



## TERMS AND CONDITIONS

These are the Terms and Conditions of **Food XLerator BV** (hereafter referred to as "FXL"), a business with address Simonszand 36, Heemskerk. FXL is registered with the Chamber of Commerce in the Netherlands, under reference 78118581.

### Applicability

1. These terms and conditions apply to every FXL offer and to every distance contract that has been concluded between FXL and the Counterparty.
2. Before the distance contract is concluded, the text of these terms and conditions will be made available to the Counterparty. If this is not reasonably possible, before the distance contract is concluded, it will be indicated that the conditions can be viewed at FXL and they will be sent free of charge at the request of the Counterparty as soon as possible.
3. If the distance contract is concluded electronically, by way of derogation from the previous paragraph and before the distance contract is concluded, the text of these terms and conditions can be sent electronically to the Counterparty in such a way that the Counterparty can store it in a simple manner on a sustainable data medium. If this is not reasonably possible, before the distance contract is concluded, it will be indicated where the terms and conditions can be taken note electronically and that they will be sent free of charge by electronic means or otherwise at the request of the Counterparty.
4. The terms and conditions can be consulted at all times on FXL websites.
5. In the event that specific service conditions apply in addition to these terms and conditions, the second and third paragraphs shall apply, mutatis mutandis, and the Counterparty may in the event of conflicting terms and conditions always invoke the applicable provision that is most favourable to him.

### Offers

1. All offers that do not explicitly state the contrary are considered as an offer without obligation and can always be revoked, even if they contain a term for acceptance. Offers can also be cancelled by FXL in writing within seven days of receipt of acceptance, in which

case no agreement has been concluded between the parties.

2. All offers from FXL are valid for 4 weeks, unless otherwise stated.
3. FXL cannot be held to its tenders if the Counterparty should have understood, on the basis of reasonableness and fairness and in current social developments, that the quotation or part thereof contains an obvious mistake or error.
4. If the acceptance, whether or not on minor points, deviates from the offer included in the quotation, FXL is not bound by it. The Agreement will then not be concluded in accordance with this deviating acceptance, unless FXL indicates otherwise.

### Establishment agreement

1. The Agreement is concluded by acceptance by the Counterparty of the FXL tender.
2. Offers can only be accepted in writing (including by electronic means). FXL is nevertheless entitled to accept a verbal acceptance as if it had been made in writing.
3. At the moment that an order confirmation has been signed by both the Counterparty and FXL, an Agreement between the parties will be concluded, or at the moment that FXL actually commences execution.
4. The Agreement supersedes and replaces all previous proposals, correspondence, agreements or other communication, written or verbal.

### Implementation agreement

1. The Agreement shall be executed by FXL to the best of its knowledge and ability in accordance with the requirements of good workmanship. With regard to the intended activities, there is an obligation of best effort on the part of FXL. The application of article 7: 404, 7: 407 paragraph 2 and 7: 409 of the Dutch Civil Code is explicitly excluded.
2. FXL determines the manner in which and by which person(s) the Assignment is to be executed. FXL is entitled to have certain work performed by third parties.
3. FXL is entitled to execute the Agreement in phases. If the Agreement is executed in phases, FXL has the right to invoice each part separately. If and as long as this invoice is not paid by the Counterparty, FXL is not obliged to execute the next phase and is entitled to suspend the Agreement.
4. FXL is entitled to the days off already announced in advance, despite the number of minimum hours included in the Agreement.

### **Changes and additional work**

If during the execution it appears from the Agreement that for proper execution it is necessary to amend or supplement the Agreement, FXL will notify the Counterparty as soon as possible. Parties will then proceed to change the Agreement in time and in mutual consultation.

If the parties agree that the Agreement will be amended / supplemented, the time of completion of the execution may be influenced as a result. FXL will inform the Counterparty of this as soon as possible.

If the amendment or supplement to the Agreement will have financial, quantitative and / or qualitative consequences, FXL will inform the Counterparty in advance.

If a fixed rate or fixed price has been agreed, FXL will indicate to what extent the amendment / supplement of the Agreement influences the tariff / price. FXL will endeavour to try to provide a quotation in advance - as far as possible.

FXL will not be able to charge additional costs if the change / supplement is the result of circumstances that can be attributed to FXL. Changes in the originally concluded Agreement between the parties are only valid from the moment that these changes have been accepted by both parties by means of an additional or amended Agreement.

### **Obligations of the Counterparty**

1. The Counterparty shall ensure that all data, equipment or (office) spaces, of which FXL indicates that they are necessary or of which the Counterparty should reasonably understand that they are necessary for the performance of the Agreement, are available on time. The Counterparty must also provide FXL with all competences and authorizations that are necessary to properly execute the Assignment.

2. FXL is not liable for damage, of whatever nature, because FXL has assumed incorrect and / or incomplete information provided by the Counterparty, unless this incorrectness or incompleteness should have been known to FXL.

3. The Counterparty shall ensure that her employees, who are involved, are available on time.

4. The Counterparty must refrain from conduct that makes it impossible for FXL to execute the Assignment properly.

5. If work is carried out by FXL or by third parties engaged by FXL within the context of the Assignment at the location of the Counterparty or a location designated by the Counterparty, the Counterparty shall provide the facilities reasonably needed.

6. If the Counterparty has not fulfilled its obligations as set out in this article, FXL has the right to suspend the execution of the Agreement and / or to charge the additional costs arising from the delay according to the usual price or rates to the Counterparty.

### **Prices**

1. Unless explicitly agreed otherwise in writing, the prices and rates indicated by FXL are always exclusive of VAT.

2. The prices and rates are exclusive of shipping, travel, accommodation and other expenses, unless otherwise agreed.

3. If a price or rate has not been explicitly agreed, the price or rate will be determined on the basis of the hours actually worked and the usual rates of FXL.

4. FXL will provide the Counterparty on time, before the conclusion of the Agreement, of all additional costs or provide data on the basis of which these costs can be charged to the Counterparty.

5. If FXL agrees a fixed price or fixed rate at the conclusion of the Agreement, FXL is entitled to increase this, even if the price or the tariff was not originally mentioned under reservation.

6. In the event that FXL intends to change the price or rate, it will notify the Counterparty as soon as possible.

7. If the increase of the price or rate takes place within three months after the conclusion of the Agreement, the Counterparty may dissolve the Agreement by means of a written statement, unless:

- a. the increase results from a competence or an obligation imposed on FXL by law;
- b. the increase is due to an increase in the price of raw materials, taxes, production costs, currency exchange rates, wages, etc. or on other grounds that could not reasonably be foreseen at the time the Agreement was entered into;
- c. FXL is still prepared to execute the Agreement on the basis of the originally agreed; or
- d. it is stipulated that the execution will be carried out for more than three months after the conclusion of the Agreement.

### **Payment**

1. Payment shall be made by bank transfer to an account specified by FXL, unless otherwise agreed.
2. FXL will send an invoice for the amounts owed by the Counterparty. The payment term for each invoice is 14 days after the date of invoice, unless stated otherwise on the invoice or agreed otherwise.
3. Invoicing takes place on monthly basis, unless otherwise agreed.
4. Objections against the invoiced amount do not exempt the Counterparty from payment obligation.
5. The Counterparty is not entitled to deduct the amount due from a counterclaim made by it.
6. In the event of non-payment or late payment, the Counterparty is legally in default without notice of default. The Counterparty will then owe the statutory commercial interest on the day of full payment from the date on which the payment is due, with interest on a part of the month being calculated over a whole month.
7. A payment made by the Counterparty shall in the first place be deducted from all interest and costs due and finally from due and payable invoices that have been outstanding the longest, even if the Counterparty states that the payment relates to later invoices.
8. If the Counterparty is in default or omission in the (timely) fulfillment of its obligations, all reasonable costs incurred in obtaining payment out of court are at the expense of the Counterparty.
9. With regard to extrajudicial (collection) costs, FXL is entitled to a compensation of 15% of the total outstanding principal sum with a minimum of € 100 for each invoice that has not been paid in full or in part.
10. In the event of bankruptcy, suspension of payment, liquidation, total attachment of assets, death or receivership, the claims of FXL and the obligations of the Counterparty towards FXL are immediately due and payable.
11. Any reasonable legal costs and execution costs incurred will also be charged to the Counterparty.

### **Complaints**

1. The Counterparty must inspect the Assignment at the time of execution, but in any case, within 7 days of execution, whether the executed Assignment meets the Agreement.

2. Complaints must be reported to FXL in writing within 7 days upon execution of the Assignment.
3. The right to (partial) restitution of the price, replacement or compensation will lapse if the complaint is not reported within the set term, unless a broader term ensues from the nature of the Assignment or under circumstances of the case.
4. The payment obligation shall not be suspended if the Counterparty notifies FXL of the complaint within the set period.

### **Force majeure and unforeseen circumstances**

1. A shortcoming cannot be attributed to FXL or the Counterparty, as the shortcoming is not due to his fault, nor is it for his account under law, legal act or generally accepted in commerce. In this case, the parties are also not obliged to fulfill the obligations arising from the Agreement.
2. In the Terms and Conditions, force majeure means, in addition to what is understood in this area in law and order, all external causes, foreseen or unforeseen, on which FXL cannot exercise any influence and as a result of which FXL is unable to meet the obligations.
3. Force majeure of FXL in any case means:
  - a. strikes;
  - b. disruptions in traffic;
  - c. government measures that prevent FXL from fulfilling its obligations on time or in a proper manner;
  - d. riots, rebellion, war;
  - e. traffic obstructions;
  - f. lack of labour;
  - g. extreme weather conditions;
  - h. fire;
  - i. import, export and / or transit bans; and / or
  - j. any circumstance that obstructs the normal course in the company as a result of which the fulfillment of the Agreement by FXL cannot reasonably be required by the Counterparty.

### **Termination agreement**

1. The parties may at any time terminate the Agreement by mutual consent.
2. Parties may terminate the Agreement in writing with a notice period of 1 month.
3. Parties may terminate the Agreement with immediate effect in writing, in case of:
  - a. application by or extension of payment to the Counterparty;
  - b. application for bankruptcy by or bankruptcy of the Counterparty; or

c. liquidation of the Counterparty or non-temporary cessation of the enterprise of the Counterparty.

4. If the Agreement is dissolved, FXL's claims against the Counterparty will be immediately due and payable. If FXL suspends the fulfillment of the obligations, it will retain its rights under the law and the Agreement. FXL always reserves the right to claim compensation.

#### **Liability**

1. FXL is only liable for direct damage caused by gross negligence or intent of FXL, and not for more than the amount that the insurer pays to FXL or up to the amount of the invoice amount or an amount of € 10,000, if the invoice amount is higher than € 10,000.

2. Direct damage is exclusively understood to mean:

a. reasonable costs to establish the cause and extent of the damage, insofar as the determination relates to damage in the sense of the Terms and Conditions;

b. reasonable costs incurred to have the defective performance of FXL comply with the Agreement, to the extent that these can be attributed to FXL; or

c. reasonable costs incurred to prevent or limit damage, insofar as the Counterparty demonstrates that these costs have led to the limitation of direct damage as referred to in the Terms and Conditions.

3. FXL is never liable for indirect damage, including consequential loss, loss of profit, lost savings, damage due to business interruption, damage resulting from the provision of defective cooperation and / or information from the Counterparty, damage due to non-binding information or advice given by FXL, the contents of which are not explicitly part of the Agreement and all damage which is not covered by the direct damage within the meaning of these Terms and Conditions.

4. FXL shall never be liable for errors in the material provided by the Counterparty or for misunderstandings or errors in the performance of the Agreement if these find their cause in actions of the Counterparty, such as not timely or not providing complete, sound and clear data / materials.

5. FXL shall never be liable for errors if the Counterparty has given its approval at an earlier time, or has been given the opportunity to carry out a check and has indicated that it does not need such a check.

6. The liability limitations set out in this article are also stipulated for the benefit of the third parties engaged by FXL for the implementation of the Agreement, and FXL is never liable for damage caused by shortcomings of these engaged third parties.

7. FXL is not liable for damage or loss of documents during transport or during shipment by mail, regardless of whether the transport or dispatch is made by or on behalf of FXL, the Counterparty or third parties.

#### **Confidentiality**

1. Both parties are obliged to keep all confidential information that they have received from each other or from another source confidentially within the framework of the Agreement. Information is considered confidential if this has been communicated by the Counterparty or if this results from the nature of the information. The party that receives confidential information will only use it for the purpose for which it was provided.

2. If, on the grounds of a statutory provision or court order, FXL is obliged to provide confidential information to third parties designated by the law or the competent court, and FXL can't rely on a legal or recognized by the competent judge or permitted right of change, then FXL is not held for damages or indemnity and the other party is not entitled to dissolve the Agreement on account of any damage this may cause.

3. Without prejudice to the foregoing, FXL is authorized to include the name of the Counterparty on a list of relations, which is published on the website or via other expressions to third parties, unless otherwise agreed.

#### **Indemnity**

1. The Counterparty indemnifies FXL insofar as permitted by law, in respect of liability towards one or more third parties, which arises from and / or is connected with the performance of the Agreement, regardless of whether the damage is caused by FXL or its auxiliary personnel, auxiliary or executed Order is caused or inflicted.

2. In addition, the Counterparty indemnifies FXL, to the extent permitted by law, from all third-party claims in connection with any infringement of intellectual property rights of these third parties.

3. The Counterparty is always obliged to do everything in its power to limit the damage.



### **Intellectual property**

1. FXL reserves the right to all intellectual property at all times, which result from or are the result of the service provided by FXL, unless explicitly agreed otherwise.
2. All rights of intellectual or industrial property, as well as similar rights to protect information, which relate to the products and / or services manufactured by FXL and delivered to the Counterparty, remain the property of FXL. Nothing in the agreement concluded with or concluded with the Counterparty shall lead to the transfer of such rights, unless explicitly agreed otherwise.
3. The Counterparty obtains, unless parties have explicitly agreed otherwise, only a non-exclusive and non-transferable right to use the products and results of the services for the agreed objectives. The Counterparty will strictly comply with the conditions laid down in the Terms and Conditions or otherwise imposed on the Counterparty in such use.
4. The Counterparty is not entitled to use the products and results of services other than for the use of the goods to which they relate.
5. The Counterparty is not entitled to reproduce the products and results of the services or the data contained therein or otherwise known to him / her and / or to disclose them to third parties, unless FXL explicitly provides permission in writing.
6. The Counterparty will not remove or change indications of FXL or its suppliers regarding copyrights, trademarks, trade names or other intellectual property rights.
7. FXL guarantees that it is entitled to grant the right of use to the Counterparty and indemnifies the Counterparty against any claims from third parties in this respect. This provision does not apply if and insofar as the products and / or results of the services have changed and / or if these have been delivered in connection with third-party goods, unless the Counterparty proves in the last-mentioned case that the claims of third parties relate exclusively to the products and / or results of the services supplied by FXL.
8. In the event of violation of the provisions of the previous paragraphs, the Counterparty will owe FXL a fine of € 4,500.00 for each violation, regardless of the other rights of FXL to fulfillment, dissolution, compensation and such.

### **Privacy**

1. FXL respects the privacy of the Counterparty. FXL handles and processes all personal data provided to it in accordance with the applicable legislation, in particular the General Data Protection Regulation (Dutch: *Algemene Verordening Gegevensbescherming*). The Counterparty agrees with this processing. FXL uses appropriate security measures to protect the personal data of the Counterparty.
2. FXL uses the personal data of the Counterparty exclusively in the context of the execution of the Agreement or the handling of a complaint.

### **Expiration period**

For all claims and / or powers that the Counterparty has towards FXL and / or third parties engaged by FXL, a limitation period of one year applies from the moment when an event occurs that the Counterparty has these rights and / or can exercise powers towards FXL and / or third parties engaged by FXL.

### **Transmission**

1. The Counterparty is not permitted to transfer rights and obligations arising from the Agreement to third parties, without FXL's written approval.
2. FXL is entitled to attach conditions to this permission.

### **Sequel**

The provisions of the Terms and Conditions and the Agreement, of which it is explicitly or by their nature intended that they also remain in force after termination of this Agreement, will remain in force afterwards and both parties will continue to bind.

### **Additional**

1. Any deviations from these Terms and Conditions can only be agreed in writing. No rights can be derived from such deviations with respect to later legal relationships.
2. The administration of FXL applies, subject to proof to the contrary, as proof of the applications made by the Counterparty. The Counterparty acknowledges that electronic communication can serve as proof.
3. If and insofar as any provision of the Terms and Conditions and the Agreement is declared void or is nullified, the other provisions of these Terms and Conditions and the Agreement will remain in full force. FXL will then determine a new provision to replace the



void / voided provision, whereby the purpose of the void / voided provision will be considered as much as possible.

4. The place of performance of the Agreement shall be deemed to be the place where FXL is established, unless otherwise agreed.

#### **Applicable law and forum choice**

1. Only Dutch law applies to agreements between FXL and the Counterparty to which these Terms and Conditions apply.
2. Any disputes between parties arising from this agreement shall, if not otherwise agreed between the parties, be submitted by the most diligent party to the competent Dutch court of FXL's place of business.
3. If, on court order an article (or articles) of these terms and conditions be declared invalid, remaining provisions of these terms and conditions shall remain in full force and FXL and Counterparty will discuss new stipulations replacing the null and void conditions, or, as far as possible, to agree upon the purpose and intent of the invalid or destroyed provisions.

#### **Changes to the Terms and Conditions**

1. FXL is authorized to change these Terms and Conditions at all times.
2. Changes will only become binding to the Counterparty if FXL has informed the Counterparty of the changes to the Terms and Conditions and after fourteen days after the date of this notification, without the Counterparty having notified FXL in writing not to agree with the changes.