

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

FOODMATE B.V. Version October 2023
Einsteinstraat 26, 3281 NJ NUMANSDORP
THE NETHERLANDS
Chamber of Commerce: 24402765

1. DEFINITIONS

- 1.1 **Agreement:** any order confirmation issued to Buyer by Foodmate and all other contracts and agreements between Foodmate as seller and the Buyer as purchaser, as well as any other instruction given by the Buyer to Foodmate, as well as all (legal) acts connected with all of this;
- 1.2 **Article:** any article or sub-article of these General terms and conditions as the context requires;
- 1.3 **Buyer:** legal person which enters or wants to enter into an Agreement with Foodmate, who purchases or takes delivery of Goods or services from Foodmate and anyone else who places an order with Foodmate or enters into negotiations with Foodmate;
- 1.4 **Confidential Information:** any information and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Agreement and/or the performance thereof, irrespective of the medium in which such information or data is embedded, which is - when disclosed in tangible form or via electronic communication, including internet based provision of information - marked "Confidential" or similarly legended by the disclosing Party or which is - when disclosed orally or visually - identified as such prior to disclosure;
- 1.5 **Date of Acceptance:** the date mentioned in the signed Goods Conformity and Final Acceptance Document on which date the Buyer declares the "Goods Conform".
- 1.6 **Delivery:** the delivery of the Goods by Foodmate to the Buyer in accordance with the delivery condition CIP, agreed place of destination (Incoterms 2020)
- 1.7 **Delivery Period:** the time needed by Foodmate to manufacture and deliver the Goods as specified in the Agreement;
- 1.8 **Export Control Legislation:** any and all applicable export control legislation and regulations, including but not limited to UN, EU and US export control legislation, regulations, sanctions and restrictions;
- 1.9 **Factory Acceptance Test:** is the technical & functional test on site at the Foodmate's location with Buyer present;
- 1.10 **Final Acceptance Protocol:** the final test that needs to be performed to determine the Goods Conform. This test takes place after commissioning and when the Goods are running in line with specified capacity. The Buyer accepts that the Goods have been delivered according to the Agreement and meet performance specifications. Upon completion of this final test, the Goods Conformity and Final Acceptance Document will be signed;
- 1.11 **Foodmate:** Foodmate B.V. plus companies affiliated with Foodmate B.V. that can also rely on the rights that belong to Foodmate B.V. pursuant to an Agreement and/or these General Terms and Conditions;
- 1.12 **General terms and conditions:** These General Terms and Conditions of Sale and delivery of Foodmate;
- 1.13 **Goods:** all objects which are to be delivered by Foodmate to the Buyer as specified in the Agreement;
- 1.14 **Goods Conform:** the Buyers acceptance that the Goods have been delivered according to the Agreement and meet performance specifications, which acceptance is confirmed by the Buyer after

the Final Acceptance Protocol, and by the Buyer signing of the Goods Conformity and Final Acceptance Document;

- 1.15 **Goods Conformity and Final Acceptance Document:** the document which is used during and mutually signed after: either the Site Acceptance Test; and / or after the Final Acceptance Protocol;
- 1.16 **Goods Readiness Notification:** the notification that the Buyer receives of the expected readiness of the Goods, which will be sent by Foodmate no later than two (2) weeks in advance;
- 1.17 **Intellectual Property Rights or IP:** mean all of the following, in any jurisdiction throughout the world, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired: all intellectual property rights and all applications thereto, which are used in connection with the Goods which are the property of or licensed to Foodmate, including;(i) patents and/or patent applications which may be granted on or claim priority of (or serve as the basis for a priority claim by) and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, together with all priority rights and counterpart applications under any existing or future international patent conventions, agreements or treaties;(ii) all inventions and trade secrets (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology, technical information, software, data and customer lists, engineering procedures and all documentation relating to any of the foregoing; (iii) all industrial designs, utility models, (three dimensional) trademarks, trade names and copyrights (including moral rights as mentioned in article 6bis of the TRIPS Treaty) and any registrations and applications therefore throughout the world.
- 1.18 **Manufacturer Warranty:** the warranty on the Goods offered by the Buyer under the conditions set forth in Article 10;
- 1.19 **Order Confirmation:** the written confirmation of acceptance of an order placed by the Buyer, which confirmation is issued to the Buyer by Foodmate and constitutes an Agreement.
- 1.20 **Parties:** Foodmate and Buyer;
- 1.21 **Purchase Price:** the agreed upon price for sale and delivery of the Goods as mentioned in Article 4 of the General terms and conditions and the amount whereof is specified in the Agreement.
- 1.22 **Foodmate Group:** Foodmate, plus its employees, independent contractors, affiliates and agents;
- 1.23 **Site Acceptance Test:** the dry and wet test to verify that the Goods meet the requirements and to confirm the Goods are installed, started-up and technically performing as defined in the contract. Upon completion of the test, the Goods Conformity and Final Acceptance Document will be signed.

