

# InService™ Terms of Service and Supply

## 1 APPLICABILITY

These Terms of Service and Supply (the “**Terms**”) shall, except as and with the modifications explicitly agreed in writing, apply to and form part of an agreement (whether oral or written) if: (a) the Terms have been referenced in the agreement or in any quotation, order, order confirmation or other correspondence leading up to the agreement; or (b) the agreement concerns supply of goods, software and/or services and the Terms have previously been applied to any agreement between the contracting parties. A “**Contract**” means an individual agreement to which these Terms apply (including, as applicable, each quotation, order, order confirmation and other documentation by which the agreement was formed). The words “include” and other grammatical forms of that word, are not words or expression of limitation.

## 2 PARTIES AND SCOPE

The Contract is made solely between the seller/service provider (the “**Supplier**”) and customer (the “**Customer**”) identified in the Contract.

The scope of service and supply is limited to what is specified in the Contract. Customer is responsible for obtaining all ancillary equipment, software and services needed to use the supplied goods, software and services.

## 3 DELIVERY AND RETENTION OF TITLE

With regard to goods that are to be supplied under the Contract, terms of delivery are DAP Customers' premises (INCOTERMS 2010), unless otherwise agreed. Supplier reserves the right to deliver the goods in one or more shipments.

Customer shall visually inspect the goods supplied by Supplier under the Contract upon delivery. Within 7 calendar days of delivery (or, if Supplier is responsible for installation and commissioning, 7 calendar days of completion of commissioning), Customer shall notify Supplier in writing and provide detailed information about all shortages, transport damage and other visually apparent deficiencies and defects. If Supplier does not receive such notice, to the extent permitted by applicable law, Supplier shall be released from all liability and obligations with regard to such deficiencies and defects except to the extent Supplier has caused the deficiency or defect intentionally (wilful misconduct) or with reckless disregard for the consequences of its acts (gross negligence).

To the extent possible under applicable law, title to each item of capital goods that is supplied under the Contract shall remain with Supplier until receipt by Supplier in full of the price of the goods. Until title passes, Customer must not sell, transfer, lease, rent, pledge or allow any security interest to be created over the capital goods. Customer grants to Supplier a security interest in such capital goods supplied by Supplier until payment has been made in full to Supplier for those goods. Customer agrees to provide any further assistance and documentation required by Supplier to enable the registration and perfection of Supplier's security interest in the goods (including proceeds thereof) as purchase money security interest under *Personal Property Securities Act 2009*.

## 4 TIME OF PERFORMANCE AND DELIVERY

Time of performance and delivery under the Contract shall not be of the essence and specified delivery dates and lead times are estimations only, unless Supplier and Customer have explicitly agreed that a certain delivery date or lead time shall be fixed and binding. Supplier reserves the right to reschedule its performance and deliveries under the Contract upon notice to Customer. If Supplier has not performed or delivered at or within a fixed and binding date or lead time, or within a reasonable time after an estimated date or lead time, Customer may give Supplier written notice of a final and reasonable deadline for when performance and delivery shall be made. If Supplier has not performed or delivered (as applicable) before the expiration of that deadline and this is due to negligence or wilful misconduct on the part of Supplier, Customer is entitled to recover damages for additional costs reasonably incurred caused by the late or failed delivery subject to the limitations set out in section 9 (Limitations of Liability).

## 5 PRICE, FEES AND PAYMENT

Customer shall pay to Supplier the prices and fees specified in the Contract (or, if no fees or prices are specified, the fees and prices specified in Supplier's

price list, as applicable from time to time at the time of order confirmation). Supplier shall be allowed to invoice periodically in advance, unless otherwise agreed.

In the event Customer considers an invoice to be incorrect, Customer must notify Supplier in writing within ten (10) calendar days of receipt of invoice setting out details of any errors or other matters relied upon by Customer to withhold or delay payment of the whole or part of an invoice. Supplier's invoice shall be deemed correct and valid in the absence of such notification from Customer. Customer shall, unless otherwise specified in the Contract, pay each invoice within 30 calendar days of the date of the invoice. In case of delay, Supplier shall be entitled to charge default interest at the rate specified in the Contract or, if not specified, a monthly rate of 1 percent or, if lower, the maximum rate permissible by applicable law.

If any payment from Customer is in delay by more than 14 calendar days from the due date for payment, it shall be deemed a breach of a material obligation under the Contract, and Supplier may, at its sole discretion, withhold further performances under the Contract until full payment has been received (without prejudice to any other remedy or right under the Contract) or terminate the Contract by notice in writing.

Customer shall not be entitled to assert any set-off or counterclaim in order to justify withholding payment under the Contract in whole or in part.

