied by Buyer to a third party and that also arose from products supplied by Koledo, except if and insofar as Buyer proves that the damage was caused by the products that Koledo supplied. Koledo cannot be held liable in any way for any defect to products, insofar as these products were not manufactured by Koledo itself, but which were manufactured by third parties at Buyer's express request to Koledo, including labels, instruction leaflets, manuals, etc.

8.5 Koledo accepts no responsibility for cases in which the event giving rise to the claim arose as a result of Buyer's wilful conduct or which could have been prevented by Buyer.

8.6 Any claim by Buyer for compensation must be submitted by Buyer within 90 (ninety) days of the date of the event giving rise to the claim, while any legal proceedings relating to such a claim must be instituted within 1 (one) year of the date of the claim. Claims that are submitted without due observance of the aforementioned are invalid.

9 Force majeure

9.1 Koledo is not liable for any failure to perform or any delay in the performance of an Agreement if:

- a) the failure or delay is due to interruptions in the product manufacturing process; or
- b) the failure or delay is due to force majeure as described below or by law.

9.2 If a failure or delay, as referred to above, takes place, the performance of the relevant part or parts of the Agreement will be suspended for as long as the failure in question lasts and Koledo will not incur any responsibility or liability towards Buyer for any resultant damage.

9.3 The term 'force majeure' means circumstances or events' whether or not foreseeable when the Agreement was entered into which by reasonable standards are beyond Koledo's control and as a result of which no fulfilment of its obligations can reasonably be demanded. This definition also extends to force majeure and/or a failure to perform at one of Koledo's suppliers.

9.4 Force majeure in each case includes but is not limited to fire, floods, strikes, epidemics, war (including civil war), riots, deluges, water damage, terrorism, government measures, non-availability or late availability of permits, trade embargoes, labour unrest, power failures, operational breakdowns, transport problems, unforeseen technical complications, breach of performance or delays by Koledo's suppliers and subcontractors and the non-availability, late availability or inadequate availability of materials, transport, fuel, power and labour.

9.5 If the force majeure situation lasts for a period of 3 (three) successive months (or if Koledo reasonably anticipates that the delay will extend over a period of 3 (three) successive months), Koledo will be entitled to terminate the Agreement, in whole or in part, without this giving rise to any liability towards Buyer.

9.6 If Koledo has already partially fulfilled the agreed obligations by the time the force majeure situation commences, it will be entitled to separately and meanwhile invoice the work already performed and Buyer must pay this invoice as though it relates to a separate transaction.

10 Termination

10.1 If:

- a) Buyer fails to fully or correctly fulfil any obligation towards Koledo;
 - b) Buyer is declared bankrupt or a petition for that purpose is submitted, a moratorium on the payment of debts is requested or granted or the application of debt rescheduling under the Dutch Debt Management (Natural Persons) Act is requested or granted;
 - c) Pre-judgment attachment or attachment in execution is levied on all or part of Buyer's assets;
 - d) Buyer loses legal capacity to act or is deprived of freedom by virtue of a court ruling;
 - e) Buyer is dissolved or liquidated, a hive off, division or merger takes place, or, in case of a natural legal person, Buyer dies;
 - f) Buyer ceases or transfers its business, or a major part thereof, including assimilating its business into another business;
 - g) Buyer provides information to Koledo that proves to be inconsistent with the actual situation;
- and Buyer has not yet fulfilled all its obligations towards Koledo, Koledo will be entitled by the mere occurrence of one of the aforementioned circumstances, to regard the Agreement as terminated, without the need for any notice of default or judicial intervention, and to reclaim the products that have been delivered as its property.

10.2 As soon as one of the aforementioned circumstances occurs, all payments to be made by Buyer under the Agreement will become immediately due and payable.

10.3 Koledo will further be entitled to claim compensation from Buyer at all times.

11 Intellectual property

11.1 All industrial and intellectual property rights on items, or parts of items, that belong to Koledo (including any documentation) vest in Koledo. Unless expressly agreed otherwise, Koledo does not grant any right of use or licence to Buyer with regard to the industrial and intellectual property rights that Koledo owns or holds under licence.

11.2 In the absence of prior written consent from Koledo, Buyer may not make any changes to Koledo's products or the packaging thereof, place any trade mark(s) or trade name(s) or other items thereon or otherwise infringe or cause harm to Koledo's industrial and intellectual property rights.

11.3 Buyer warrants towards Koledo that it holds all the rights including industrial and intellectual property rights to the materials it has delivered or made available to Koledo, which are necessary for Koledo to fulfil its obligations under the Agreement, and/or that it is entitled to allow Koledo to have at its disposal and use the aforementioned materials as referred to in the Agreement.

11.4 Koledo accepts no responsibility towards Buyer for any infringement as referred to in this article if the infringement relates to the fact that Koledo has adapted or altered the relevant products, or had third parties perform these acts, on Buyer's instructions.

