



General delivery conditions from Milling Company Europe B.V. version March 2021

Consideration

Milling Company Europe B.V. is a company that treats and processes (Business to Business) organic residual flows and by-products into semi-finished products for various applications, such as raw materials, fertilizers, and for generating energy. Milling Company Europe B.V. knows two disciplines, namely, "the testing ground" and "the factory". The aim of the testing ground is to -purely experimentally- give other entrepreneurs the opportunity to develop their products, and to test them for the possibility of processing them into semi-finished products or a specific end product. The factory actually produces and delivers semi-finished and end products based on residual flows and by-products. Based on an assignment, the Milling Company Europe carries out work using its own machines.

These general terms and conditions have been drawn up to clarify the rights and obligations of the parties with regard to the services to be performed and to be purchased and the sale of goods arising from the agreement relating to Milling Company Europe B.V. and its affiliated legal entities, hereinafter referred to as MCE.

Article 1. Definitions

In these general delivery conditions, the hereafter mentioned terms apply to the following meanings, unless otherwise specifically indicated:

- a. MCE: is the contractor, the limited company Milling Company Europe B.V. and its affiliated companies, registered with the Chamber of Commerce under number 68754132;
- b. Client: the party other than MCE;
- c. Work: both the provision of services; production, development and distribution, with or without the help of the contractor's own machines and the result of the service.
- d. Purchase: is the agreement whereby MCE undertakes to provide a good and the Client undertakes to pay a price in money for it.
- e. Working days: every day of the week with the exception of Saturdays, Sundays, generally recognized Christian and national holidays between 07:30 and 16:30;
- f. General delivery conditions: the present general delivery conditions.

Article 2. Applicability

- a. The present general delivery conditions apply to all offers made, agreements concluded by MCE and the factual and legal acts carried out for the implementation of all of these. A copy of these general delivery conditions can be downloaded [HERE](#) and will also be sent free of charge upon first request. The applicability of any other condition is hereby expressly rejected.
- b. If MCE commits itself to forwarding work towards the Client, the latest version of the industry-customary Dutch Forwarding Conditions ([FENEX forwarding](#)) as filed at the Registry of the Court in Rotterdam apply.
- c. If MCE undertakes to the Client to transport goods by road, the latest version of the industry-customary General Transport Conditions ([AVC](#)) apply, unless imperative law prescribes otherwise. Cross-border road transport is subject to the provisions of the CMR Convention ([CMR](#)) as well as any amendments thereto insofar as these have entered into force for the Netherlands and, in addition, the aforementioned AVC.
- d. If MCE undertakes towards the Client to keep goods in storage for a specified period of time by agreement, the latest version of the industry-customary Dutch Storage Conditions ([FENEX storage](#)) as filed at the registry of the court in Rotterdam apply.
- e. The specific sector conditions mentioned under paragraphs b, c and d are enclosed and can be found via the link. In the event of a conflict between the aforementioned specific sector conditions and the general delivery conditions, and insofar as they cannot complement each other, the general delivery conditions will prevail.

- f. In the event of a conflict between the conditions as established in the agreement and the general delivery conditions and/or the industry conditions, and insofar as they cannot complement each other, the conditions as established in the agreement will prevail.
- g. If one or more provisions in these general delivery conditions are at any time wholly or partially invalid or become void, the other provisions stated in these general delivery conditions will remain fully in force. In such a case, the parties will consult to agree on new provisions to replace the invalid or nullified provisions, whereby the aim and scope of the original provisions will be pursued as much as possible.

Article 3. Offers

- a. All offers and/or quotations are without obligation and are valid for a maximum of 10 working days.
- b. Unless expressly agreed otherwise in writing, all prices and fees are in Euros and exclusive of VAT.
- c. Offers made orally by MCE or its subordinates are free of engagement unless confirmed in writing by MCE.
- d. Every offer is based on its execution by MCE under normal circumstances and normal working days, unless otherwise specifically indicated in writing.
- e. The conclusion of an agreement and all changes thereto are never (only) dependent on a so-called Purchase Order to be sent by the Client. An agreement is concluded through an offer from MCE and an unambiguous acceptance thereof by the Client.
- f. Should Client provide MCE with information and data such as, but not limited to, amounts, times, dimensions, weights and drawings, Client guarantees their correctness and MCE will base its offer thereon.
- g. Should an offer made by MCE not be accepted, then MCE reserves the right to claim all cost MCE had to incur in order to produce the offer for the Client.
- h. Unless agreed otherwise in writing, Client guarantees that all permits, licenses, exemptions and all other rulings required have been obtained on time to perform the Work;
- i. An increase in cost-determining factors arising after the conclusion of the agreement may be passed on by MCE to the Client if the fulfilment of the agreement has not yet been completed at the time of the increase.

Article 4. Information and data

- a. The Client is obliged to provide all (valid) data, not limited to information, knowledge and changes, of which MCE indicates that these are necessary, or of which the Client should reasonably understand that these are necessary for the correct execution of the agreement, to MCE completely, on first request, and at least on time and in the desired manner. The above also applies if the data comes from third parties.
- b. With regard to the delivery of residual flows, ingredients and by-products, the Client must always submit the following information: environmental and permit requirements and other laws and regulations and the associated appendices.
- c. MCE has the right to charge the Client additional costs associated with converting the data into the correct form. MCE also has the right to suspend the execution of the assignment until the moment that the Client has fulfilled the obligations referred to in the previous paragraph. MCE is not liable for any resulting damage. Client indemnifies MCE in this regard.
- d. Client guarantees the correctness and completeness of the aforementioned data, even if these are provided by or via third parties. MCE is in no way liable in this respect.

Article 5. Intellectual Property

- a. Unless agreed otherwise in writing, MCE is entitled to retain all copyright and all rights pertaining to industrial and intellectual property in its offers and all other materials provided such as, but not limited to: supplied designs, recipes, images, drawings, (test) models, formulas, methods etc.
- b. The rights reserved in paragraph a of this article will remain property of MCE, irrespective whether MCE has charged the Client for the production costs or not. These data may not,

without prior explicit permission in writing from MCE, be copied, used or shown to third parties, or used for any other commercial purposes other than those for which they were provided. Client is likewise forbidden to sell the data provided by MCE referred to under paragraph a to, through or by means of third parties in any form whatsoever, unless expressly agreed in writing.

- c. The Client indemnifies MCE against any claim from third parties with regard to the use of designs, recipes, images, drawings, models, test models, formulas, methods and the like provided by or on behalf of the Client.

Article 6. Suitability

- a. The Client cannot derive any rights from advice and information it receives from MCE.
- b. The Client will guarantee the overall composition of the items, including the suitability of the items for the applied and/or prescribed method and/or the process during the work.
- c. Unless otherwise agreed, with regard to the by-product, ingredient and residual flow supplied by the Client, the following applies:
 - has a maximum moisture percentage of 15%;
 - the maximum fraction size does not exceed 40 millimetres;
 - is clean, does not contain any foreign substances and is not contaminated;
 - complies with all relevant environmental and permit requirements and other laws and regulations and the associated appendices;
 - has no end-of-waste status, at least is not regarded as waste according to the law, unless it complies with the accepted Eural code specified by MCE;
 - complies with all other agreements as laid down in the agreement.
- d. Failure to meet the aforementioned requirements will result in breach of contract on the part of the Client. In addition, if MCE is forced to remove, destroy, or otherwise treat or process goods on the basis of laws and regulations or other government measures, all resulting costs and fines will be borne by the Client. Client must indemnify and hold MCE harmless for this.
- e. MCE has the right to refuse the goods delivered by the Client at any time if they do not meet the aforementioned requirements, or if MCE merely suspects that they do not meet the aforementioned requirements. MCE is not liable for the consequences of such a refusal.
- f. Unless otherwise agreed, the Client is prohibited from offering the item delivered and/or provided by MCE as food or feed.
- g. The Client has the right to inspect or examine the environmental license of MCE insofar as this is relevant for the implementation of the agreement, or to provide the correct goods and information by the Client.

Article 7. Unfeasibility of an order

- a. MCE is entitled to suspend its obligations when circumstances, which were not to be expected upon conclusion of the agreement and which are outside the control of MCE, are temporarily obstructing the fulfilment of its obligations.
- b. Circumstances that could not be expected by MCE and that lie beyond its control include: the circumstance that suppliers and/or subcontractors of MCE do not or not timely fulfil their obligations or the Client has made a mistake, the weather, earthquakes, government measures, unforeseen violations of laws and regulations in the broadest sense of the word, fire, loss or theft, the loss of raw materials to be processed, computer failure, machine breakdown, or trade restrictions.
- c. MCE will no longer be entitled to suspend its obligations if the temporary impossibility of fulfilment has lasted more than 3 months or is expected to last more than 3 months. An agreement can only be dissolved after this period has expired and dissolution is restricted to those parts of the obligations which have not been fulfilled. Client is not entitled to any compensation due to damages sustained or to be sustained as a result of such dissolution.

