

ADF MILKING LIMITED
TERMS AND CONDITIONS OF SUPPLY V.1.2

1 APPLICATION

- 1.1 The parties agree that the terms and conditions of the Agreement are the only terms and conditions applicable to the parties and they shall govern the Agreement to the entire exclusion of all other terms or conditions.
- 1.2 No other terms or conditions endorsed upon, delivered with or contained in a purchase order, order form or similar document will form part of the Agreement and (subject to the provisions of condition 1.3 below) the parties waive any right which they otherwise might have to rely on such terms and conditions.
- 1.3 No variation to the Agreement shall have effect unless expressly agreed in writing by a duly authorised representative of each of the parties.
- 1.4 The provisions of the Agreement shall be interpreted in accordance with condition 12 below.

2 QUOTATIONS AND ORDERS

- 2.1 Any quotation shall be valid for a period of 14 days and ADF may withdraw it at any time by notice to the Customer.
- 2.2 ADF shall be deemed to have accepted an order upon the earlier of:
- 2.2.1 in respect of Equipment ordered, issuing a written confirmation of acceptance of the order following receipt from the Customer of (i) a signed Order Acceptance Form and (ii) payment of the Deposit Amount; or
- 2.2.2 at such time as ADF delivers and/or supplies the Equipment and/or Services and/or Goods to the Customer.
- 2.3 Each order for Equipment and/or Services and/or Goods shall be a separate offer by the Customer to purchase such Equipment and/or Services and/or Goods on the terms of the Agreement, which ADF shall be free to accept or decline in its discretion.

3 PRICE AND PAYMENT

- 3.1 In consideration of ADF supplying the Equipment and/or Services and/or Goods, the Customer shall pay to ADF the Price. Any Prices stated are, unless expressly stated otherwise, exclusive of delivery charges and VAT which shall be payable by the Customer in addition.

Equipment

- 3.2 In respect of Equipment ordered, the Customer shall be required to pay the Deposit Amount upon providing the signed Order Acceptance Form. Where no Deposit Amount has been stated in the Order Acceptance Form, the Deposit Amount shall be 25% of the total Price of the Equipment.
- 3.3 Equipment is manufactured to order by ADF. As such, the Customer shall not be entitled to cancel the Equipment order once the Deposit Amount has been paid and shall be liable to ADF for the Price of the Equipment. For the avoidance of doubt the Deposit Amount is non-refundable.
- 3.4 The remaining Price (being the Price less the Deposit Amount) shall be due and payable in full and cleared funds and without any deduction, by way of set off, counterclaim, discount, rebate, abatement or otherwise, as follows:
- 3.4.1 75% of the total Price of the Equipment upon confirmation of the delivery date for the Equipment. ADF shall provide a valid VAT invoice in respect of the Price payable.
- 3.5 Payment of the invoice specified in condition 3.4 shall be due immediately unless otherwise stated.

Goods and Services

- 3.6 Subject to any Special Terms to the contrary, in respect of Goods ordered, ADF shall raise a valid VAT invoice for the Price of the Goods at the time the Goods are ordered.
- 3.7 In respect of Services ordered, unless otherwise agreed pursuant to any Special Terms, ADF shall raise a valid VAT invoice for the Price of the Services following provision of the services to the Customer.
- 3.8 The Customer agrees to pay any such invoice raised in accordance with conditions 3.6 or 3.7 above in full and cleared funds within 30 days from the date of the relevant invoice and without any deduction, by way of set off, counterclaim, discount, rebate, abatement or otherwise.

