



exkal

 FOR FUTURE GENERATIONS

**General Conditions
of Sale and Supply
2021**

GENERAL CONDITIONS OF SALE AND SUPPLY

1. Definition

- 1.1** Hereinafter, any reference to the selling "**COMPANY**" or "Seller" shall refer to the company EXKAL S.A., its subsidiaries or its associated companies.
- 1.2** Any reference to the buying "**CUSTOMER**" shall refer to any INDIVIDUAL, LEGAL ENTITY or INSTITUTION with the capacity to enter into a contract with the COMPANY for the supply of equipment and/or provision of services.
- 1.3** The "**PRODUCT**" or materials shall refer to any equipment, device or service that the CUSTOMER acquires from the COMPANY.

2. Scope

- 2.1** These General Conditions of Sale and Supply ("GCSS") shall apply to all sales, supplies and services and, generally, any delivery and performance obligations, in addition to any related quotes and orders provided by the Company for the Customer.
- 2.2** These GCSS shall be deemed to have been fully accepted by the Customer by the mere fact of it placing an order, requesting a service or accepting a quote.
- 2.3** The relationships established between the Company and the Customer shall not be subject to any of the Customer's general conditions other than these, even when the Customer is aware of them; the Company shall not be required to make any form of reservation or qualification in respect thereof.
- 2.4** Acceptance of any other general conditions shall require the Company's express consent, given in writing. Consequently, any other conditions that have not been expressly accepted by the Company in writing shall have no legal value or effect.

3. Orders and scope of the supply

- 3.1** The scope of the supply shall be clearly specified in the Customer's order and it shall be binding for the parties. To be considered effective, the order must be expressly accepted by the Company, except in cases where this requirement has been dispensed with, by mutual consent, due to the ongoing nature of the supply.
- 3.2** The Customer is responsible for the accuracy of the order and for providing all of the necessary information related to the ordered Products, to allow orders to be processed as agreed.
- 3.3** The supply only includes the equipment and materials that are the subject of the order, except in cases where any Customer order accepted by the Company expressly includes an additional document or service provided by the Company or third parties.
- 3.4** The Customer may only change the order on the proviso that the Company has not started to procure the materials or the production operations associated with the ordered Products. The Company accepts no liability for any losses or damages that may arise from the foregoing, whatever form they may take.
- 3.5** The Company shall take the utmost care to ensure that the descriptions, drawings and, generally, the information contained in the catalogues, brochures and technical documentation in any format, is accurate. Notwithstanding the foregoing, unless otherwise agreed, those elements shall only serve as an approximate guide, so they are not binding in nature and no warranty is made in relation to them. Consequently, the Company accepts no liability for any inaccuracies that may exist in the contents of said information.
- 3.6** The Company has the right to change or improve the Products without informing the Customer of this in advance, provided that said change or improvement is not detrimental to the form, function or technical characteristics of the Products.

- 3.7** The Company must be notified of any changes to and/or variations in the scope of an order within five (5) business days of the order being confirmed, always in writing, and they must be expressly accepted by the Company to be valid. Any change that occurs shall require a review of the order's price and delivery period, which must be accepted again in writing by both parties.
- 3.8** In accordance with the stipulation in clause 2.3, any specific condition referred to in the Customer's order shall be excluded if it is not compatible with these GCSS or expressly accepted in writing by the Company.
- 3.9** The Customer may not cancel the order when the Company has started procuring the materials or manufacturing or fifteen (15) days after the order is confirmed, whichever occurs first.

If the Customer persists with its intention to cancel the order, this shall result in a penalty amounting to 70% of the net value of the order, with the final penalty amount being confirmed by the Company when it has calculated the total value of the loss arising from this and/or reusing the Product.

- 3.10** The Company reserves the right to accept orders from Customers who have breached these GCSS in previous contracts and supplies.

4. Prices and quotes

- 4.1** The supply prices are net and in Euros, excluding VAT and any other tax, duty or fee, which shall be subsequently added to the invoice at the applicable rates. Unless there is a contrary stipulation in the order, or a relevant agreement between the Customer and the Company originating from their business relationship, the prices of the supplies do not include special packaging, transportation, loading or unloading, delivery, assembly or insurance and they are considered Ex Works¹.