Article 8. Cancellation

- a. Cancellation of a reservation is not possible.

- b. An assignment can only be cancelled in writing. In the event of cancellation, the Client will owe the costs incurred for:
- project-specific investments agreed in advance.
 - (de)mobilization of employees and equipment, such as, but not limited to, order - picking, travel and accommodation costs, pre-testing, storage, certification and transport.
 - work preparation, such as, but not limited to investigation, project management, contract work, application for permits.

Whereby the costs are based on all work related to the initial agreement, including the changes made to it from the first moment of application.

- c. In the event of full or partial cancellation, the Client will owe MCE a fee as follows:
- In the case of work and cancellation during, or less than 72 hours before, the last initial commencement of the assignment announced to MCE:
 - 50% of the initial daily price of the equipment with a maximum of 7 days.
 - 8 working hours per person per shift, for a maximum of 7 days.
 - In case of sale of goods:
 - lost profit

Article 9. Suspension

- a. Suspension of a reservation is not possible. Extending a reservation is only possible if it has been approved in writing by MCE.
- b. An assignment can only be suspended in writing and applies from the last initial commencement of the assignment announced to MCE. During the suspension, the Client owes MCE a fee as follows:
- In the case of Work:
 - at least 50% of the initial daily price of the equipment
 - at least 8 working hours per person per shift
 - fixed and flexible continuous costs, such as, but not limited to (de)mobilizing employees and equipment, rental, travel and accommodation costs, storage, continuing or reapplying for permits.
 - costs charged by third parties
 - In the case of sale of goods:
 - fixed and flexible continuous costs, such as, but not limited to (de)mobilizing employees and equipment, rental, travel and accommodation costs, storage, continuing or reapplying for permits.
 - costs charged by third parties
- c. Without prejudice to other provisions of these general delivery conditions, Client has the right to suspend the agreement, but only under the following conditions:
- suspension by Client starts after a waiting period of 24 hours after the announcement of the suspension;
 - the duration of the suspension may not exceed the duration of the initial agreed assignment;
 - as soon as the Client has information on the basis of which it expects, or can expect that a suspension is about to occur, it must immediately inform MCE of this, failing which the Client is legally in default.
 - as soon as the equipment or employee(s) made available by MCE is used again, the suspension is immediately terminated;
 - the possibility to suspend can only be based on circumstances unforeseen at the time of the conclusion of the agreement;
 - when a period of suspension has started and the work must be resumed, the Client must notify MCE as soon as possible, but no less than 10 working days prior to the resumption of work.
- d. The order will be cancelled by operation of law after 7 days of suspension. Article 8 applies.
- e. MCE has the right to charge the Client for changes to the initial assignment and the costs for (extra) work preparation as a result of the suspension as additional work.