Value added tax, goods and services tax and other duties or taxes required to be paid by Supplier according to applicable law (other than any tax imposed on the net income of Supplier) upon the sale or delivery of any product or service under the Contract or the receipt of payment for the goods or service, are in addition to the prices under the Contract (unless specifically included) and shall be paid by Customer to Supplier.

## 6 OTHER CUSTOMER OBLIGATIONS

The InService™ Customer Obligations statement, as attached hereto, is made a part of the Contract by this reference.

Customer shall provide Supplier such information and such access to its premises and to relevant equipment and software (including, without limitation, by remote connection) as Supplier reasonably requests to be able to perform its obligations under the Contract.

Customer shall notify Supplier in writing and provide detailed information about all occupational hazards that may affect the security or safety of Supplier's personnel when working on Customer's premises and about all injuries to persons and/or damages to property (including livestock) related to the goods, software and services supplied under the Contract.

If and to the extent Customer fails to comply or is in delay with any of its obligations, as set out above or in any other part of the Contract, and Supplier's performance of any of its obligations under the Contract is impeded or made more onerous by such failure or delay, Supplier shall be relieved from the affected obligations (without prejudice to any other remedy or right under the Contract).

## 7 SOFTWARE AND ONLINE SERVICES

The *DeLaval Software and Online Service Terms of Use*, which are governed by Swedish law and are available for download and printing at <http://www.delaval.com/legal/> (it is recommended to print copies for future reference), shall exclusively govern the rights to use of and liability for each DeLaval software and DeLaval online service (including, without limitation, each software and online service provided as part of or in connection with any DeLaval product) and all documentation and data made available or generated through or in connection with such software or service (unless other terms are provided with the software or online service, in which case such terms will apply). Each DeLaval software and DeLaval online service may transfer data to DeLaval International AB (and any other entity in the DeLaval Group) for use and further processing as set out and for the purposes described in the *DeLaval Software and Online Service Data and Privacy Statement*, which is available for download and printing at <http://www.delaval.com/legal/>. Other software and online services provided under or in connection with the Contract shall, if applicable, be governed by the terms that are provided with such software or online services.

With regard to third party software and third party online services, Supplier's only liability or obligation for defects in such software or service, to the extent permitted by law, shall be to forward Customer's claims to the address of the third party that is publicly notified. For the avoidance of doubt, this clause is not intended to affect any rights that the Customer may have under any applicable consumer guarantees arising under the Australia Consumer Law to the extent that they cannot be excluded or limited by law.

## 8 WARRANTIES

Specific warranty terms may be provided with or otherwise apply to certain goods, services and software (e.g. according to the terms referred to in section 7). Where such specific warranty terms do not apply, Supplier warrants that:

- the services supplied by Supplier under the Contract in all material aspects shall be performed in a professional and workmanlike manner;
- the goods supplied by Supplier under the Contract and the work produced by Supplier as part of the service supplied by Supplier under the Contract in all material aspects shall be free from defects in materials and workmanship at the time of delivery; and
- the software supplied by Supplier under the Contract shall, when properly installed in accordance with the applicable documentation, be capable of providing the features and functions generally described in the applicable documentation.

Supplier shall, at its own expense, rectify any breach of the above warranties by reperformance, redelivery, replacement or repair (at Supplier's discretion), provided that such breach is notified in writing with details of the alleged defects to Supplier by Customer within the warranty period applicable to the goods or service or, if no specific period has been specified: (a) in respect of capital goods, no later than 12 months from delivery of the relevant goods and (b) in respect of other goods (not capital goods), services or software, no later than 3 months from delivery or performance of the relevant goods, service or software. If Supplier has not rectified the breach within a reasonable time after such notice, Customer may give Supplier written notice of a final and reasonable deadline for rectification of the breach. If Supplier has not rectified the breach before the expiration of that deadline and this is due to negligence or wilful misconduct on the part of Supplier, Customer is entitled to damages for additional costs reasonably incurred caused by the defect subject to the limitations set out in section 9 (Limitations of Liability).

For the avoidance of doubt, this section (Warranties) does not apply to any software or online service for which separate terms apply according to section 7 (DeLaval Software and Online Services).

Notwithstanding the foregoing, in the event and to the extent that Customer acquires goods and/or services as a consumer within the meaning of section 3 of *Australia Consumer Law* then the following additional terms shall apply:

- Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
  - To cancel your service contract with us; and
  - To a refund for the unused portion, or compensation for its reduced value.

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

- The benefit to Customer given by the warranty are in addition to other rights and remedies of Customer as a consumer under law in relation to the goods or services to which the warranty relates.
- In order to claim the warranty, Customer must contact Supplier and give notice of the claim and follow all of Supplier's directions. Supplier's contact details are specified in the Contract.
- This warranty does not cover any expenses that the Customer may incur claiming the warranty. Such expenses shall be borne by the Customer.

