



**Mainland Canning B.V.**  
Harlingerstraat 11A  
1704BT Heerhugowaard  
The Netherlands

Chamber of commerce #86655477  
Tax ID #NL 864037880B01  
IBAN: NL61BUNQ2072013348

## **PURCHASE and SERVICE Conditions**

**PARTIES:** Mainland Canning B.V. (Seller) and customer (Purchaser).

### **ARTICLE I**

#### **Terms and Conditions of Purchase**

Purchaser hereby agrees to purchase from the Seller the items described below (specified in "**Schedule A**"), upon the terms and conditions contained herein. These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale of the applicable goods and/or services ("**Goods**") between Seller and Purchaser. These Terms prevail over any of Purchaser's general terms and conditions of purchase regardless of whether or when Purchaser has submitted its purchase order. Fulfillment of Purchaser's order does not constitute acceptance of any of Purchaser's terms and conditions and does not serve to modify or amend these Terms.

### **ARTICLE II**

#### **Description of Goods**

The Goods are described in the Mainland Canning BV invoice attached to and incorporated into this Agreement by this reference.

### **ARTICLE III**

#### **Price and Payment Terms**

The Purchaser will pay to the Seller the sum as shown on the invoice, with the agreed payment schedule.

### **ARTICLE IV**

#### **Freight, Duties and Taxes**

All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes and charges of any kind imposed by any Governmental Authority on any amounts payable by Purchaser, except for the EU import duties, which will be paid by Seller. Purchaser shall be responsible for all such charges, costs and taxes. Purchaser will be invoiced without VAT provided that purchaser

submits proof of a VAT liability status within Europe (European VAT number) which is valid at the time of purchase.

### **ARTICLE V**

#### **Conditions of Sale**

**Section 1. Payment and Closing.** Seller's obligations hereunder are expressly made contingent upon Seller's receipt from Purchaser of payment, in the amount set forth in Article III of this document.

**Section 2. Place of Delivery.** Seller agrees to arrange delivery of the Goods to Purchaser's address of operation. Fees and costs for unforeseen logistics out of control of Seller such as but not restricted to storage between Seller's location and Purchaser's address of operation, change of destination, customs, inspection etc. shall be for the account of Purchaser.

**Section 3. Transportation Charges.** Seller shall be solely responsible for the costs of transportation from the place of delivery set forth above to such location that the Purchaser directs the Goods to be delivered. Seller can make a choice and decide between Ex-works Heerhugowaard, The Netherlands or Delivery at Place of Purchaser. The choice for- and terms of transport and subsequent charges will be captured in our quotation. Purchaser will be charged for Delivery at Place of Purchaser. The choice for- and cost of Ex-works transport are for the account of Purchaser.

**Section 4. Time of Delivery.** Purchaser acknowledges that the Goods will be available for immediate delivery on or about the date estimated by the third party shipper upon its acceptance of this Agreement. Purchaser will take delivery of the Goods on the date specified by the third party shipper. Upon the Seller giving not less than 10 days' notice to the Purchaser.

**Section 5. Inspection and Rejection.** Purchaser shall inspect the Goods within ten business (10) days of receipt ("**Inspection Period**"). Purchaser will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller.

"**Nonconforming Goods**" means product shipped that is different than the Goods identified in Purchaser's purchase order. If Purchaser timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, shall (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods, together with any

reasonable shipping and handling expenses incurred by Purchaser in connection therewith. Purchaser shall ship, at Seller's expense, the Nonconforming Goods to Seller's facility. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Purchaser's shipment of Nonconforming Goods, ship to Purchaser, at Seller's expense, the replaced Goods.

Purchaser acknowledges and agrees that the remedies set forth in Section 4 are Purchaser's exclusive remedies for the delivery of Nonconforming Goods. All sales of Goods to Purchaser are final and, except as provided under this Section 4, Purchaser has no right to return Goods purchased under this Agreement to Seller.

**Section 6. Installation.** Seller's appointed technicians are only authorized to install equipment supplied by Seller. Seller's appointed technicians cannot handle or install any third-party equipment not being part of this Purchase Agreement. For installation and training associated with these items, Purchaser must work directly with the corresponding manufacturer.

**Section 7. Risk.** Title and risk of loss passes to Purchaser upon delivery of the Goods from Seller's facility. Until Purchaser pays for the Goods in full, Purchaser grants to Seller a lien on and security interest in and to all of the right title and interest of Purchaser in the Goods so that Seller can recover for any non-payment hereunder.