Late Payment

- 3.9 Without prejudice to any other rights or remedies it may have, if the Customer does not pay any sum owed to ADF pursuant to the provisions of the Agreement on the due date, ADF may:
- 3.9.1 suspend delivery of all supplies of Equipment and/or Services and/or Goods then ordered by the Customer; and
- 3.9.2 charge the Customer for such reasonable costs as ADF incurs in respect of:
- a) storing any Equipment and/or Goods awaiting delivery subsequent to the Customers failure to pay any such sum;
- b) either cancelling or re-organising the delivery of Equipment and/or Goods; and
- c) either cancelling or re-organising the date for the provision of the Services; and
- 3.9.3 charge interest on such sum from the day after the due date for payment up to and including the date payment is made in full (either before or after any judgment) in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

4 DELIVERY

- 4.1 Delivery of Equipment shall occur at such time and place as is notified to the Customer by ADF or as otherwise agreed between the parties, but any such time and/or date shall be an estimate only and shall not be of the essence of the Agreement. For Equipment orders, ADF shall use reasonable endeavours to deliver the Equipment within four (4) weeks following confirmation of the order pursuant to condition 2.2.1 and to have had the Equipment installed within four (4) weeks of delivery. ADF endeavours to provide two (2) weeks notice ahead of its intended delivery of the Equipment.
- 4.2 ADF shall use reasonable endeavours to deliver any Goods ordered in accordance with any timeframe specified or notified to the Customer or agreed between the parties, but any such time and/or date shall be an estimate only and shall not be of the essence of the Agreement.
- 4.3 ADF shall endeavour to provide at least five (5) Working Days notice of an intended date to provide any Services (such as installation of Equipment), whether such Services are to be provided by ADF directly or via a sub-contractor, however any such time and/or date shall be an estimate only and shall not be of the essence of the Agreement.
- 4.4 Where ADF accept an order for Equipment and/or Goods for supply outside of the United Kingdom, such Equipment and/or Goods shall be provided on an ex-works (EXW) basis (Incoterms 2000) to the exclusion of condition 5.1 below. Services to be provided outside the United Kingdom shall be provided pursuant to these Conditions of Supply as amended by any Special Terms applicable.

5 TITLE AND RISK

- 5.1 Risk in the Equipment and/or Goods shall pass to the Customer from the moment they are off loaded from ADF's nominated carrier's delivery vehicle at the agreed delivery address.
- 5.2 Title to the Equipment and/or Goods shall only pass to the Customer when ADF has received payment in full (in cleared funds) for:

- 5.2.1 such Equipment and/or Goods; and
- 5.2.2 all other sums which are, or which become, due to ADF from the Customer for sales of Equipment and/or Services and/or Goods or on any other account.
- 5.3 Although the Customer may at all times use the Equipment and/or Goods in the ordinary course of its business, the Customer agrees that until title to the Equipment and/or Goods has passed to the Customer, it shall:
- 5.3.1 hold the Equipment and/or Goods on a fiduciary basis as ADF's bailee;
- 5.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment and/or Goods;
- 5.3.3 maintain the Equipment and/or Goods in satisfactory condition and keep them insured on ADF's behalf for their full price against all risks to the reasonable satisfaction of ADF. On request the Customer shall provide a copy of the policy of insurance to ADF;
- 5.3.4 store the Equipment and/or Goods at its cost separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as ADF's property.
- 5.4 Until title in the Equipment and/or Goods passes to the Customer pursuant to condition 5.2, the Customer's right to possession of the Equipment and/or Goods shall cease in the event that:
- 5.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 5.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Agreement or any other contract between ADF and the Customer, or the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 5.4.3 the Customer encumbers or in any way charges any of the Equipment and/or Goods.
- 5.5 ADF shall be entitled to recover payment for the Equipment and/or Goods notwithstanding that title to any of the Equipment and/or Goods has not passed from ADF.
- 5.6 The Customer grants ADF, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment and/or Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 5.7 ADF's rights under this condition 5 shall survive on termination of the Agreement (for any reason).