Article 10. Liability and Insurance

- a. Client is liable for damage which results from any accident and any event and which results from a breach of another contractual or non-contractual obligation, with the exception of the deviations listed below and without prejudice to any other provisions in these general delivery conditions. Client shall indemnify MCE against any and every claim for compensation to that effect.
- b. Client must indemnify MCE and hold it harmless against claims and fines as a result of acts and omissions of Client that constitute a violation of sanctions legislation and regulations.
- c. The damages payable by MCE shall be established in accordance with the liability arrangement provided for in the general terms and conditions referred to in Article 2 of these Trading Conditions, by law, or in treaties.
- d. Client guarantees to have adequate liability insurance (appropriate to the work) and to keep it valid during the term of the agreement, with an insured sum of at least EUR 2,500,000 per claim and at least EUR 5,000,000 per year.
- e. In all cases, MCE's obligations can be qualified as best-efforts obligations. MCE will act to the best of its ability and knowledge. An obligation will only apply as a result obligation if this has been explicitly agreed in writing.
- f. To the extent that there is any liability on MCE, the liability of MCE for damage to goods caused during the time that MCE or someone on behalf of MCE actually transports, processes, handles, rents, borrows, uses, stores or has for any reason is also limited to EUR 5,000 per claim. MCE is not liable for damage resulting from the property damage.
- g. MCE is not liable for, and Client indemnifies MCE against, all claims on account of product liability arising from the Work that have been delivered whether in whole or in part by MCE. Client indemnifies MCE against, all claims from third parties based on product liability.
- h. For the goods delivered directly by MCE, the product liability of MCE is limited to the purchase price, or in proportion to the purchase price to which the damage relates, with a maximum of EUR 5,000.00 per event. Multiple damages arising from the same cause or related to each other are considered as one damage or event. The Client indemnifies and indemnifies MCE against claims from third parties based on product liability that exceed the aforementioned liability limit.
- i. MCE is not liable for indirect, immaterial or consequential damage, such as but not limited to business damage, loss of turnover, loss of profit, loss of time, loss of service, demurrage, damage to reputation and missed orders.
- j. If and insofar as any liability rests on MCE, for whatever reason, this liability is at all times limited to a maximum amount of EUR 1,250,000.00 per event or series of events with the same cause of damage.
- k. In any case, the liability of MCE will lapse in its entirety if the Client, as soon as it becomes aware of circumstances for the first time, does not report this promptly, or if the Client does not act or omit action to prevent further damage.
- l. Parties cannot invoke liability-limiting conditions if and insofar as loss or damage is the result of the gross negligence or wilful misconduct of the other party, or its affiliated companies.
- m. Notwithstanding the provisions regarding prescription and limitation as stipulated in Article 2 of these General delivery Conditions, any claim against MCE shall become null and void through the mere expiry of one year.

Article 11. Guarantee

- a. MCE bases its work on the instructions, procedures, information and the like provided by the Client and MCE never gives a guarantee on the result.
- b. With regard to the purchase of goods, in the event of non-conformity, the Client is entitled to have the missing items sent. If sending the missing item does not lead to a solution, the Client is entitled to repair. If repair does not lead to a solution, the Client is entitled to a replacement. If replacement is not possible because the item in question is no longer available, the agreement will be dissolved.
- c. In the event that the Client benefits from repair or replacement, the Client must pay a pro rata contribution.

Article 12. Payment

- a. Unless specifically otherwise agreed in writing, invoices must be duly paid within 30 (thirty) days after invoice date, to the bank account indicated by MCE and in the currency mentioned in the invoice.
- b. If a payment becomes overdue, MCE reserves the right to claim an interest on overdue payments from the first day the payment becomes overdue until the day of full payment. The interest on overdue payments is 1.5% per month.
- c. Irrespective of the agreed terms of payment, the Client is obliged, on request of MCE and to its discretion, to provide sufficient surety. When the Client does not comply within the stipulated period, the Client is immediately in default. MCE is entitled in such case to the right of dissolution of the agreement and to claim damages from the Client.
- d. The Client is not entitled to compensate any amounts due to MCE with amounts which MCE may owe the Client. The Client is also not entitled to suspend payment on account of the agreement regarding any other concluded agreement with MCE.
- e. In case of liquidation, bankruptcy, seizure or moratorium of the Client, all claims from MCE on the Client become payable on demand.
- f. If payment is not fulfilled within the stipulated period, the Client is liable to pay MCE all extrajudicial costs. The costs are calculated according to the credit collection fee of the Dutch Law Society, with a minimum fee of EUR 250.00. Should the actual extrajudicial costs be higher, then the actual costs will be charged.
- g. If the costs incurred have not led to the desired result, this will not lead to crediting, at least, this does not release the Client from its payment obligation towards MCE.
- h. If a juridical procedure is decided, in whole or in part, in favour of MCE, all cost MCE has incurred related to this procedure will be at the expense of the Client.

Article 13. Delivery and acceptance

- a. The prices and rates stated in the offer for the delivery of goods are based on Delivery EXW (Ex Works), in accordance with Incoterms 2020 unless the parties agree otherwise in writing.
- b. The Incoterms declared applicable under paragraph a apply by analogy with purchase contracts to the acceptance of goods as a result of the Work; meaning that acceptance takes place at the agreed location, unloaded and not cleared.
- c. Client obliges the carrier to issue a consignment note to MCE.
- d. At first request, the Client will issue a relevant cleanliness or decontamination certificate with regard to the relevant transport object.
- e. Irrespective of the provisions of the previous paragraphs, the parties can agree that MCE will take care of the transport or transport. Such an agreement counts as an agreement for the transport. Under no circumstances does MCE act as a carrier, but as a forwarding agent. The risk of storage, loading, transport and unloading in that case also rests with the Client.

Article 14. Risk transfer and acceptance

- a. The risk of the good on the basis of the purchase agreement transfers to the Client at the time and in accordance with what has been determined in this respect in the Incoterms delivery category indicated by MCE or agreed in writing by the parties, but in any case at the time when the good is legally and/or factually delivered to the Client and thus placed under the control of the Client or a third party to be designated by the Client.
- b. The Work is considered to be completed in any one of the following cases:
 - the Client has approved the Work;
the Work has been put into use by the Client;
 - MCE has notified the Client in writing that the Work has been completed or made available at the agreed location;
no reservation is made on the consignment note;
 - The Client does not approve the Work on the basis of minor defects that can be repaired or delivered within a reasonable period of time and that do not prevent the Work from being put into use.

- c. The Client is obliged to inspect the delivered/accepted goods or to have them inspected for quality and quantity upon delivery/acceptance. If the Client does not approve the Work, it is obliged to inform MCE of this immediately in writing, stating the reasons, failing which any right of the Client will lapse.

Article 15. Retention of title and right of retention

- a. All goods delivered by MCE by means of purchase remain the property of MCE until the Client has fully complied with all obligations arising from all agreements concluded with MCE.
- b. MCE has a right of retention of goods and documents that it has in its possession in connection with the agreement towards anyone who requests the surrender thereof.
- c. The Client is not authorized to pledge or encumber in any other way the goods falling under the retention of title.
- d. If third parties seize the goods delivered under retention of title or wish to establish or assert rights thereon, the Client is obliged to notify MCE of this as soon as may reasonably be expected.
- e. In the event that MCE wishes to exercise its property rights referred to in this article, the Client gives unconditional and irrevocable permission to MCE, or to third parties to be designated by it, to enter all those places where the properties of MCE are located and to take the goods back.
- f. If MCE cannot invoke its retention of title because the goods delivered have been mingled, distorted or copied, the Client is obliged to pledge the newly formed goods to MCE.

Article 16. Uncollected items

- a. When items are not collected after the final delivery moment has passed, they remain at the disposition of Client. Uncollected items will be stored at the expense and risk of the Client. MCE may always exercise the power provided by Article 6:90 of the Dutch Civil Code.

Article 17. Terms of completion and Addition work

- a. The completion time and/or the realization period stated in the offer are established approximately by MCE. A specified completion time or a realization period is never a final deadline.
- b. When a completion time and/or realization period is specified, Client guarantees that MCE can perform the order under the circumstances known at that moment by MCE.
- c. The delivery time and/or execution period only starts when agreement has been reached on all technical details, but not until at least:
 - all necessary data are in the possession of MCE
 - final, approved drawings are in the possession of MCE
 - the agreed (partial) payment has been received and
 - the necessary conditions for the implementation of the agreement are met.
- d. Should different circumstances occur than those known to MCE when it established the completion time and/or realization period, then MCE may extend the completion time and/or realization period by the time which is necessary to realize the order under these circumstances. If the Work cannot be fitted into the planning of MCE, it will be realized as soon as the planning allows.
- e. When it concerns extra Work, the completion time and/or realization period will be extended by the time which is necessary to allow delivery of materials and parts and to perform the extra Work. If the execution of the extra Work cannot be fitted into the planning of MCE, it will be realized as soon as the planning allows.
- f. When it concerns suspension of obligations by MCE, then the completion time and/or realization period will be extended with the duration of the suspension period. If the continuation of the Work cannot be fitted into the planning of MCE, it will be realized as soon as the planning allows.
- g. Exceeding the agreed completion time and/or realization period does not entitle for compensation, unless this has been agreed in writing.



Article 18. Translation

- a. These general delivery conditions have been translated into English. In the event of disputes of any nature regarding the interpretation of general delivery conditions, the Dutch version shall prevail.

Article 19. Applicable law and disputes

- a. Dutch law governs all contractual obligations between MCE and Client.
- b. The Vienna Sales Convention 1980 is excluded, as well as any other international convention which may be excluded.
- c. All disputes will be submitted at first instance to the competent court at Assen, the Netherlands, unless this is in conflict with mandatory law.