2. APPLICABILITY

- 2.1 These General Terms and Conditions apply to any Agreement, obligation, and legal relationship, including but not limited to all current and future requests, offers, instructions, orders, confirmations, deliveries, collaborations, services, and legal acts between the Parties.
- 2.2 Deviations from and/or changes and/or additions to these General Terms and Conditions can only be agreed expressly and in writing by a representative of Foodmate authorized to do so and apply only for the specific Agreement for which they have been made. The General Terms and Conditions are fully applicable to subsequent Agreements.
- 2.3 General Terms and Conditions, irrespective of how they are named, of the Buyer are expressly excluded and do not apply.
- 2.4 In the event that the content of the Agreement deviates from the content of these General Terms and Conditions, the content of the Agreement will prevail.
- 2.5 These General Terms and Conditions also apply for the benefit of the employees of Foodmate and third parties involved by Foodmate in the fulfilment of the Agreement.

3. CONCLUSION OF AN AGREEMENT

- 3.1. Any and all offers and quotations issued by Foodmate in whatever form are without any obligation, are not binding on Foodmate and merely constitute an invitation to the Buyer to place an order with Foodmate. No rights can be derived from any such offers and/or quotations by the Buyer, unless expressly stated otherwise in writing by Foodmate.
- 3.2. Any offer or quotation of Foodmate is open for acceptance within the period stated in such offer or quotation or, when no period is stated, within thirty (30) calendar days from the date of the offer.
- 3.3. Orders of the Buyer are not binding until confirmed by Foodmate in writing, resulting in an Agreement. Foodmate is always entitled to refuse an order without indication of its reasons.
- 3.4. The Order Confirmation will be deemed to be a correct and complete reflection of the Agreement.
- 3.5. Any additional arrangements made after the confirmation of an order and conclusion of an Agreement will be binding on Foodmate only if confirmed by Foodmate in writing.
- 3.6. Foodmate will be entitled, if the Buyer's financial situation gives rise thereto, either upon or after entering into a Sales Agreement, and before Delivery of Goods, to request the Buyer to make advance payments or to provide financial and/or other security. As long as the Buyer fails to do so, Foodmate shall be entitled to suspend performance of its obligations. If the Buyer fails to provide the requested safeguards within a reasonable term, Foodmate may dissolve the relevant Agreement by giving written notice to the Buyer. In a situation as referred to above, the Buyer will be liable for any costs to be incurred by Foodmate as a result or in relation to the Buyer's breach.
- 3.7. Deviations from, changes and/or additions to an Agreement are valid only if agreed in writing with a representative of Foodmate who is authorized to do so.

4. **PURCHASE PRICE AND PAYMENT**

- 4.1 Unless explicitly otherwise agreed in writing, the purchase price specified in the Order Confirmation of Foodmate and/or the Agreement, as the case may be, the Purchase Price will be:
 - a. inclusive of packaging;
 - b. on the basis of the delivery condition CIP, agreed place of destination (Incoterms 2020);
 - c. inclusive of remote support during a period of one (1) year after the Date of Acceptance and software updates during a period of two (2) years after the Date of Acceptance. Supervision on installation and commissioning of the Goods and/or training on the site where the Goods are installed shall be included for a number of days specified in the Agreement.
 - d. exclusive of VAT;
 - e. stated in EURO.
- 4.2 The purchase price of the Goods is based on the factors determining the price prevailing at the time that the Agreement is concluded. Should one or more of the cost price factors increase after the date of conclusion of the Agreement, Foodmate shall be entitled to proportionally increase the Purchase Price accordingly.
- 4.3 In the event of an increase in any of the cost factors prior to Delivery of the Goods Foodmate will be entitled to increase the purchase price accordingly, all with due observance of any relevant statutory requirements. These cost factors include but are not limited to: products obtained by Foodmate from third parties, wages, salaries, social security contributions, governmental charges, costs of energy, carriage, and insurance premiums. In the event of application of this article, Foodmate will notify the Buyer as soon as possible.
- 4.4 Unless other instructions are given by Foodmate, all payments shall be made in EURO by means of SWIFT or telegraphic transfer to Foodmate's account with the Rabobank, Rotterdam, The Netherlands.

Account no. :Rabobank 12.53.40.087

IBAN no. :NL47 RABO 0125 3400 87
BTW (VAT) :NL 8172.76.695.B01

- 4.5 All payment by the Buyer to Foodmate will be carried out without setoff, suspension or discounts. Bank charges associated with this payment shall be borne by the Buyer.
- 4.6 The Buyer shall pay 50 % of the purchase price by means of an irrevocable downpayment ultimately ten (10) business days after the order is confirmed by Foodmate.
- 4.7 The Buyer shall pay 40 % of the purchase price ultimately ten (10) business days after Buyer receives the Goods Readiness Notification from Foodmate, but before shipment of the Goods or at the date of issue of a warehouse receipt against submission of Foodmate's invoice, whichever comes first.
- 4.8 The Buyer shall pay 10 % of the purchase price ten (10) business days after signature of the Goods Conformity and Final Acceptance Document for Goods Conform or twenty (20) business days after Delivery of the Goods, whichever comes first.
- 4.9 Foodmate reserves the right to require that payment of the amounts due pursuant to the Articles 4.7 and 4.8 hereof shall be made by irrevocable letter of credit opened by the Buyer in favor of Foodmate and confirmed by a bank acceptable to Foodmate.
- 4.10 Foodmate shall be entitled to change its credit terms and/or require security in a form acceptable to it at any time when, in Foodmate's opinion, the Buyer's financial position or previous payment record so requires.