6 CUSTOMER OBLIGATIONS

General

- 6.1 Without prejudice to condition 1.2, it is the Customer's responsibility to ensure that any purchase order or other paperwork required by the Customer to authorise (for their own purposes) an order for Equipment and/or Services and/or Goods is provided to ADF at the time of ordering. Any purchase order or other paperwork purported to be missing by the Customer shall not invalidate any order and the respective subsequent invoice for the Equipment and/or Services and/or Goods shall remain payable by the Customer in full.
- 6.2 The Customer shall treat as confidential the details of the Agreement, and shall, in particular, not disclose any details of pricing under the Agreement to any third party.

Site Requirements

- 6.3 It is the Customer's responsibility to ensure that any site where ADF are to provide Services to the Customer, including installation of Equipment, is suitable for the provision of such Services.
- 6.4 The Customer agrees that they will comply with ADF's reasonable instructions in order to make the site suitable for the provision of such Services, which shall for the avoidance of doubt include any recommendation or instruction given by ADF requiring alterations, changes or other work to be carried out to ensure the site and/or installation of Equipment will meet applicable health and safety standards.
- 6.5 The Customer agrees to indemnify ADF in respect of any increased costs reasonably incurred by ADF as a result of the Customer failing to comply with conditions 6.3 and 6.4 above.

7 MAINTENANCE AND WARRANTY

- 7.1 Subject to condition 7.2, ADF warrants that, unless otherwise agreed between the parties, for a period of 12 months from the date of delivery (or in respect of the Equipment from the date of installation) all Equipment and/or Goods shall:
- 7.1.1 be of a satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 7.1.2 shall be free from defect in materials and/or workmanship.
- 7.2 Where the Goods delivered to the Customer include any reconditioned or refurbished parts or spares (such parts or spares to have been specifically purchased by the Customer as 'reconditioned' or 'refurbished') the warranties given at condition 7.1 shall apply to such reconditioned or refurbished parts or spares for a period of three months only (or if applicable, such other period as is notified to the Customer).
- 7.3 The Customer shall be required to ensure any Equipment is properly maintained and serviced by an approved ADF maintenance and repair specialist (a list of whom is available on request) pursuant to the scheduled service intervals as notified to the Customer by ADF. Failure to ensure the Equipment is maintained and serviced in accordance with this condition 7.3 shall invalidate the warranties provided under conditions 7.1 and 7.2.
- 7.4 ADF warrants all Services provided pursuant to these Conditions of Supply shall be provided using reasonable care and skill using employees or sub-contractors with appropriate skill and expertise.
- 7.5 ADF shall not be liable for a breach of any of the warranties in this condition 7 if:
- 7.5.1 the Customer makes any further use of the Goods and/or Equipment (and any Equipment and/or Goods intended to be used in conjunction with the affected Goods and/or Equipment) after identifying the possible defect; or
- 7.5.2 the defect arises because the Customer failed to follow ADF's oral or written instructions as to the storage, commissioning, use or maintenance of the Equipment and/or Goods; or
- 7.5.3 the Customer alters or repairs such Equipment and/or Goods without the written consent of ADF.
- 7.6 Subject to the provisions of this condition 7, if any of the Equipment and/or Services and/or Goods do not conform with any of the warranties in this condition 7, ADF shall at its option repair or replace, or in the case of the Services, remedy, such Equipment and/or Services and/or Goods (or any defective part) or refund the price of such Equipment and/or Services and/or Goods (or defective part) provided that, if ADF so requests, the Customer shall, at its own expense, return any Equipment and/or Goods (or the defective part) to ADF.

7.7 If ADF complies with condition 7.6 it shall have no further liability for a breach of any of the warranties in this condition 7 in respect of such Equipment and/or Services and/or Goods.

7.8 Any Equipment and/or Goods replaced or repaired shall be guaranteed on these terms for the unexpired portion of the original warranty period.

7.9 All warranties, conditions and other terms implied by statute and common law are, to the fullest extent permitted by law, excluded from the Agreement.