¹ (For the purposes of the GCSS, we understand Ex Works to be as defined in the 2010 edition of the Incoterms rules established by the International Chamber of Commerce).

- 4.2** In the case of quotes provided before orders, the prices quoted shall be valid for thirty (30) days and, in this period, they shall be considered to be fixed under the terms of payment specified in the quote, unless the supply covered by the quote is subject to exchange rate contingencies or the payment of duties and fees, in which case the quoted price would be adjusted in line with those variations.
- 4.3** The applicable prices shall be those that appear on the current price list when the order is confirmed and they shall be valid for the ordering of all Products specified in the quote. Transactions shall be carried out and agreed primarily in Euros. Unless specifically agreed otherwise by both parties, the prices and discounts specified in the quote or order shall not be binding for future contracts.
- 4.4** The prices included in the quote are deemed to be subject to the payment terms specified in the quote given to the Customer. If these payment terms are changed, the prices in the quote shall be reviewed by the Company.
- 4.5** All taxes, local rates and other charges shall be paid by the Customer.
- 4.6** When the Company has accepted the order, the supply prices shall be deemed to be fixed and not subject to review. However, price adjustments shall be applicable when:
- The Customer and Company have agreed to a price review;
 - the time of delivery or acceptance has been delayed for a reason that is directly or indirectly attributable to the Customer;
 - the scope of the supply has been changed at the Customer's request;

GENERAL CONDITIONS OF SALE AND SUPPLY

- d. if the prices have been quoted in a currency other than the EURO and the difference in the exchange rate between the currency and the EURO between the date of the order and the date of delivery warrants an adjustment to the sale price.
- 4.7** Where applicable, the Company shall provide information about the prices for the spare and replacement parts catalogue and they shall be considered not subject to review during the period of validity.
- 4.8** For quotes provided before orders, all services and supplies not specified in the quote shall be deemed not to be included in its price, for example:
- Masonry, joinery, plumbing and electrical work that is not expressly included in the quote;
 - connecting the mains power and lighting;
 - obtaining permits, completing official procedures and the Refrigeration Project, if necessary;
 - customisation of colours, accessories, any additional equipment, decorative elements of the linear display case; when not included in the quote;
 - special packaging, transportation, unloading and start-up if not included in the quote and/or order.
- 4.9** Any purchase of a new refrigerated display cabinet is exempt from payment of the Tax on Fluorinated Greenhouse Gases, according to Act 16/2013, of 29 October 2013.

5. Terms of payment

- 5.1** The Company's quote or, if no such thing exists, the Customer's order accepted by the Company shall include the terms of payment for the supply. It shall also be possible to use terms of payment that have previously been specified within the framework of an ongoing business relationship between the Company and the Customer. In any event, the payment terms agreed on between the parties must comply with Act 15/2010, of 5 July, amending Act 3/2004, of 29 December, establishing measures to combat late payments in commercial operations, also known as the Payments Act.
- 5.2** Payment shall be made according to the conditions agreed on by the parties and without any deductions such as: withholdings that have not been agreed, discounts, expenses, taxes or fees, or any other deduction.
- 5.3** If for reasons not attributable to the Company the delivery, assembly, start-up or acceptance of the supply is delayed, the terms of payment agreed for the supply shall be maintained. In such an event, if the order has been supplied, the payment due date shall fall within thirty (30) days of the Products being delivered.
- 5.4** If the Customer should fall into arrears, from the payment due date, with no demand for payment required, it shall have to pay the Company interest for late payment, which shall be calculated by applying an interest rate for the period of delay that is equivalent to 5 points above the EURIBOR. Payment of this interest does not release the Customer from its obligation to make the rest of the payments according to the agreed terms.
- 5.5** If the Customer should fall into arrears with the agreed payments, the Company may suspend delivery of the supply or the provision of its associated services, notwithstanding the right to demand payment of the arrears by the Customer and, where appropriate, to demand additional compensation for this suspension of the supply or provision of the associated services. And if the Customer should repeatedly fall into arrears with the agreed payments, the Company has the right to unilaterally withdraw from all commercial agreements with the Customer and discontinue all subsequent orders, if any.
- 5.6** If the quote or order includes installation, assembly, start-up and/or fitting, any delay to this that is not attributable to the Company shall not give rise to a deferment of payment under the agreed terms.