11.5 Koledo retains all rights to all computer programs, specifications and/or data it uses or develops for the performance of the Agreement, regardless of whether these computer programs, specifications or data have been developed by Koledo for the purpose of supplying products to Buyer under the Agreement or otherwise.

11.6 Koledo retains all rights to adaptations, including but not limited to all model, trial and other adaptations that it produces, regardless of whether these are produced for the purpose of supplying products to Buyer under the Agreement or otherwise.

12 Import/export regulations

12.1 If an import or export permit has to be granted for the purpose of supplying products under the Agreement by a government and/or any government agency pursuant to any applicable laws or regulations, or if supply is otherwise restricted or prohibited under laws or regulations governing imports or exports, Koledo may suspend its obligations and Buyer's rights with regard to the relevant delivery until the required permit is granted, or for the duration of the relevant restriction and/or prohibition. Koledo may also terminate the Agreement without being bound to any resultant obligation towards Buyer.

12.2 If an end-user statement is required, Koledo must immediately inform Buyer thereof and Buyer must furnish this document to Koledo on demand.

12.3 If an import permit is required, Koledo must immediately inform Buyer thereof and Buyer must furnish this document to Koledo as soon as it becomes available.

12.4 By accepting Koledo's offer, entering into an Agreement and/or taking receipt of products, Buyer agrees to refrain from using the products and/or the related documentation in any way that would result in the infringement of any laws and regulations governing imports or exports.

13 Confidentiality

13.1 Each of the parties warrant that all confidential information received from the other party prior to or after the conclusion of the Agreement will remain confidential and not be used for any purpose other than as agreed upon under the Agreement. In each case, information will be deemed confidential if it is marked as such by one of the parties.

13.2 In the absence of prior written consent from Koledo, Buyer may not in any way publicise, advertise or otherwise disclose in writing or verbally that it trades and/or has traded with Koledo.

13.3 All data, specifications or other information provided to Buyer in connection with the performance of this Agreement will be regarded as confidential information.

13.4 Buyer must immediately hand over the confidential information, as well as all copies or other reproductions thereof, to Koledo on request.

14 Applicable law and dispute resolution

14.1 All offers, confirmations and Agreements are subject to and will be interpreted according to Dutch law.

14.2 Buyer and Koledo must try in the first instance to resolve any dispute arising from or related to any Agreement by way of consultation and negotiation with each other in good faith and in an atmosphere of joint cooperation.

14.3 All disputes that cannot be resolved amicably must be subjected to the exclusive jurisdiction of the 's-Hertogenbosch District Court, on the understanding that Koledo is at all times entitled to take legal action or bring proceedings against Buyer before any other competent court.

14.4 The United Nations Convention On Contracts For The International Sale Of Goods (CISG) does not apply to any offer, confirmation or Agreement.

14.5 None of the provisions of this Article 14 may be interpreted or read as the restriction of the right of either Koledo or Buyer to obtain a court ruling or other legal measure, or to take steps to guarantee the possibility of recourse against the other party, pursuant to applicable legislation.

15 Other provisions

15.1 If one or more provisions of these General Terms and Conditions of Supply lose their validity or cannot be enforced as a result of the finding of a competent court or any future act of a legislative or administrative body, this will not affect the validity or enforceability of the remaining provisions.

15.2 If a finding must inevitably be reached in the last instance that any provision of these General Terms and Conditions of Supply is unlawful or unenforceable, the provision in question will be deemed removed from these General Terms and Conditions of Supply, all remaining provisions will remain fully applicable and in force, and the provision that is deemed unlawful or unenforceable will be replaced by a provision of equal purport that conveys the original intention of the provision, insofar as this is lawfully permitted.

15.3 If one of the parties neglects to make use of any right or legal remedy under the Agreement, or only makes use thereof after some time, that may not be interpreted as a waiver of that right or legal remedy.

15.4 Likewise, any single instance of use or partial use of such a right or legal remedy will not lead to the exclusion of any further or future use thereof or to the exclusion of the use of any other right or legal remedy under the Agreement or any associated document or by law.

15.5 Buyer is not entitled to assign or delegate its rights or obligations under the Agreement, without the prior written consent of Koledo, which will not be unreasonably withheld.

15.6 If Koledo has entered into an Agreement with two or more natural legal persons or legal entities, each natural legal person or legal entity will be jointly and severally liable for the complete fulfilment of all the obligations under this Agreement. An Agreement will also exist between two or more natural legal persons or legal entities if Koledo is requested to address deliveries and/or invoices to affiliated companies. The affiliated companies will then also be deemed to be jointly and severally liable. These natural legal persons or legal entities must sign a declaration on demand in which they confirm that they have bound themselves jointly and severally for the fulfilment of the obligations under the Agreement.

15.7 The wording of the Dutch version of these General Terms and Conditions of Supply will be decisive if a translated version is unclear.