**Section 8. Warranties.** Seller warrants to Purchaser that for a period of one (1) year from the date of fulfilling installation & training as set forth in the applicable commissioning report, or if none, then the date of the shipment of the Goods ("**Warranty Period**"), that such Goods will be free from material defects in material and workmanship and the Goods shall be fit for the particular purpose of general canning processes. Seller warrants that the goods are delivered free of the rightful claim of any third person by way of infringement or the like but where Purchaser furnishes specifications, Purchaser holds Seller harmless against any such claim which arises out of compliance with the specifications. Warranty includes parts and labor except wearable parts and consumables. Wearable parts include, but are not limited to: tubing and connectors, fill head gaskets, blades, rotary cam, seamer springs, seamer bearings and o-rings. Where individual component parts are warranted by the original equipment manufacturer these warranties will be deemed transferred to Purchaser by Seller. Seller warrants that services furnished under this agreement will be free from defects in workmanship for a period of ninety (90) days from the completion of the services. Any non-functioning parts that are repaired by Seller shall be returned to the Seller if requested. If Purchaser refuses Seller's (remote) installation & training service, all warranties are void.

EXCEPT FOR THE FOREGOING WARRANTY ABOVE, SELLER MAKES NO WARRANTY EITHER ORALLY OR WRITTEN AND EXPRESSLY DISCLAIMS ANY WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY; WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; WARRANTY OF TITLE; OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD

PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. PURCHASER ACKNOWLEDGES THAT THE CONSIDERATION PAID TO SELLER REFLECTS SELLER'S INABILITY AND UNWILLINGNESS TO PROVIDE THE WARRANTIES DISCLAIMED.

(b) The Seller shall not be liable for a breach of the warranty set forth in Section 7 unless: (i) Purchaser gives written notice of the defect, reasonably described, to Seller within ten (10) days of the time when Purchaser discovers or ought to have discovered the defect; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such goods and Purchaser (if requested to do so by Seller) returns such goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Purchaser's claim that the goods are defective.

(c) The Seller shall not be liable for a breach of the warranty set forth in Section 7 if: (i) Purchaser makes any further use of such goods after giving such notice; (ii) the defect arises because Purchaser failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the goods; or (iii) Purchaser alters or repairs such goods without the prior written consent of Seller.

(d) With respect to any such goods during the Warranty Period, Seller shall, in its sole discretion, either: (i) repair or replace such goods (or the defective part) or (ii) credit or refund the price of such goods at the pro rata contract rate provided that, if Seller so requests, Purchaser shall, at Seller's expense, return such goods to Seller.

**Section 9. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.

**Section 10. Default Cancellation.** If the Purchaser fails to make any payment required to be made to the Seller, under this Agreement, and such default continues for thirty (30) days past the required due date, then the Seller may cancel this Agreement upon written notice to Purchaser, and Seller may repossess the machine or machines in addition to retaining all payments made by the Purchaser as liquidated damages and not as penalty. The foregoing shall in no way be deemed to preclude or be in lieu of any other remedies that may be available to Seller, whether

expressly set forth herein or otherwise arising by operation of common law or statute.

**Section 11. Default Interest.** Purchaser shall pay interest on all late payments at the lesser of the rate of 2% per week or the highest rate permissible under applicable law, calculated daily and compounded monthly. Purchaser shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Purchaser fails to pay any amounts when due hereunder. Purchaser shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

**Section 12. Storage.** If the Purchaser does not take delivery of the Goods at the time the Goods are due and ready for delivery, the Seller may, but is not required to, store the Goods until their actual delivery and, in that event, the Purchaser shall be liable to the Seller for all reasonable fees and costs of such storage (including insurance and daily storage fees, if any). Failure of Purchaser to receive delivery of the Goods for 30 days after notice from Seller, entitles Seller to resell or repossess the Goods.

**Section 13. Waiver.** The waiver by the Seller of strict compliance of performance of any of the terms of this Agreement or of any breach thereof on the part of the Purchaser, shall not be held or deemed to be a waiver of any subsequent failure to comply strictly with or perform the same or any other term or condition of this Agreement or any breach thereof.

**Section 14. Unavoidable Delay.** It is mutually agreed by the parties, that neither party shall be held responsible for any losses resulting from the non-fulfillment of any terms or conditions if performance under this Agreement (excluding Purchaser's payment obligations) is delayed or prevented by wars, acts of enemies, strikes or lockouts, fires, floods, acts of God, or without limiting the foregoing, by any other cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent, whether of the class of causes before enumerated or not. The Purchaser acknowledges that the estimate of days for delivery of goods referred to in this agreement is given and intended as an estimate only, and the Seller shall not be liable to make good any damages or losses, whether arising directly or indirectly out of delay in delivery.

**Section 15. Changes and Additional Charges.** Services which must be performed as a result of any of the following conditions are subject to additional charges for labor, travel and parts: (a) equipment alterations not authorized in writing by Seller; (b) damage resulting from improper use or handling, no- or poor maintenance accident, neglect, power surge, or operation in an environment or manner in which the machine is not designed to operate or is not in accordance with Seller's operating manuals; (c) the use of parts or accessories not provided by Seller; (d) damage resulting from acts of war,

terrorism or nature; (e) services outside standard business hours; (f) noncompliance with site requirements to include specified power and air requirements and other equipment specifications; (g) claims or damage resulting from a period of standstill-inactivity or non-operating of the Brewery-Production/Processing Plant; or (f) any repairs required to ensure equipment meets manufacturer's specifications upon activation of a service agreement.

