

General Terms and Conditions of Sale of Fruit Factor B.V. having its registered office in Ridderkerk with the place of business Handelsweg 120, 2988 DC in Ridderkerk, the Netherlands. Registered with the Chamber of Commerce under number 59687789.

1. Applicability

1.1. Only the following terms and conditions are applicable to all offers and/or agreements and all the ensuing commitments under which Fruit Factor B.V.(hereafter also referred to as: “the Seller”) sells and supplies to the other party (hereafter referred to as: “the Buyer”).

1.2. Departures from these General Terms and Conditions are only valid if and in so far as they have been explicitly agreed upon in writing. The Seller hereby explicitly rejects the applicability of any General Terms and Conditions or Specific Terms and Conditions of Purchase employed by the Buyer.

2. Conclusion of Agreements

2.1. All offers made by the Seller are entirely free of obligation.

2.2. The Seller reserves the right to revoke an offer it has made within two (2) working days after its acceptance.

2.3. The Buyer’s acceptance of an offer made by the Seller can only take place by means of a written notice by an authorized person.

2.4. If, upon acceptance, the offer made by the Seller is departed from, the Seller will regard this acceptance as an invitation to make a new offer. In that case, the Seller will make a new offer in writing, to which articles 2.1 and 2.2 apply.

2.5. Moreover, an agreement is not concluded until an order has been accepted by the Seller. The Seller has the right to refuse orders or assignments without stating any reason therefore or to only accept them on condition that the delivery is made COD or after payment in advance.

3. Prices

3.1. Prices stated or agreed upon apply to delivery ex warehouse and are exclusive of handling and postage, exclusive of loading and unloading and exclusive of sales taxes.

3.2. In the case of notification of levies or extraordinary taxes after the agreement has been concluded, as well as in the case of alterations of these levies or taxes in so far as applicable during the conclusion of the agreement, the Seller has the right to raise the agreed price accordingly and to invoice the Buyer for the price increase, even if the price increase was foreseeable at the time the agreement was entered into.

4. Delivery

4.1. Unless expressly agreed otherwise, delivery will take place ex warehouse where the sold items are stored.

4.2. From the moment the contract of sale is concluded, the sold items are at the Buyer’s disposal and at the Buyer’s expense and risk.

4.3. If it has been agreed upon that delivery to the Buyer will be ex warehouse, the Buyer must provide transport.

4.4. If, in the case of 4.1, the Seller is requested by the Buyer to provide transport, the Seller will do so only on behalf of the Buyer and at the Buyer’s own expense and risk. The Seller precludes every liability for all the instructions it gives in relation to transport. If the Buyer has not given any special instructions for the type of transport, the Seller is completely free to choose.

4.5. If it has been agreed that deliveries are to be made to the Buyer carriage paid, the Seller will provide transport. In this case, delivery of the items will be made to the address agreed upon with the Buyer.

4.6. Also in the case referred to in 4.5, the goods sold by the Seller are entirely at the Buyer’s expense and risk from the moment that the sales agreement is concluded.

4.7. It is the Buyer’s responsibility to provide transport insurance. This is never included in the transport costs.

4.8. If the Seller must complete any customs formalities or similar activities on behalf of the Buyer, related to the fulfilment of the sales agreement, these activities will be undertaken at the Buyer's expense and risk.

4.9. The Buyer guarantees the Seller that it has the required permits for the import or transit of the items it has purchased, and the Buyer indemnifies the Seller against all claims (including product liability claims), demands, third-party taxes and fines from third parties, including any national or international governments or any European institution.

5. Date of Delivery

5.1. The date of delivery stated by the Seller is free of obligation and never to be considered a deadline.

5.2. The Seller is never in default by the mere lapsing of the agreed delivery date, yet a written notice of default is always required.

5.3. Exceeding a delivery date never entitles the Buyer to any compensation, annulment of the agreement or any other legal action against the Seller. This does not apply in case of gross negligence or willful intent on the part of the Seller or its managers, nor if the delivery date is exceeded by more than four weeks. In that event, the Buyer will be entitled to annul the agreement, however without being entitled to claim any compensation.

6. Non-Receipt of Goods

6.1. If delivery ex warehouse has been agreed upon, the Buyer must arrange for receipt of the goods by a transporter - designated by the Buyer or on the Buyer's behalf - as soon as possible after the agreement has been concluded and at least within 48 hours.