5. DELIVERY PERIOD

- 5.1 The Delivery Period commences after receipt by the Foodmate of:
- a. the downpayment of the amounts and percentages specified in Article 4 hereof in Foodmate's bank account;
 - b. in the event payment by irrevocable letter of credit is agreed in accordance with Article 4.9, receipt of such irrevocable letter of credit by Foodmate;
 - c. all technical details and signed layouts required for the performance of the Agreement.
- 5.2 In the event the Buyer fails to comply with the requirements set forth in Article 5.1 Foodmate may at his own discretion alter the Purchase Price and/or the Delivery Period (subject to availability of Foodmate's Delivery capacity).
- 5.3 The Delivery Period is based on the working conditions applicable when the Agreement is signed and on the timely delivery of the materials ordered by Foodmate for the execution of the work. Should there, through no fault of Foodmate, be a delay as a result of changes to the said working conditions or as a result of the late delivery of materials that were ordered in good time for the execution of the work, the Delivery Period shall be extended as necessary.
- 5.4 The Delivery Period shall be extended by the length of the delay (subject to availability of Foodmate's delivery capacity) that arises on the part of Foodmate as a result of the Buyer's failure to fulfil any obligations arising from the Agreement or to provide any assistance to be asked of it in respect to the execution of the Agreement.
- 5.5 Foodmate will keep the Buyer updated about the progress of manufacturing and estimated date of completion of the goods, at least six (6) weeks in advance before the goods are ready for shipment.
- 5.6 Should the Delivery Period be exceeded, Foodmate will only be in default in case it fails to perform in accordance with a written notification from the Buyer in which Foodmate is granted a reasonable period to comply with its obligations under the Agreement. In case of such default liability of Foodmate shall - with the exception of late delivery due to willful misconduct or gross negligence of Foodmate - be 0.5% (one-half percent) of the net price of the delayed Goods per full week of delay.

5.7 The maximum aggregate amount of the compensation for liquidated damages shall never exceed 5% (five percent) of the net price of the delayed Goods.

6. DELIVERY OF GOODS AND DOCUMENTS

6.1 The Goods will be delivered in accordance with delivery condition CIP at the named place specified in the Agreement (Incoterms 2020).

6.2 Partial shipment is allowed.

6.3 If Delivery is delayed due to an act or omission of Buyer, and/or Buyer's breach by missing one or more of the payment terms set forth in Article 4, Foodmate shall be entitled to claim from Buyer compensation for liquidated damages suffered as a result of such delay in the amount of 0,5% of the Purchase Price per week with a maximum of five percent (5%) of the Purchase Price in aggregate of all claims, unless Foodmate proves that the amount of the actual costs incurred and/or other damages suffered due to the delay exceed this percentage.

6.4 Foodmate will keep the Buyer updated about the progress of manufacturing and estimated date of completion of the Goods, at least six (6) weeks before the Goods will be ready for shipment.

6.5 The Goods will be accompanied by the following documents:

a. 3 original commercial invoices;

b. Packing List – 3 originals;

6.6 All technical manuals and other documents provided by Foodmate will be delivered in the English language unless agreed otherwise by Parties. These manuals will be attached as a hard copy to the Goods.

6.7 Unless otherwise agreed in writing, Foodmate shall clear the Goods for export and pay export duties. Foodmate is under no obligation to clear the Goods for import, or for transit through third countries, to pay any import duties or carry out any import customs formalities.

6.8 Foodmate will render assistance in obtaining for the Buyer, at the Buyer's request, risk and expense, any documents and information, including security-related information that the Buyer needs for the import of the Goods and/or for their transport to the final destination.

7. CONFORMITY OF THE GOODS

7.1. Prior to shipment a Factory Acceptance Test will be performed. After completion of the Factory Acceptance Test, equipment will be shipped.

7.2. Before accepting Delivery of the Goods from Foodmate, Buyer is obligated to examine if:

a. the Goods are complete;

b. the Goods are undamaged;

7.3. If the Goods are damaged and/or incomplete at the time of Delivery, Buyer has the obligation to send a duly substantiated written notification of its observations to Foodmate immediately (within 48 hours) after discovery of the deficiency.

7.4 By not notifying Foodmate of any non-conformity of the Goods subject to Article 7.3, Buyer explicitly waives his right to claim from Foodmate compensation for damage to the Goods and/or non-conformity and/or incompleteness of the Goods.

7.5 In case the Goods are installed on the Buyer's designated location, a Site Acceptance Test will be performed and the Goods Conformity and Final Acceptance Document shall be signed by the Buyer and delivered to Foodmate without undue delay after installation and testing of the Goods on site.

7.6 If the Goods do not comply with the technical specifications provided for in the Agreement including any Annexes thereto, the Buyer will specify any non-conformities on the Goods Conformity and Final Acceptance Document.

7.7 By signing the Goods Conformity and Final Acceptance Document for "Goods Conform" the Buyer confirms conformity and acceptance of the Goods.

7.8 Foodmate will have the opportunity to remedy any non-conformity by correcting this non-conformity within reasonable time.