- 5.7** The Customer filing a claim shall not entitle it to suspend the agreed payments or deduct any amount therefrom.
- 5.8** In order to reduce the risk of cyber fraud, if the Customer receives a notification from the Company requesting that it change the bank account in which payments are deposited, the Customer shall request confirmation of this change via a channel of communication other than the one through which the initial request was received. If this confirmation is not received from the Company, it shall refuse to make the requested change and wait to be contacted by the relevant sales team.

6. Delivery period and conditions

- 6.1** Unless agreed otherwise, any delivery periods that may be stipulated by the Company in the quote and/or when confirming the order shall be for guidance purposes only and, consequently, they shall not be binding. Therefore, the Company shall not be liable for the consequences of exceeding such periods.
- 6.2** If any binding periods are established, after the delivery period has ended, the Company shall be entitled to a reasonable "grace period", which shall begin when the initial agreed period ends. The Company shall only be liable for the delay after that grace period ends.
- 6.3** In the above case, when there are delays in the delivery that are attributable to the Company after the end of the grace period, the Customer may present a reasoned submission to request compensation for any proven losses suffered, for an amount not exceeding 5% of the price of the products that are delivered late.
- 6.4** The delivery period means the date when the Product is placed in the location and under the conditions stated on acceptance of the order. If no specification is made, it shall be deemed to mean the supply being placed in the Company's factory or warehouses. For the delivery period to be binding for the Company, the Customer must have strictly adhered to the payment schedule, if any.
- 6.5** The delivery period shall be changed when:
- The documentation required to complete the supply is not submitted on time;
 - the Customer requests changes to the order, these are accepted by the Company and the Company believes that they require an extension to the delivery period;
 - completion of the supply requires work to be performed by the Customer or its subcontractors and said work has not been completed on time;
 - the Customer has failed to fulfil any of the order's contractual obligations, in particular with regard to payments;
 - for reasons not directly attributable to the Company, there are delays in the production or provision of all or some items included in the supply. By way of example and without limitation, the following causes of delay are included: industrial action affecting suppliers, transportation and services, failures in third-party supplies, floods, storms, riots, pandemics, walkouts by the Company's staff or its subcontractors, sabotage, unplanned stoppages due to breakdowns.
- 6.6** In cases a), b), c) and d) above, delays in delivery dates shall not change the payment schedule for the supplies ordered.
- 6.7** Unless agreed otherwise or specified in the delivery terms of the Customer's purchase order, the Company may make partial deliveries.
- 6.8** The delivery terms are Ex Works (defined in article 4.1) in the Company's facilities, with its head office being at 31340 Marcilla, Navarra (Spain).

GENERAL CONDITIONS OF SALE AND SUPPLY

7. Packaging, transportation and acceptance

- 7.1** Unless there is a prior agreement with the Customer, any request for special packaging (sea, air, etc.) for the Products being supplied shall be subject to an additional charge on top of the sale price and it is not permitted to return them.
- 7.2** Transportation, including loading and unloading, is carried out at the Customer's cost, risk and expense. Consequently, the Company is not liable for any claim related to damage to, a delay to or a reduction in the supply, with the Customer assuming those risks, unless specifically agreed in the order with the prior acceptance of the Company. Furthermore, the cost of all permits and works necessary to enable unloading shall be borne by the Customer.
- 7.3** If the Products are ready to be supplied, if the delivery date of the order passes without the Customer removing them or reaching an agreement with the Company to store them in its facilities subject to agreed terms, the Customer shall have a maximum of thirty (30) days from their date of manufacture to remove them. Otherwise, all costs that arise from their storage, determined at the Company's discretion, shall be borne by the Customer, who shall also assume all risks regarding the material being stored and, where applicable, the cost of insuring those Products in the Company's facilities.
- 7.4** When the goods are delivered, the Customer shall immediately inspect the delivery and, if the Customer notices any problems with or damage to the products, it must inform the carrier of this immediately and make a specific, legible record of this on the delivery note.
- 7.5** On receipt of the delivery, the Customer shall inspect the contents thereof no later than ten (10) days after it is received, to check for any defects and/or faults that may be attributable to the Company, immediately reporting any defects and/or faults that may exist.
- 7.6** If there are any defects and/or faults in the supply that are attributable to the Company, it shall take the necessary steps to eliminate and/or rectify them.
- 7.7** If the Company does not receive a written notification of any defects or faults within ten (10) days of the Customer receiving the supply, the supply shall be deemed to have been accepted and the warranty period shall begin from that moment.
- 7.8** For all intents and purposes, the supply shall be deemed to have been accepted by the Customer if it has agreed to perform acceptance tests and they have not been performed within the specified period for reasons that are not attributable to the Company or if the Customer starts to use the products supplied.
- 7.9** The Customer shall be responsible for obtaining any licences, permits, authorisations etc. and it shall bear the associated costs. Furthermore, it must ensure the supply of electricity, water and any items required for the assembly work, if this is performed by the Company.