8 LIABILITY

8.1 The provisions of this condition 8 set out the entire financial liability of ADF (including any liability for the acts or omissions of its employees, agents and sub-contractors and those of the personnel of such sub-contractors or agents) to the Customer in respect of:

8.1.1 any breach of the Agreement;

8.1.2 any use made by the Customer of the Equipment and/or Goods; and

8.1.3 any representation, guarantee, warranty, indemnity, statement or tortious act or omission, including negligence, arising under or in connection with the Agreement.

8.2 Nothing in the Agreement excludes or limits the liability of either party:

8.2.1 for death or personal injury caused by that party's negligence; or

8.2.2 for fraud or fraudulent misrepresentation; or

8.2.3 for breach of the implied covenant of title under section 12 of Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

8.2.4 for any other liability which cannot be legally excluded or limited.

8.3 Subject to condition 8.2 above, ADF shall not be liable whether in contract (whether by way of guarantee, warranty, indemnity or otherwise), tort (including negligence), misrepresentation, breach of statutory duty or otherwise, and whether caused directly or indirectly, for any:

8.3.1 loss of profits;

8.3.2 loss of reputation;

8.3.3 loss of business;

8.3.4 depletion of goodwill; or

8.3.5 indirect and/or consequential loss or damage of any kind

howsoever caused which arises out of or in connection with the Agreement.

8.4 Subject to condition 8.2 and without prejudice to condition 8.3 above, in the event that ADF is liable (whether directly or indirectly) to the Customer:

8.4.1 for damage to real property arising as a result of ADF's negligence, default or breach of the Agreement, ADF's liability shall not exceed £1 million per claim or series of associated claims arising out of any one incident;

8.4.2 in respect of any substandard or defective Equipment and/or Services and/or Goods ordered, ADF's liability shall be limited to that stated in condition 7.6;

8.4.3 in respect of any other claim, ADF's liability shall not exceed £1 million per claim or series of associated claims arising out of any one incident.

9 TERMINATION

9.1 ADF may by notice to the Customer terminate the Agreement with immediate effect if the Customer:

9.1.1 commits a material breach of the terms of the Agreement which is not capable of remedy;

9.1.2 commits a material breach of the terms of the Agreement which is capable of remedy but fails to remedy that breach within 30 days of being notified of the breach;

9.1.3 ceases, or threatens to cease, to carry on business;

9.1.4 (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal);

9.1.5 is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

9.1.6 suffers or allows any execution, whether legal or equitable, to be levied on its assets or obtained against it;

9.1.7 goes into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purposes of bona fide reconstruction or amalgamation;

9.1.8 has a receiver, manager, administrator or administrative receiver appointed in respect of all or any of its assets;

9.1.9 is the subject of a resolution or petition for its winding up;

9.1.10 takes or is subject to any steps (including the making of an application or the giving of any notice) for the appointment of an administrator;

9.1.11 is subject to any other proceedings relating to its insolvency or possible insolvency; or

9.1.12 takes or suffers any similar action analogous to those described in conditions 9.1.4 to 9.1.11 (inclusive) in any jurisdiction because of debt.

9.2 Termination of the Agreement for whatever reason is without prejudice to the rights and duties of either ADF or the Customer accrued prior to termination. Any provision of the Agreement that expressly or impliedly has effect after termination will continue to be enforceable notwithstanding termination.

10 FORCE MAJEURE

10.1 If either party is prevented or delayed in the performance of any of its obligations under the Agreement by an Event of Force Majeure, it shall have no liability to the other party in respect of the performance of such of its obligations as are prevented by the Event of Force Majeure whilst they continue and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

11 GENERAL

11.1 All intellectual property rights in the Equipment and/or Goods and/or any documentation supplied to the Customer belongs to ADF unless otherwise stated and Customer shall only be entitled and licensed to use such intellectual property rights to the extent required for the intended operation of the Equipment.

11.2 ADF shall be entitled to assign, sub-contract or otherwise deal in its rights and/or obligations under the Agreement or any part of it and in such event as ADF appoints such a person or sub-contractor, it agrees to remain responsible for the acts and omissions of that person or sub-contractors as if they were acts or omissions of that party.