#### 9 LIMITATIONS OF LIABILITY

Supplier's liability for the goods, services and software supplied by Supplier under the Contract, and available remedies for Supplier's delay in any performance or delivery or breach of any warranty shall, to the extent permitted by applicable law, be limited to what is provided for in section 5 (Time for Performance and Delivery), section 7 (Software and Online Services) and section 8 (Warranties) and, if applicable, otherwise explicitly specified in the Contract. Where statutory or implied conditions, consumer guarantees and warranties are mandatory and it is not legally possible to exclude them, these Terms (including section 15) do not exclude them.

If the Contract entitles Customer to any liquidated damages, penalties or other similar remedies, such damages, penalties or remedies shall be Customer's sole and exclusive remedy for the breach that the damages or penalties relate to.

Supplier shall not be liable under or in connection with the Contract for indirect, special or consequential loss or damage, for loss of profit or loss of opportunity to make profit, loss of production, loss of use, loss of revenue, loss of business or loss of goodwill, loss or denial of opportunity, loss of access to market, loss of business reputation, future reputation or publicity, damage to credit rating, for loss of or unauthorised access to data or other information or for loss of or damage to Customer's property, whether or not such loss, damage or access could have been reasonably foreseen.

The maximum aggregate liability of Supplier is: (a) in respect of each item of capital goods, software or intangible goods or services, limited to an amount corresponding to twenty percent of the total amount paid under the Contract for the item; and (b) in respect of other goods (not capital goods) and services, limited to an amount corresponding to the total amount paid under the Contract for such other goods and services during the twelve months preceding the event or series of events giving rise to the relevant claim.

The limitations and exclusion of liability set out above in this section (Limitations of Liability) do not apply to the extent Supplier has caused the relevant loss or damage intentionally (wilful misconduct). Furthermore, nothing in the Contract shall limit or exclude liability where such limitation or exclusion may not be so enforced under any applicable consumer guarantee arising under the Australian Consumer Law (to the extent that they cannot be lawfully excluded) or otherwise under applicable mandatory law.

#### 10 FORCE MAJEURE

Supplier shall not be liable for any default or delay in the performance of its obligations under the Contract if and to the extent the default or delay is caused, directly or indirectly, by force majeure or any other circumstance beyond its reasonable control (which shall include, but not be limited to, war, acts of terrorism, strikes, lockouts, epidemic, destruction of production facilities, riot, insurrection, earthquake, explosion or other casualty or accident, electricity failure, flood, fire telephone/Internet system failure, farm visit restrictions, lightning and other weather conditions).

#### 11 TERM AND TERMINATION

The Contract enters into force on the start date specified in the Contract (or, if such date is not specified, the date it has been duly accepted by both parties) and shall remain in effect until the end date specified in the Contract (or, if such date is not specified, the date following the last delivery under the Contract), unless terminated as set out in this section (Term and Termination).

Unless otherwise specified in the Contract, each subscription under the Contract continues for 12 months and will be automatically renewed (and invoiced) for consecutive 12-month periods (at the prevailing fees) unless terminated no later than 1 month prior to the renewal date.

Each of Supplier and Customer has the right, at any time, to terminate the Contract (and all subscriptions, if applicable) without cause upon no less than 6 months' written notice to the other party, but such termination shall not affect accepted orders of goods or installation or commissioning of goods (which orders shall survive the expiry of the Contract). Supplier shall be entitled to compensation for all supply made before the expiry of the Contract and for supply under orders that survive the expiry of the Contract. Furthermore, where Customer issues such notice of termination, Customer shall not be entitled to any refund of any advance payment.

Without prejudice to any other remedy or right under the Contract, each party has the right to terminate the Contract (and all subscriptions), with immediate effect and without recourse to a court, by written notice to the other party, if the other party:

- breaches or is in non-compliance with any material obligation under the Contract and, if possible to remedy, fails to remedy such breach or non-compliance within 30 calendar days from written notification regarding such breach or non-compliance; or
- enters into liquidation, voluntary or compulsory, or becomes insolvent or enters into composition, examinership or corporate reorganization proceedings or has receiver (or equivalent) appointed over a substantial proportion of its property or assets.

#### 12 SUB-CONTRACTING

Supplier may appoint sub-contractors for the performance of its obligations under the Contract.

#### 13 QUOTATIONS

A quotation by Supplier for a Contract expires 30 calendar days after its date of issue unless otherwise stated in the quotation.