8. Returning materials and claims

- 8.1** The Company shall not accept the return of any materials unless there is a prior agreement with the Customer in that regard. The Customer shall have ten (10) days following receipt of the supply to inform the Company of its intention to make a return, stating the grounds for doing so, and to agree with the Company, where appropriate, the procedure and conditions of the return. In any event, the Customer must issue any claims to the Company in writing and in a verifiable manner.
- 8.2** Any returns or shipments of materials to the Company's facilities for reasons not attributable to the Company, whether for repayment, replacement or repair, must be prepaid.

- 8.3** If an order is returned by mistake or for other reasons not attributable to the Company, there shall be a charge of at least fifteen percent (15%) of the net value of the returned material to cover part of the costs of any checks, damage and packaging.
- 8.4** The Company shall not accept the return of any Products that have been used, installed on other equipment or systems or disassembled.
- 8.5** The final value of the return shall be dependent on the goods passing the inspections on the premises of the Company, which shall determine the final reduction in the sum repaid, which may reach the total original invoiced value, calculated on the basis of the condition of the returned Product or in the case of Products manufactured specifically for the Customer's order.
- 8.6** The Company shall deal with all claims that arise from the sale of its Products by following the procedure implemented for that purpose, informing the Customer on the schedule and method for processing and closing their claim.
- 8.7** Service or transportation claims (for reasons other than product quality), related to damage during transportation that has been recorded on the freight forwarding company's delivery note, shall only be accepted by the Company if received within ten (10) business days through the sales management department at its central office.
- 8.8** For product quality claims, during the warranty period and due to a defect in the manufacturing, assembly or design of the material, the Customer must submit the product quality claim to the Company through its relevant sales office.

9. Warranties

- 9.1** Unless there is an explicit stipulation to the contrary in the quote or acceptance of the order, the Company provides a warranty for the products that it has supplied to cover defects in materials, manufacturing and assembly for a period of twelve (12) months, starting from the date of acceptance, whether this be explicit (the acceptance tests agreed upon between the Company and Customer are passed and a letter is sent accepting the supply) or tacit (no written notification received by the Company indicating any dissatisfaction within fifteen (15) days of delivery to the Customer), or for eighteen (18) months after the date on which notice is given that the supply is ready for shipment, whichever occurs first.
- 9.2** The warranty covers the repair or replacement (at the Company's discretion) of the items that have been confirmed to be defective, whether due to defective material or defects in manufacturing or assembly. Repairs shall be performed in the Customer's facilities, with the Customer covering the costs of any services required to perform them.
- 9.3** The repair or replacement of a defective item in the supply does not alter the start date of the warranty period of the supply as a whole, which shall be as specified in section 9.1. However, the repaired or replaced item shall have a one-year warranty from the date of its repair or replacement. The Company shall not ever bear the cost of any repairs performed by persons from outside its organisation or by an official installation company without prior approval.
- 9.4** The warranty does not cover damage caused by/the effects of wear and tear resulting from the normal use of the equipment. Furthermore, the warranty - which would be deemed as void - does not cover any damage caused by/the effects of improper upkeep or maintenance, improper or negligent storage and handling, misuse, the use of unsuitable liquids and gases and an unsuitable flow or pressure, defective assembly, variations in the quality of the electricity supply (voltage, frequency, disturbances), modifications made to the supply without the Company's approval, installations performed or subsequently modified without following the product's technical instructions and, generally, any cause that is not attributable to the Company.