- 7.9 Foodmate will issue a Certificate of Conformity (CoC) and CE marking.
- 7.10 The Buyer acknowledges that Foodmate has the obligation to take corrective actions in case Foodmate considers or has reason to believe that the Goods are not or no longer in conformity with the requirements imposed by any national or international laws or regulations. In such case Foodmate shall notify the Buyer of any non-conformities and provide the Buyer with a reasonable plan and offer for the performance of the corrective actions necessary to bring the Goods into conformity. The Buyer shall provide reasonable cooperation in the performance of corrective actions by Foodmate.
- 7.11 In the event the Buyer fails to allow and enable Foodmate to perform the corrective actions mentioned in Article 7.10 the Buyer shall be liable for and indemnify Foodmate against any charges, penalties, fines, damages or costs incurred as a result or in relation to such failure.
- 7.12 In case of different or changed national safety regulations it shall be the Buyer's responsibility to take required actions in order to assure compliance with such regulations. In case the Goods will have to be amended accordingly the extra costs thereof will be for the account of the Buyer.

8. INSTALLATION

- 8.1 Insofar as applicable, installation of the Goods is executed by the Buyer's specialists under the supervision of Foodmate's specialists or by a specialized organization, suggested and invited by the Buyer at the Buyer's own risk and expense. The chosen specialized organization is to be submitted to Foodmate for approval.
- 8.2 The Buyer will inform Foodmate at least ten (10) working days in advance that the Buyer is ready to commence with the installation of the Goods.
- 8.3 In case the installation is rescheduled within less than ten (10) working days before any agreed upon installation date a new installation date needs to be agreed upon, timing subject to availability of Foodmate's Service capacity.
- 8.4 Foodmate's team of specialists shall have unlimited access to the installation site during the installation of the Goods.
- 8.5 During installation, the Buyer's specialists will only follow the installation drawings made by Foodmate and instructions given by Foodmate's specialists.
- 8.6 For the period of supervision of installation, the Buyer shall provide Foodmate's specialists with the following at the Buyer's expense (instruction of these requirements will be provided for by Foodmate):
- a. technicians and skilled staff;
 - b. safe working gear including but not limited to all tools, as well as hoisting and lifting gear, fit for the purpose of installation;
 - c. goods and sources of energy required for installation;
 - d. sufficient testing material, in accordance with further specifications in the Installation Schedule;
 - e. communication facilities (Internet, landline phone),
- 8.7 The Buyer shall ensure that:
- a. Foodmate's specialists can start work as soon as they arrive at the place where the Goods are to be installed, and can continue to carry out their work during the normal working hours and, should Foodmate deem this necessary, outside the normal working hours, provided that Foodmate has notified the Buyer of this in good time;
 - b. suitable accommodation and/or all the facilities required pursuant to government regulations, the Agreement and general custom are available for Foodmate's specialists;
 - c. the access roads to the place where the Goods are to be installed are suitable for the required transportation;
 - d. the designated place where the Goods are to be installed is suitable for storage and assembly;
 - e. the required lockable storage areas are available for materials, tools and other items; the necessary and usual ancillary personnel, auxiliary tools and materials and operating materials

(including fuel, oil and grease, cleaning materials and other consumables, gas, water, electricity, steam, compressed air, heating, lighting etc.), and the measuring and testing equipment normally used in the Buyer's business are available to the Foodmate at the correct location in good time and free of charge;

- f. all necessary safety and precautionary measures have been taken and will remain in force, as well as that all measures have been taken and will remain in force that are necessary to comply with the applicable government regulations within the framework of the assembly/installation;
- g. proper and sufficient insurance coverage for death, personal injury and material damage to property due or related to the failure of the Buyer to comply with the obligations set forth in this Article 8.7.

- 8.8 Loss or damage and costs that have arisen as a result of the Buyer's failure to comply with the conditions laid down in this Article or to comply with these conditions in good time, shall be for the account of the Buyer.
- 8.9 Foodmate will send to the Buyer's specialists the necessary requirements, subject to Article 8.6, for installation on site. These requirements need to be complied with by the Buyer in order to commence with the installation. Foodmate is not liable for any delay in installation if Foodmate cannot start due to Buyer's non-compliance with these requirements.
- 8.10 Onsite training of employees of Buyer and instructions given to Buyer's specialists are to be regarded as a basic operating instructions and not as a full-scale training.
- 8.11 The Buyer guarantees that the concrete floor on which the Goods will be installed can withstand the pressure of the weight of the Goods.
- 8.12 The Buyer furthermore guarantees that all utilities required by Foodmate for the installation of the Goods are present at the moment the supervision on installation commences and that all work methods and equipment of Buyer and his employees are fully compliant with all relevant local safety rules and regulations and other laws applicable on the location where the work is executed.
- 8.13 During the supervision of installation, as well as in the process of commissioning and start-up of the Goods, Foodmate will provide operating instructions to the appointed specialists of the Buyer. The number of specialists to be instructed will be mutually agreed by the Parties.
- 8.14 Points that need adjustment after installation will be noted in the Goods Conformity and Final Acceptance Document.
- 8.15 The Buyer is liable for and will defend, indemnify and hold Foodmate, its officers, officials and employees harmless from any and all claims, injuries, damages and/or costs, losses or suits including attorney fees, arising out of or in connection with the Buyer's breach of any of the Buyer's obligations or undertakings set forth in this Article 8.