- 11.3 Nothing in the Agreement is intended to or shall operate to create a partnership or joint venture or an agency or employment relationship between the parties and no party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 11.4 A failure to exercise or delay in exercising a right, power or remedy provided by the Agreement or by law does not affect or constitute a waiver of that right, power or remedy nor shall any single or partial exercise of any such right, power or remedy preclude its further exercise.
- 11.5 The Agreement constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between them relating to its subject matter.
- 11.6 If any provision of the Agreement (the "**Void Provision**") is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable:
- 11.6.1 such invalidity or unenforceability shall not affect the other provisions of the Agreement which shall remain in full force and effect;
- 11.6.2 if the Void Provision would be valid or enforceable if some part of it were deleted, the Void Provision shall apply with such modification as may be necessary to make it valid and enforceable; and
- 11.6.3 if that is not possible the parties shall attempt to substitute for the Void Provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the Void Provision.
- 11.7 No provisions of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.
- 11.8 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

12 INTERPRETATION

12.1 In the Agreement the following definitions apply:

"ADF"	means ADF Milking Limited (company number 06890537) whose registered office is at Witan Gate House, 500-600 Witan Gate West, Milton Keynes, MK9 1SH;
"Agreement"	means the Order Acceptance Form (including any Special Terms referenced therein) and these Conditions of Supply;
"Conditions of Supply"	means these terms and conditions;
"Customer"	means the person, firm or company named in the Order Acceptance Form who purchases the Equipment and/or Goods and/or Services from ADF;
"Deposit Amount"	means the deposit amount to be paid as specified on the Order Acceptance Form;
"Event of Force Majeure"	means any cause preventing either party from performing any or all of its obligations under the Agreement which arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control including strikes, lock-outs or other industrial disputes (whether involving its own workforce or that of any other person), unavailability of raw materials, act of God, war, riot, civil commotion, terrorist act, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood or storm;
"Equipment"	means the equipment specified on the Order Acceptance Form to be provided by ADF pursuant to the Agreement;
"Goods"	means the parts, spares, consumables and other goods specified on the Order Acceptance Form to be provided by ADF pursuant to the Agreement;
"Order Acceptance Form"	means the form provided by ADF which shall include the details of the order as specified by these Conditions of Supply;
"Price"	means the relevant price of the Equipment and/or Goods and/or Services as set out in the Order Acceptance Form pursuant to the Agreement or as otherwise provided in a valid written quote;
"Services"	means the services detailed on the Order Acceptance Form to be provided by ADF; and
"Special Terms"	means any additional terms applicable to the Agreement and/or variation to the Conditions of Supply either: <ul style="list-style-type: none">i. set out on the Order Acceptance Form; orii. incorporated by reference on the Order Acceptance Form.

12.2 In the Agreement (except where the context otherwise requires):

- 12.2.1 where there is a contradiction between these Conditions of Supply and the Order Acceptance Form (including any Special Terms referenced therein), the Order Acceptance Form (together with such Special Terms referenced therein) shall take precedence;
- 12.2.2 a reference to a "**party**" is to either the Customer or ADF as the context requires and a reference to "**parties**" is to both the Customer and ADF;
- 12.2.3 headings are for convenience and shall not affect the interpretation of the Agreement;
- 12.2.4 use of the singular includes the plural and vice versa and use of any gender includes the other genders;
- 12.2.5 a reference to "**persons**" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);

- 12.2.6 where the Customer comprises more than one person the obligations of that party under the Agreement shall be joint and several obligations and liabilities of those persons. Where the Customer is a partnership, all partners are deemed to accept the Customer's obligations under the Agreement on a joint and several basis;
- 12.2.7 references to legislation are to that legislation as amended;
- 12.2.8 "including", "include", "in particular" shall be interpreted with the words "without limit" after them.