#### 14 DATA AND PRIVACY

Supplier may collect data relating to Customer (e.g. about system set-up, farm size, contact persons, and ordered goods, software and services). Supplier may use and further process the data itself (e.g. to administer and develop the relationship with Customer, to develop customised offerings, to provide products and services to Customer and for regional market research) and disclose the data for use and further processing by DeLaval International AB and any other entity in the DeLaval Group (e.g. to support DeLaval sales entities and distributors, for end customer surveys, for market research and for product and service development). The processing of data is further described in the data and privacy statements available for download and printing at <http://www.delaval.com/legal/>. Supplier and the DeLaval Group respects Customer's privacy and operates in compliance with applicable laws and regulations regarding data security and data protection. See section 7 (Software and Online Services) for information on collection, use and further processing of data in connection with DeLaval software and DeLaval online services.

#### 15 ENTIRE AGREEMENT

The Contract sets out the full scope of obligations and liabilities of Supplier in relation to the goods, software and services supplied by Supplier under the Contract. To the extent permitted by applicable law, all promises, representations, warranties, consumer guarantees and conditions related to the goods, software or services but not explicitly set forth in the Contract, including but not limited to any that may otherwise be implied by statute, common law or usage, including any warranties of merchantability and fitness for a particular purpose, are hereby excluded and are not binding on Supplier.

A term of this Contract must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of the provision in the Contract.

#### 16 SEVERABILITY

If any provision of the Contract is found to be invalid or unenforceable, the remaining provisions shall remain effective and such provision shall be replaced with another provision consistent with the purpose and intent of the Contract.

#### 17 APPLICABLE LAW AND DISPUTES

The Contract is governed by and shall be construed and interpreted in accordance with the laws of Victoria, Australia. The courts of Victoria, Australia (including courts of appeal) will have jurisdiction to settle any dispute, controversy or claim arising out of or in connection with the Contract. Notwithstanding the above, Supplier is always entitled to petition courts and authorities in any competent jurisdiction to enforce claims of any payments due.

## InService™ – Customer Obligations

In order for Supplier to be able to perform InService™ services (the “**Services**”) as intended, in relation to the system identified in the Contract (the “**System**”), Customer must adhere to the following obligations:

1. Customer shall immediately inform Supplier (on weekdays 8-17, unless emergency call-out) in detail of all malfunctions and other operational problems experienced with the System.
2. Customer shall grant Supplier such access to Customer's premises and the System as may be necessary to perform the Services.
3. Customer acknowledges that the System may not be able to operate during the Service; the time will be decided by Supplier and planned together with Customer prior to each visit. Customer is responsible for the control of the udder health and wellbeing of the cows, and must ensure that the cows are milked at least the minimum required number of milkings per day even if Service is performed.
4. Customer shall maintain documentation of the System (milk quality reports, drawings, technical manuals and other relevant documentation) at the premises in which the System is installed and shall make such documentation available to Supplier at all times.
5. Customer shall at all times give Supplier full access to the System management computer system. Such access shall be given via remote control if applicable.
6. Customer shall ensure that the System is operated according to the written instructions regarding the System such as manuals, service protocols and other documentation as well as according to the advice by Supplier and DeLaval.
7. On the advice of Supplier, Customer agrees to accept software re-loads and calibration for System, as and when deemed necessary by Supplier. The purpose of this action is to ensure the correct function of the System, and to ensure that service technicians receive the correct information from it.
8. To the extent available, Customer shall seek to use DeLaval consumables and spare parts for the System or consumables and parts of equal or higher quality and specification.
9. Without limiting section 6 above, Customer shall, if applicable, ensure that the preventive maintenance schedule for the compressor and other equipment on which the System relies is followed to avoid damage on the System. Customer shall keep a copy of each service report for the compressor in the InService™ booklet included in the visibility kit provided at the installation.
10. Customer shall ensure that a full back up of the System management computer system is performed on a daily basis. Any services, parts, consumables or travel needed to restore the System due to insufficient back up may be provided at Supplier's current price list.
11. Customer shall make no design or technical modifications of the System or the auxiliary systems that could have a direct or indirect effect on the System.
12. Customer shall not repair or replace any parts of the System, without prior advice and instructions from Supplier.
13. Customer shall ensure that any service on the System outside the scope of the Contract shall be performed by personnel with competence and training of a level equal to or better than a DeLaval authorised service technician.
14. Customer shall make sure that the System is not affected by improper electrical supply or stray voltages, leading to voltage peaks, voltage drops and other voltage errors.
15. Customer shall not use the System for any other purpose than it was intended for.
16. Customer shall not use water that is of exceptional hard/soft/aggressive nature with high mineral content that can negatively affect the System.
17. Customer shall ensure that the area for the System, vacuum pump and other technical system is maintained at a temperature between 5 and 35 degrees Celsius.
18. Customer shall perform the daily, weekly, monthly and quarterly service tasks stipulated in the operator maintenance documentation, and additionally perform any required cleaning of the System if necessary prior to the Service visits.
19. Any electricity or water used by Supplier during visits shall be provided free of charge by Customer.