9. SOFTWARE, SERVICE SUPPORT AND REMOTE SUPPORT

- 9.1 The Buyer shall take out a Service Agreement with Foodmate, for the first twelve (12) months after completion of installation for further training and to ensure proper operation and maintenance of the Goods and software, in line with Foodmate's standards.
- 9.2 Software updates will be provided without charge to the Buyer during a period of two (2) years after the Date of Acceptance. After this period software updates will be provided against charge, unless two (2) months written notice is given by the Buyer that no further software updates are to be provided.
- 9.3 Remote support will be provided without charge to the Buyer during a period of one (1) year after the Date of Acceptance. After this period remote support will be provided against charge, unless two (2) months written notice is given by the Buyer that no further remote support is to be provided.
- 9.4 OnSight dashboard services will be provided without charge to the Buyer during a period of one (1) year after the Date of Acceptance. After this period OnSight dashboard services will be

provided against charge, unless two (2) months written notice is given by the Buyer that no further OnSight dashboard services are to be provided.

- 9.5 For remote support on software, OnSight dashboard and operational issues, Buyer guarantees to provide an internet connection to the Installed Goods. Remote support cannot be established by using the Buyer's VPN service.
- 9.6 To establish a connection to the Installed Goods, Foodmate will provide a VPN Router in the Installed Goods. This VPN Router equips the Installed Goods with a local network and establishes an accesses to the internet via a secure VPN connection between the Goods and Foodmate's Talk2M™ cloud. Foodmate uses the Talk2M cloud to access the Installed Goods.
- 9.7 In any circumstance that Buyer is not able to provide an internet connection as mentioned in Article 9.5, even temporarily, Foodmate cannot offer such remote support to Buyer.
- 9.8 The manufacturer of the VPN Router is ISO 27001-certified company EWON™. This network environment shall solely be used by Foodmate for the purpose of:
- a. providing remote Equipment repair and/ or improvement services; and
 - b. allowing Buyer to receive emails when there is an Equipment malfunction; and
 - c. collecting data on wear and tear of the Equipment for service visits; and
 - d. creating a 2nd user interface/ monitor for Buyer (optional).
- 9.9 The VPN Router shall under no circumstance be used by Foodmate for any other purpose than the abovementioned.
- 9.10 If use of the network environment is required for any reason outside of the scope of this purpose, but nevertheless in light of providing services to the Equipment, this use shall be subject to Buyers advance approval.
- 9.11 The following options are available to Buyer in order to increase its Equipment network security:
- a. creating a virtual local area network ('VLAN') to separate the Equipment network from the Buyers network; or
 - b. by using a second internet provider, which differs from the Buyers standard network provider; or
 - c. by creating a separated network by using a 3G antenna solution (optional extension required).
- 9.12 The Buyer acknowledges that adding a second user interface/ monitor for Buyer as mentioned in Article 9.8 and/or using GSM- network to facilitate connection on the Equipment is not possible in some cases. This is only possible if the GSM signal on the Equipment's production location is of sufficient quality. These options are not delivered as a standard and shall need to be agreed upon separately in writing between Buyer and Foodmate.

10. MANUFACTURER WARRANTY

- 10.1 Foodmate warrants that the Goods are delivered free from any defects and compliant with the Agreement.
- 10.2 The Manufacturer Warranty starts at the time of Delivery.
- 10.3 This Manufacturer Warranty shall end after 2,000 operating hours (based on shifts of 8 hours per working day, five working days a week). If the 2,000 operating hours are not met within 12 (twelve) months after Delivery of the Goods the Manufacturer Warranty shall also end.
- 10.4 During the Manufacturer Warranty, Foodmate shall remedy any defects by repairing or replacing the defective part, either on the Buyer's or Foodmate's premises, or by sending a replacement part, at the discretion of Foodmate. Defective parts replaced under warranty must be returned to Foodmate at all times.
- 10.5 Should the Buyer fail to fulfill any of its obligations arising from the Agreement, Foodmate shall not be bound by warranty obligations.
- 10.6 Any claims under warranty must be submitted to Foodmate in writing within 14 days after discovery, giving a detailed description of the facts and circumstances to which the claim relates.

- Should submitted complaints not comply with the above, any claim against Foodmate in respect of the defects in question shall lapse.
- 10.7. Legal proceedings relating to such claims under warranty must be instituted within one (1) year of the timely submission of the claim in question; should this not be done, the Buyer's claim and right to institute proceedings shall lapse.
- 10.8. The Manufacturer Warranty shall immediately end if;
- a. General- and/or operating instructions (including but not limited to the provisions of the universal and product specific user manuals) are not complied with;
 - b. Goods are used outside the parameters specified in the machine specific user manual;
 - c. inadequate use, maintenance and/or cleaning of the Goods occurs;
 - d. other than Foodmate's original spare parts are used without explicit prior approval of Foodmate.
- 10.9. Regular wear and tear of the Goods falls outside of the Manufacturer Warranty.
- 10.10. No consumables, i.e. items which need to be replaced on a regular basis during commercial use such as, but not limited to, blades used for cutting, shall be subject to the Manufacturer Warranty.
- 10.11. Repair or replacement does not create an extension of the warranty period.
- 10.12. Foodmate is only liable for defects under the Manufacturer Warranty if the defect is caused by an act or omission of Foodmate. Automatic attributability of a default to Foodmate is hereby excluded.
- 10.13. An alleged failure on the part of Foodmate to fulfill its obligations under the Manufacturer Warranty shall not release the Buyer from the obligations incumbent upon it pursuant to any other Agreement concluded with Foodmate.
- 10.14. If loss or damage to the Goods occurs between Delivery and installation, the Manufacturer Warranty shall not apply.