6.2. If the Buyer does not take delivery of the Seller's goods, for any reason whatsoever beyond the control of the Seller, it is nevertheless obliged to effect payment in accordance with the payment terms agreed upon, as if it had received the delivered goods.

6.3. If the Buyer does not take delivery of the Seller's goods, the Seller is entitled to store them at a location of its choice, at the Buyer's expense and risk.

6.4. The Seller is not obliged to compensate the Buyer for any damage or loss – for example, but not exclusively, as a result of deterioration in quality or weight – incurred as a result of non-acceptance of delivery.

7. Payment

7.1. Payment should always follow within fourteen (14) days of delivery, unless explicitly agreed otherwise.

7.2. In the event of overdue payment, the Buyer owes default interest of 1% (one percent) a month on the entire amount of overdue payment, from the fifteenth (15th) day until the day of total payment, without prejudice to the Seller's right to total compensation.

7.3. In the event of overdue payment, the Seller is entitled to postpone delivery of other goods sold to the Buyer until the Buyer has fulfilled its payment obligations including payment of the contractual interest due.

7.4. If payment has not been made on the 14th day after the invoice date, the Buyer is in default by operation of law, without notice of default being required, and the Buyer is liable to pay the interest as referred to in 7.2 immediately.

7.5. If the Buyer requests a moratorium or files for bankruptcy or its bankruptcy is petitioned, all its outstanding invoices are immediately due.

7.6. All non-legal expenses incurred by the Seller in case of non-performance, overdue performance or improper performance by the Buyer are fully payable by the Buyer. The extrajudicial expenses incurred by the Seller will amount to 15% (fifteen percent) of the total amount owed by the Buyer to the Seller, with a minimum of €500 (five hundred Euros).

8. Claims

8.1. The Buyer is required to verify the quantity of delivered goods and inspect the outside for visible damage. If the goods are placed at the disposal of a transporter, the Buyer is required to designate a person to inspect the goods. If there is no designated person, the driver who takes delivery of the goods on behalf of the Buyer is expected to inspect them on the Buyer's behalf.

8.2. Claims concerning quantities and damage and/or defects visible from the outside should be submitted by the Buyer in writing as soon as possible and in any case within 12 hours after delivery as referred to in Article 4. In default thereof, the quantities specified on the waybills, delivery forms, invoices or related documents will be considered correct and the goods will be considered delivered without damage visible from the outside. If the quantity delivered falls less than 10% short of the total, the Buyer is obliged to accept the delivery in full in exchange for a proportionate reduction in price.

8.3. Claims based on non-visible damage and/or defects at the time of delivery as well as other claims should be submitted in writing with the Seller as soon as possible after delivery, and in any case within 24 hours, as referred to in Article 4 or, as the case may be, after any flaws have been detected or could reasonably have been detected. In default thereof, the Buyer will be considered as having accepted the delivery.

8.4. If the Buyer has complaints regarding the quality of the delivered goods, an expert opinion on the goods should be asked of a sworn expert within 24 hours of delivery as referred to in Article 4, in case of visible flaws as referred to in article 8.2 or, as the case may be, after any non-visible flaws have been or could reasonably have been detected, and the Seller should be given the opportunity to have a countercheck performed simultaneously. In this case, the goods sold by the Seller will also be entirely at the expense and risk of the Buyer from the time the agreement was concluded.

8.5. Late or wrongly filed claims have no legal effect and release the Seller from all liability.

8.6. If it is established that the delivered goods do not meet the agreed specifications, the Seller will be allowed to a periodequal to the original delivery period to replace the goods. The terms of payment as stipulated in Article 7 remain in full force.

9. Liability

9.1. The Seller accepts liability only for losses that the Buyer suffers as a result of an imputable failure in the performance of its obligations or an unlawful act, if and so far as this liability is covered by its insurance, up to the amount of the claim paid out by the insurer.

9.2. If, for any reason, the insurer does not pay out the claim or the loss is not covered by the insurance policy, liability is in all cases limited to the invoice amount.

9.3. Contrary to the previous provisions and without prejudice to the provisions of Article 5, the Seller does not accept liability for exceeding delivery dates, nor for consequential damage and trading loss suffered by the Buyer or its customers.