**Section 16. Entire Agreement.** This Agreement contains the whole agreement between the Seller and the Purchaser, in respect to the purchase and sale of the Goods covered by this Agreement, and there are no warranties, representations, terms conditions or collateral agreements expressed, implied or statutory other than as expressly set out in this Agreement.

**Section 17. Amendments.** Neither party shall be bound by an amendment or modification to this Agreement unless it is in writing and signed by each party.

**Section 18. Site Access / Preparation / Worker Safety / Environmental Compliance.** In connection with services provided by Seller, Purchaser agrees to permit prompt access to equipment. Purchaser assumes full responsibility to back-up or otherwise protect its data against loss, damage or destruction before services are performed. Purchaser is the operator and in full control of its premises, including those areas where Seller employees or contractors are performing service, repair and maintenance activities. Purchaser will ensure that all necessary measures are taken for safety and security of working conditions, sites and installations during the performance of services.

Purchaser is the generator of any resulting wastes, including without limitation hazardous wastes. Purchaser is solely responsible to arrange for the disposal of any wastes at its own expense. Purchaser will, at its own expense, provide Seller's employees and contractors working on Purchaser's premises with all information and training required under applicable safety compliance regulations and Purchaser's policies.

**Section 19. Indemnification By Seller:** Seller agrees to indemnify Purchaser and its affiliates against any loss, cost, expense, damage or liability from the date expended and attorney fees and other expenses incurred in defending against litigation, either threatened or pending) incurred or sustained by any one or more of them with respect to or arising out of (a) any breach of or misrepresentation of any warranty or representation made by Seller in or pursuant to this Agreement or failure by Seller or to perform or comply with any covenant or agreement made by them in or pursuant to this Agreement, or (b) any liability of or claim against Purchaser relating to any state of facts, event or omission existing or occurring prior to Closing.

**Section 20. Indemnification by Purchaser:** Purchaser agrees to indemnify Seller, its directors, officers, shareholders, contractors and its affiliates against any loss, cost, expense, damage or liability incurred or sustained by any one or more of them with respect to or arising out of (a) any breach of or misrepresentation of any warranty or representation made by Purchaser in or pursuant to this Agreement or failure by

Purchaser to perform or comply with any covenant or agreement made by it in or pursuant to this Agreement, or (b) any liability of or claim against Seller relating to any state of facts, event or omission existing or occurring after Closing.

**Section 21. Confidentiality:** Purchaser and Seller agree that the disclosure of these discussions and negotiations will be detrimental to their individual and mutual interests. It is therefore agreed that these discussions and any documentation or information produced or disclosed shall not be divulged to any other party, exclusive of lenders, accountants and representatives of the parties, who in turn shall be bound by this paragraph.

**Section 22. Cancellation.** This Agreement cannot be canceled or terminated by either party except as expressly provided by this Agreement.

**Section 23. Proprietary Rights.** The Seller retains exclusively all proprietary rights (including manufacturing rights) in and to all designs, engineering details, software/operating system and other data pertaining to the goods covered by this Agreement. Adding unauthorized fill heads to the system is a violation of this agreement.

**Section 24. Time of the Essence.** Time is of the essence with respect to the obligations of the Seller and Purchaser under this Agreement.

**Section 25. Governing Law and arbitration.** This Agreement shall be exclusively governed by and interpreted in accordance with the laws of The Netherlands. For the purposes of resolution of each and any dispute that has arisen or might arise further to the present agreement, or any further agreements resulting from the same, the parties shall – or a party shall – file a request for mediation with the Netherlands Arbitration Institute NAI secretariat in accordance with the NAI Mediation Rules. If such request fails to result in a comprehensive resolution of the dispute by conclusion of a contract of settlement as referred to in Article 7(1) (a) of the NAI Mediation Rules, by an arbitral award on agreed terms as referred to in Article 8 of said Rules, or by a combination of both, the dispute – or any part thereof not resolved in any of the aforesaid manners – shall be resolved exclusively in accordance with the NAI Arbitration Rules .

**Section 27. Attorneys' Fees and Costs.** In the event of a conflict or alleged breach arising under, out of, or in relation to this Agreement, the non-prevailing party shall pay the reasonable costs and fees of the prevailing party, including the prevailing party's attorneys' fees, whether incurred as a result of or in connection with litigation, alternative methods of dispute resolution, or otherwise.

**Section 27. Assignment.** This Agreement may not be assigned by either party without the written consent of the other party, except that the Seller may assign this Agreement to its successor or any entity acquiring all or substantially all of the assets of the Seller.

**Section 28. Binding Effects.** This Agreement is binding and shall insure the benefit of the parties within this agreement and their respective permitted successors and assigns.

**Section 29. Independent Contractors.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**Section 30. Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.