11. REMEDY OF DEFECTS

- 11.1. Within the Manufacturer Warranty period, subject to the provisions of Article 10, Foodmate will undertake all reasonable efforts to remedy any defect by means of repair or replacement, at the sole discretion of Foodmate, within reasonable time after Buyer notifies Foodmate hereof. Such a notification shall be sent to Foodmate immediately after Buyer discovered, or ought to have discovered the defect.
- 11.2. The period of replacement of the defective parts of the Goods shall not exceed 30 (thirty) days from the date that notification of the defect was given to Foodmate. In case it is not possible to replace the parts within the period, Parties will mutually agree upon a new period in writing.
- 11.3. Costs of hiring an independent expert, who will be appointed in mutual consent of the Parties, to determine the cause of a defect are borne by the Party whose act or omission caused the defect according to this independent expert.
- 11.4. An alleged failure on the part of Foodmate to fulfill its obligations under the Manufacturer Warranty shall not release the Buyer from the obligations incumbent upon it pursuant to any Agreement concluded with Foodmate.

12. LIABILITY

- 12.1. Except in case of willful misconduct or gross negligence, Foodmate and members of the Foodmate Group will, regardless of the legal grounds, never be liable for:
- a. indirect and consequential losses, including loss of profit, loss of sales, losses suffered and costs incurred;
 - b. any lost orders or customers or lost savings, loss of data, investments not recovered;
 - c. late deliveries, damage through production or business interruptions or standstills;
 - d. infringement of patents, licenses or other rights of third parties as a result of the use of information provided by or on behalf of the Buyer;
 - e. loss of or damage to raw materials, semi-finished products, models, tools and other goods made available by the Buyer, regardless of the cause of such loss or damage;

- f. property belonging to third parties which is on the business premises of the Foodmate and/or the business premises of the Buyer for repair, storage or for any other reason whatsoever.
- 12.2. During installation of the Goods, insofar as applicable, Foodmate and members of the Foodmate Group shall not be liable for any loss or damage if it is not caused by willful misconduct or gross negligence of Foodmate.
- 12.3. Should Foodmate and/or any member of the Foodmate Group, notwithstanding the above, be held liable for any loss or damage, the aggregate and cumulative liability of Foodmate or such shall not exceed an amount equal to 50% of the Purchase Price. In any case Foodmate and/or any member of Foodmate Group shall only be liable insofar as such liability is covered by its insurance, up to the amount of the compensation paid by the insurance.
- 12.4. Should no compensation be paid out under the insurance in any instance, Foodmate and/or any member of the Foodmate Group shall never be liable towards the Buyer for more than 50% of the invoiced amount, in aggregate of all claims and excluding VAT, for the Agreement in question. The Buyer will indemnify the Foodmate Group for all such (third party) claims exceeding this amount accordingly.

13. INSURANCE

- 13.1. The Buyer shall maintain during installation of the Goods a workers' compensation insurance with statutory limits and commercial general liability insurance with a combined single limit for bodily injury and property damage of not less than EUR 1,000,000 per occurrence and EUR 2,000,000 in aggregate.
- 13.2. All such insurance policies shall be primary and shall add Foodmate as co-insured, without contribution from any other insurance carried by Foodmate. Upon Foodmate's first written request, Buyer shall provide Foodmate with a certificate evidencing the coverage required hereunder.

14. FOODMATE'S IP RIGHTS AND SOFTWARE

- 14.1. The Buyer hereby acknowledges that all IP Rights belong and will continue to belong to Foodmate and that the software which is used to operate the Goods remains the sole and exclusive property of Foodmate at all times.
- 14.2. The Buyer will not use the IP Rights for a purpose other than within the scope and with due observance of the provisions of the Agreement. The Buyer is explicitly not entitled to provide a sublicense or other right of use relating to the IP Rights and/or to transfer and/or encumber the IP Rights, in whole or in part, unless agreed otherwise in prior writing.
- 14.3. For the duration of the Agreement, and at any time thereafter, the Buyer is not permitted to use or take on any trademark, any trade name and/or other marks identical or similar to the IP Rights.
- 14.4. The Buyer will never use the IP Rights in any way which would damage Foodmate's reputation, the IP Rights, the Goods, or the goodwill associated with the aforementioned.
- 14.5. Without Foodmate's prior written consent, the Buyer will not use the IP Rights as part of its business, trade and/or brand name.
- 14.6. The Buyer is not permitted to register, attempt to register or to have registered one or more of the IP Rights or intellectual property rights that resemble these in its own name.
- 14.7. The Buyer will strictly comply with the guidelines and instructions relating to the use of the IP Rights provided to it from time to time by Foodmate.
- 14.8. Without Foodmate's prior written consent, the Buyer is not permitted to modify in any way the labels or the packaging of the Goods in which the IP Rights are depicted. The Buyer will not modify, delete, or make invisible or illegible any reference whatsoever to the IP Rights, the name of Foodmate, or any other name that is displayed on the Goods or the labels and the packaging of the Goods.
- 14.9. The Buyer will immediately notify Foodmate in writing of all infringements or possible infringements of the IP Rights that come to its attention. Whether or not legal steps will be taken with regard to

such infringements is at Foodmate's discretion. The Buyer will immediately notify Foodmate in writing of all claims from third parties that are based on an alleged infringement of the intellectual property rights of third parties as a result of the use of the IP Rights and/or the Goods. The Buyer undertakes to provide Foodmate with evidence it has in its possession, and to lend its cooperation in putting up a defense to against such claims. Foodmate has the right to determine which attorney will act on its behalf to conduct proceedings, whether or not these are initiated by a third party, involving the infringement referred to in this Article, and will do so at Foodmate's expense. Foodmate has the exclusive rights to reach any settlement in disputes involving the IP Rights, unless the Parties agree otherwise in writing.

- 14.10. Software programs will fully remain the property of Foodmate or Foodmate's affiliated companies. No program, documentation or subsequent upgrade thereof may be disclosed to any third party, without the prior written consent by Foodmate, nor may they be copied or otherwise duplicated, even for the Buyer's internal needs apart from a single back-up copy for safety purposes.
- 14.11. In the event the Buyer and Foodmate did not agree upon a separate license agreement for such software Foodmate grants to Buyer a non-exclusive, non-transferable and non-sublicensable license to install such software on one database and to utilize the relevant software, as embedded software or application software as the case may be, in the manner prescribed in the Agreement. If the Agreement only specifies specific modules and/or functionalities of such software then these rights only apply for these modules and/or functionalities. No further rights are granted.
- 14.12. Unless agreed otherwise, use of the software by others than Buyer's employees or by more employees than for whom a license is acquired is prohibited. Foodmate retains the right to terminate this license to the extent that the terms of the license are violated or the Buyer otherwise breaches the terms of the Agreement.
- 14.13. Any copyright marks may not be removed by Buyer.
- 14.14. Buyer is entitled to make one copy of the software for back-up purposes, which must be labelled as a copy and affixed with any copyright identification of Foodmate or Foodmate's affiliated companies.
- 14.15. Buyer agrees not to change, decompile, analyze, re-engineer or copy, except as expressly allowed herein, the software.
- 14.16. The source code of the software will not be made available to the Buyer.
- 14.17. Foodmate shall not be liable for loss of electronic data by Buyer. It is the Buyer's responsibility to make timely back-ups of the electronic data.
- 14.18. If the Goods include software of third parties Foodmate will on behalf of the Buyer obtain an adequate license agreement for said software from the third party in question. The Buyer shall abide to the terms and conditions of such license agreement.
- 14.19. The failure of the Buyer to comply with the provisions of this Article 14 shall be a material breach of the Agreement. In event of such breach Foodmate may, and in addition to any other remedies available at law, or otherwise specified in these General terms and conditions demand payment of a penalty equal to the Purchase Price or the amount of EUR 1,000,000, whichever is greater, per event, regardless of the actual damages suffered. The aforementioned is without prejudice to the right of Foodmate to claim the full amount of the actual damages or costs from the Buyer in the event these exceed the Purchase Price or the amount of EUR 1,000,000.

15. TERM AND TERMINATION

- 15.1 The Agreement commences on the date of signing hereof.
- 15.2 Foodmate may dissolve (*ontbinden*) all or part of the Agreement with immediate effect, without prejudice to its other legal remedies, in the event the Buyer is in breach of fulfilling an obligation under the Agreement, unless such a breach is remedied in a timely manner within a reasonable term, to be determined by Foodmate at its discretion, after the Buyer has received the written notice from Foodmate in which Foodmate has notified the Buyer of the breach. The determination

of a term for fulfilment in the written notice by Foodmate is not required in the event fulfilment is not or no longer possible or desirable, in Foodmate's opinion.

- 15.3 Each Party may dissolve (*ontbinden*) the Agreement with immediate effect in whole or in part in the event one of the following circumstances occurs:
- a. the other Party petitions for bankruptcy or a suspension of payments or a comparable insolvency proceeding;
 - b. the other Party is declared bankrupt or is granted a suspension of payments;
 - c. the other Party experiences an event similar to the events listed above according to the laws of the country where the other Party has its headquarters or operates its business;
 - d. the other Party enters into negotiations with one or more creditors, or takes other steps with a view to the restructuring or rescheduling of its debts;
 - e. all or part of the other Party's business activities are transferred, liquidated, discontinued or relocated abroad, the other Party is dissolved, or in the event a decision is taken in respect of the aforementioned;
 - f. one or more of the confidentiality obligations as set out in the Agreement is violated by the other Party.
- 15.4 In case of termination of this Agreement for convenience purposes by the Buyer, the Buyer will be liable for all damage and costs suffered by Foodmate due to this termination, plus a termination fee of 50% of the Purchase Price.

16. RETENTION OF TITLE

- 16.1 Title to the Goods only passes when all amounts owed by the Buyer to Foodmate in respect of deliveries of Goods or work performed, including any interest and costs, have been paid to Foodmate in full.
- 16.2 Foodmate has the right to enter the premises of the Buyer Group for the purposes of repossessing the Goods if Foodmate legally wants to make use of its retention of title right.
- 16.3 The Buyer is obligated to store the Goods in a clean, secured, covered and ventilated space and to take out proper insurance for the Goods at Purchase Price value. The goods shall be stored separate from goods belonging to other parties, for the purpose of marking them as Foodmate's property.
- 16.4 The Buyer is not allowed to sell the Goods or to encumber or otherwise deal with the Goods before title of the Goods has passed to the Buyer.

17. FORCE MAJEURE

- 17.1. Force Majeure means every event or circumstance which cannot be reasonably attributed to one of the Parties and which prevents the proper fulfilment of all or part of the obligations under the Agreement, temporarily or permanently, other than (currently payable) payment obligations. Among others, Force Majeure is considered to apply in the following situations: government orders issued or to be issued which prevent or limit the sale and delivery and/or the use of the Goods, delivered or to be delivered, a shortage of the Goods to be delivered, import or export bans, the failure of Foodmate's suppliers and/or transport companies to satisfy their obligations or to satisfy these in time, disruptions in the production process for the Goods, the inability of one Party to obtain or retain the necessary permits, strikes, war, disease, epidemics, pandemics, natural and/or nuclear disasters, explosions, acts of terrorism and/or the threat of terrorism, act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization, fire, destruction of machines, equipment, factories and/or any other kind of installation, prolonged break-down of transport, telecommunication or electric current, general labor disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.

- 17.2. Unless otherwise determined in the Agreement and on the condition that the provisions in this Article are satisfied, none of the Parties will be liable to the other Party for any shortcoming in the fulfilment of its obligations, with the exception of any payment obligations (which have already come due) it may have under the Agreement, or any default or delay in the fulfilment of the Agreement occurring as a result of this shortcoming, in the event such may be attributed to Force Majeure.
- 17.3. In the case of Force Majeure, the Party invoking Force Majeure must take all measures reasonably necessary or required in order to remedy the situation as soon as possible. If necessary, the Parties will jointly investigate the measures to be taken to mitigate the effects of Force Majeure.
- 17.4. In the event a Party wishes to invoke Force Majeure, this Party must notify the other Party as soon as possible, yet in any case no later than five days after the discovery of the circumstance that has resulted in Force Majeure.
- 17.5. In the case a Force Majeure event cannot be readily resolved and continues for a period of at least six (6) consecutive months and materially prevents or hinders the performance of material obligations under the Agreement, either Party shall be entitled to terminate the Agreement upon prior written notice to the other Party without any liability.
- 17.6. Neither Party shall be liable for any costs, claims, loss of profit or revenue or other damages suffered due to or in relation to any shortcomings in the performance of the Agreement due to a Force Majeure event.
- 17.7. Foodmate shall not be responsible for any delay in the Delivery or other shortcoming in the performance of the Agreement in the event such delay or other shortcoming can be attributed to an epidemic or pandemic (including but not limited to the COVID-19 epidemic, including its potentially mutating strains) (and/or trade restrictions and/or other requirements, prohibitions or measures imposed by national and/or international government bodies or other authorities. to prevent further spread of such epidemic or pandemic.

18. DISPUTE SETTLEMENT

- 18.1. Legal representatives of the Parties will firstly try to settle any disagreements and disputes in an amicable manner.
- 18.2. All disputes arising in connection with the Agreement between Foodmate and a Buyer registered in an EU or EFTA member state, shall exclusively be submitted to the competent court in Rotterdam, the Netherlands. All disputes arising in connection with the Agreement between Foodmate and a Buyer not registered in an EU or EFTA member state, shall exclusively and finally be settled by arbitration in Rotterdam, in the English language, in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three arbitrators.
- 18.3. Notwithstanding the above, any dispute regarding monies due by the Buyer or Foodmate's need to protect or enforce any IP Rights or confidential information, or as part of litigation commenced by a third party shall allow Foodmate to commence proceedings in a court of competent jurisdiction.

19. MISCELLANEOUS

- 19.1. All changes and additions to the Agreement are only valid in case they are made in writing and signed by both Parties' legal representatives.
- 19.2. In the event of a translation of the Agreement, the English version will prevail.
- 19.3. All notices under the Agreement will be given in writing and are duly signed by a legal representative of the notifying Party. The notifying Party shall ensure himself that the notification is received and read by the other Party.
- 19.4. Both Parties will fulfil their own obligations under REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with

regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

- 19.5. The Agreement is understood and intended to be the final expression of the Parties' intentions and is a complete and exclusive statement of the terms and conditions with respect thereto, superseding all prior agreements or representations, oral or written, and all other communication between the Parties relating to the subject matter of the agreement. Any general terms and conditions applied by the Buyer are hereby explicitly rejected.
- 19.6. Each party agrees not to disclose to third parties any Confidential Information disclosed to it by the other party in the context of the Agreement.
- 19.7. The Buyer warrants that it shall comply with all applicable Export Control Legislation. The Buyer is responsible for submitting applications, or for having applications submitted for the required import and export permits, based on the Export Control Legislation. The Buyer is responsible for ensuring that the use and/or the onward supply of delivered Goods and/or services and/or information by the Buyer complies with Export Control Legislation. If so required by the Foodmate, the Buyer shall immediately issue a so-called end user statement to Foodmate related to the end use and/or destination of the delivered Goods and/or services.

20. CHOICE OF LAW

- 20.1. The relationship between the parties, including the Agreement, shall be governed by and will be interpreted on the basis of the laws of the Netherlands, whereby the provisions of the Vienna Sales Convention do not apply.