GENERAL CONDITIONS OF SALE AND SUPPLY

- 9.5** Moreover, the warranty does not cover faults caused by acts of God or force majeure (atmospheric or geological phenomena) and accidents or any other natural disasters.
- 9.6** The warranty shall also be rendered void if it is stipulated that the Company's staff must be present for start-up of the product supplied and it is started up without them being present or if no steps are taken to mitigate the damage in the event of a fault.
- 9.7** The warranty solely covers the replacement or repair of the material at no additional charge to the Customer, with the Company held harmless against any losses of damages otherwise directly or indirectly suffered or any loss of earnings. Furthermore, the Company shall not be liable for any losses or damages that may arise from the loss of products stored in the equipment that it supplies.
- 9.8** If there is a refrigerant gas leak from the display cabinet, the costs that arise from applying the tax on fluorinated gases are not covered by the warranty and should be deemed to be excluded.
- 9.9** The rights that arise from the warranty may only be exercised by the Customer and they cannot be transferred to a third party.
- 9.10** The Company agrees to keep spare parts for the Products being supplied, pursuant to the provisions of the current pertinent regulations. It shall also guarantee the availability of the spare parts specified in Ecodesign Directive 2009/125/EC for the specified period.

10. Transfer of risks

- 10.1** The risk of the Product being lost or damaged shall be transferred to the Customer when it is delivered or made available.
- 10.2** If the delivery or provision is delayed for a reason attributable to the Customer, the transfer of risks shall occur when the delivery or provision should have occurred under the agreement.

11. Ownership of the property

- 11.1** The Company retains ownership of the materials and products supplied, which it shall continue to own until the amount invoiced has been paid in full.
- 11.2** The Customer shall not be permitted to sell any materials or supplies whose ownership has been retained, use them as a security or transfer their ownership as collateral, unless the Company gives its express consent in writing.

12. Limitation of liability

- 12.1** The Company's total liability that arises from the supply is limited to the value of the supply that has given rise to the claim.
- 12.2** The Company shall not be liable for any losses or damages unless it is guilty of wilful misconduct or gross negligence, whatever the legal basis for liability. Any claims against the Company for losses and damages may only be brought by the Customer; they cannot be transferred to third parties.
- 12.3** The cost of any indirect or consequential damages that may arise due to the supply; such as, by way of example and without limitation: loss of production, loss of products, loss of earnings, capital costs, the cost of stoppages or breakdowns of the equipment supplied or other equipment not included in the supply shall not ever be borne by the Company.
- 12.4** The Company shall not be liable for any act or action by the Customer or the operator during the assembly, repair or operation of the products supplied unless the installation is carried out directly by the Company in a manner that is contrary to the Company's printed instructions.

- 12.5** Some products supplied by the Company may be subject to export control regulations. Therefore, the items supplied to the Customer shall not be directly or indirectly exported by the Customer or third parties without the prior written authorisation of the Company. The Customer is responsible for fulfilling this requirement.
- 12.6** The Customer shall be solely responsible for taking any steps necessary to protect occupational health and safety. It is responsible for sharing information and coordinating the various contracts and contractors that may be involved in any given project. It shall also perform any consultation and training functions and, generally fulfil any other occupational health and safety obligations that arise from the Occupational Health and Safety Act, both in respect of its own workers and those of its contractors.
- 12.7** If the Customer expressly requests a modification to the original/standard design of the Product or the setting of parameters not provided as standard by the Company, it shall be solely responsible for the operation, design and performance thereof. Furthermore, unless expressly agreed otherwise, the Company is not responsible for the appearance or performance of the work as a whole; it is solely responsible for meeting the requirements established by the Customer in its purchase order.