9.4. The Seller is not liable if the failure is a result of force majeure as referred to in Article 12.

9.5. The Buyer is always fully liable towards the Seller for clearance of customs and transit documents such as, but not exclusively, T1 and T2 documents.

9.6. At the Seller's request, the Buyer will provide the Seller with sufficient security for any consequences of potential non-clearance of the documents referred to here, such as customs duties and VAT, fines and interest due.

9.7. The exclusions and/or limitations of liability laid down in these terms and conditions do not apply if the losses are a result of gross negligence or wilful intent on the part of the Seller or its managing staff.

10. Packaging

10.1. Deposit packaging supplied by the Seller, including pallets, crates and boxes, is accepted in exchange for the invoice price applicable at the time of return, minus any fixed packaging refunds applicable under the relevant regulation. Returned barrels should be clean enough to carry produce.

10.2. If the Seller is to pick up packaging using its own means of transport, it should be sorted and ready for transport.

10.3. Packaging supplied by others than the Seller will only be accepted in so far as the Seller carries the products in question in its product range.

11. Indemnity

11.1. The Buyer undertakes to indemnify the Seller against third-party claims on any grounds whatsoever in connection with the items delivered by the Seller, particularly on grounds of personal injury or death.

12. Force Majeure

12.1. In the event of force majeure, being a non-imputable failure of the Seller in the fulfilment of its obligations, the obligation to deliver is postponed for the duration of the continuance of force majeure.

12.2. Circumstances of force majeure include but are not limited to war, risk of war, mobilization, riot, civil war, fire, flooding, frost, lightning, labor dispute, strike (on the part of both the Seller and its suppliers), lockouts, supply delays, unavailability of the sold goods for whatever reason, transport problems, negligence on the part of auxiliary persons, defects in means of transport, seizure of goods and trade embargo.

12.3. If fulfilment of the agreement has become impossible as a result of the circumstances referred to in 12.1 for a period of more than fourteen (14) days, either party is entitled to annul the agreement by means of an explicit notification in writing, without judicial intervention.

12.4. In the case that one of the events mentioned in 12.1 occurs, the Seller is never liable to pay the Buyer any compensation.

12.5. If, in the case of one of the events mentioned in 12.1, the Seller has already fulfilled some of its obligations or can only fulfil some of its obligations it is entitled to invoice the part already delivered and/or the deliverable part separately, and the Buyer is obliged to pay the invoice as if it were a separate contract.

13. Retention of Title

13.1. The right of ownership of all goods delivered by the Seller is expressly reserved by the Seller until payment in full has been made of all the amounts owed, including any interest and expenses under agreements for the delivery of goods and the performance of related activities.

13.2. Only as a part of its normal operations is the Buyer allowed access to the items that fall under the retention of title clause. In that case, the retention of title of the Seller ceases to apply when the items concerned are delivered to third parties.

13.3. The Buyer undertakes to make non-paid items available to the Seller on demand and hereby irrevocably authorizes the Seller or the person or persons designated by the Seller to enter the location where the items are in order to repossess the items and store them in the warehouse indicated by the Seller.

13.4. The Seller agrees to transfer the ownership of the aforementioned goods to the Buyer in accordance with the provision of 13.1 as soon as the Buyer has fulfilled all of its obligations. As security for payment of everything the Buyer owes at any point in time, the Seller will have a right of retention and pledge on all of the Buyer's goods that the Seller has or will have in its possession at any point in time, in accordance with the provisions of, for example, 13.3.

GENERAL

14. Applicable Law

14.1. All offers and agreements concluded with the Seller as well as all ensuing obligations are exclusively governed by Netherlands law.

14.2. The Uniform Sales Act and the Vienna Sales Convention expressly do not apply to international transactions.

15. Competent Court

15.1. The competent court within the district of the Seller's place of business takes cognizance of all disputes which may arise between the parties, unless the Seller prefers to bring the dispute before the competent court in the Buyer's or the supplier's domicile, with the exception of those disputes that fall under the jurisdiction of the sub district court.

15.2. The choice of a Dutch court in 15.1 does not prejudice the Seller's right to apply to the court that would have been competent in the absence of a jurisdiction clause.