13. Force majeure

- 13.1** The Company shall not be liable for force majeure events and such cases shall entitle it to extend the agreed delivery periods, precluding any claims by the Customer for losses and damages.
- 13.2** Force majeure events must include, by way of example but without limitation: industrial action affecting suppliers, transportation and services, failures in third-party supplies, failures in transport systems, floods, fires, riots, strikes, pandemics, walkouts by the Company's staff or its subcontractors, sabotage, unplanned stoppages due to breakdowns, storms, atmospheric or geological phenomena, accidents, natural disasters or other eventualities beyond its foreseeable control, any rules laid down by official and government authorities which, during the term of the supply agreement, make it impossible to fulfil the obligations assumed in it.

14. Intellectual and industrial property

- 14.1** The intellectual and/or industrial property rights over the quote and the information attached to it and the equipment included in the supply and the elements, drawings, photos, software, etc. included in/associated with it, belong to the Company or their providers, so it is expressly forbidden for the Customer to use them for any purpose other than the fulfilment of the order, to copy all or part of them or transfer them for use by a third party without the Company's express prior consent.
- 14.2** The Customer must treat all documentation related to sales and specifications, quote documents and price lists that are provided by the Company as strictly confidential and it must not provide them to third parties without prior written consent. This also applies to these GCSS, unless the Company has published them.
- 14.3** As part of the commercial activity itself, for the purpose of creating and supporting sustainable relationships between both parties, they may agree to enter into a binding mutual Confidentiality Agreement, by virtue of which the Disclosing Party provides confidential information to the Receiving Party to enable the successful completion of projects, design of Products and supplies to be defined.

15. Code of ethics and legal compliance

15.1 The Company has adopted a Code of Ethics and Equality Plan, (the "EXKAL Code of Ethics"), which is available on its website and known by all of its employees. Consequently, when conducting business with the Company, the Customer agrees to comply with it and conduct itself in a manner that is consistent with the Company's Code of Ethics and Equality Plan.

15.2 Furthermore, the Company is a signatory to the United Nations Global Compact. Our participation in this Global Compact was a voluntary initiative to affirm our ethical commitment, aimed at incorporating principles of conduct and action in the areas of human rights, labour, environmental rights and anti-corruption as an integral part of our strategy and operations, based on the following principles:

- a) Supporting and respecting the protection of internationally proclaimed human rights.
- b) Ensuring that we are not complicit in human rights abuses.
- c) Upholding the freedom of association and the effective recognition of the right to collective bargaining.
- d) Helping to eliminate all forms of forced and compulsory labour.
- e) Supporting the abolition of child labour.
- f) Supporting the elimination of discrimination in respect of employment and occupation.
- g) Maintaining a preventive approach to protect the environment.
- h) Undertaking initiatives to promote greater environmental responsibility.
- i) Encouraging the development and diffusion of environmentally friendly technologies.
- j) Businesses should work against corruption in all its forms, including extortion and bribery.

15.3 The Company has established the following channel to allow the Customer and its employees to report, in a completely confidential and independent manner, any breach of the Code of Ethics, the current legislation or the Company's policies, procedures and protocols:

Website: www.exkalsa.com/cultura/canal-de-denuncias/

15.4 Notwithstanding the other provisions in these GCSS, each Party acknowledges that it shall comply with the applicable international and domestic regulations and laws regarding financial crimes, free competition, anti-trust laws and data protection laws.

15.5 The Company acknowledges that it shall comply with all current regulations applicable to its Products, in particular but without limitation, the ISO 23953-1-2 international standards for commercial refrigerated display cabinets and the 2009/125/EC European Ecodesign Directives established in Regulation (EU) 2019/2024 and the Energy Label Directives established in Regulation (EU) 2017/1369.

15.6 Any breach of the provisions of this article (15) shall be considered a breach that entitles the Company to terminate the whole supply agreement with immediate effect, with the Customer having no right to file a related claim for losses and damages, notwithstanding any other right or remedy of which the Company may avail itself pursuant to the applicable law.

16. Submission to jurisdiction and authority

16.1 The relationship between the Company and Customer shall be governed by the general civil law of Spain (Commercial Code, Civil Code and other domestic regulations).

16.2 The parties expressly waive any other jurisdiction to which they may be entitled and submit to the jurisdiction and authority of the courts of the City of Pamplona in the province of Navarra (Spain).

Legally authorised representative of the Buyer:

Name:
Position:

Date, Signature and Stamp: