

GENERAL PURCHASE CONDITIONS OF FRUIT FACTOR

Article 1: definitions

The definitions below are used in these general purchase conditions ("Conditions").

- Fruit Factor:* the private limited company Fruit Factor B.V., having its registered office in Ridderkerk and its business address at Koopliedenweg 3 in Barendrecht;
- Seller:* the Person with whom Fruit Factor has concluded an Agreement or with whom Fruit Factor is negotiating an Agreement;
- Parties:* Fruit Factor and the Seller;
- Agreement:* every agreement between the Parties, irrespective of whether it is a framework or individual agreement, with the intent (a) that the Seller supplies goods to Fruit Factor against monetary payment (*contract of sale*) and/or (b) that the Seller makes goods available to Fruit Factor in order to have these sold by Fruit Factor for the risk and account of the Seller (*consignment contract*) and/or (c) that the Seller supplies goods to Fruit Factor against payment of a minimum guaranteed price (*mgp contract*) and/or (d) that the Seller provides services to Fruit Factor and/or (e) that the Seller delivers any other performance for the benefit of Fruit Factor, every change or supplement to this agreement, as well as all factual and legal acts in preparation or performance of this agreement, including offers;
- Products:* all goods and/or services and/or other performances that are the subject of an agreement;
- Person:* natural or legal person or company without legal personality.

"Written" in the sense of these Conditions includes: by fax and email.

Article 2: general

1. These Conditions - with the explicit exclusion of all other general conditions – are applicable to all Agreements. If Fruit Factor at any time does not require strict compliance with these Conditions, this does not mean that Fruit Factor waives its right to require strict compliance with these Conditions in future - whether or not similar - cases. Clauses that deviate from these Conditions are binding only if agreed in writing and apply only to the case in question.
2. All the clauses of these Conditions are stipulated not only for the benefit of Fruit Factor, but also for the benefit of its directors and shareholders (including indirect directors and shareholders), all Persons working for Fruit Factor, all Persons engaged by Fruit Factor in the performance of an Agreement, and all Persons for whose actions or negligence Fruit Factor could be held liable.
3. If one or more provisions of these Conditions and/or an Agreement are void or declared void by a court of law, the remaining provisions of these Conditions and the Agreement will remain in force. The void or voided provisions will be replaced by valid provisions that, taking into consideration the purpose and scope of these Conditions and the Agreement, deviate as little as possible from the original provisions.
4. These Conditions are drawn up in various languages. If there is any difference of opinion regarding the content or scope of these Conditions, the Dutch text will be binding.
5. Fruit Factor is at all times entitled to amend these Conditions.

Article 3: contract of sale, consignment contract and mgp contract; harvest insurance

1. If Fruit Factor obtains Products from the Seller without making any explicit choice for a contract of sale, consignment contract or mgp contract, the Parties will be deemed to have concluded a consignment contract.
2. The following applies in the event of a consignment contract:
 - (a) Fruit Factor is not subject to a duty of inspection or complaint in respect of the Products;

- (b) Fruit Factor will sell and deliver the Products to third parties in its own name, yet at all times for the risk and account of the Seller;
- (c) Fruit Factor will, without guaranteeing any results, strive to realise optimal sales proceeds, taking all circumstances into account;
- (d) the sales proceeds depend on the quality of the Products and the situation on the - often volatile - market; insofar as Fruit Factor states indicative sales prices, these will be for information purposes only without the Seller being able to derive any rights therefrom;
- (e) Fruit Factor will pay the net sales proceeds as reflected by its sales accounts to the Seller, on the understanding (i) that Fruit Factor is at all times entitled to set off the net sales proceeds against any paid advances and set off the positive net sales proceeds against any negative net sales proceeds and (ii) that Fruit Factor at all times makes a reservation as regards subsequent claims by its clients and subsequent credit notes to its clients; "net sales proceeds" within the context of these Conditions are defined as: the gross sales proceeds under deduction of the commission owed to Fruit Factor and the costs incurred by Fruit Factor in connection with the sale of the Products, including but not limited to the costs of sea freight, terminal handling charges (THC), documents, import duties, transport, handling, cooling, quality inspections and laboratory tests and if necessary sorting and repacking;
- (f) if - taking into consideration the sales accounts, the payments by Fruit Factor, subsequent claims by clients of Fruit Factor and subsequent credit notes to its clients - it is established after conclusion of the programme or the season that the Seller owes an amount to Fruit Factor, the Seller will (re)pay this amount to Fruit Factor on demand;
- (g) the Seller will retain ownership of the Products until Fruit Factor has sold and delivered these to third parties; the risk with regard to the Products will not pass to Fruit Factor at any time; Fruit Factor is not required to insure the Products;
- (h) Fruit Factor is at all times entitled to again make the Products available to the Seller at Fruit Factor's warehouse, in which case the consignment contract will be regarded as terminated without Fruit Factor being held to pay any compensation, the Seller will recover the Products as soon as possible and the Seller will compensate Fruit Factor for its costs, including, but not limited to refrigeration and storage costs.

The other articles of these Conditions also apply (whether or not by analogy) to consignment contracts, except if such is not possible due to the nature of a consignment contract. Insofar as this article 3 paragraph 2 is in conflict with any other article or paragraph of these Conditions, the provisions of this article 3 paragraph 2 will prevail.

3. The following applies in the event of an mpg contract:

- (a) the Seller will transfer ownership of the Products to Fruit Factor;
- (b) Fruit Factor will in any event owe the agreed minimum guaranteed price on condition that the Products fully comply with the Agreement and the Seller fulfils its obligations;
- (c) if the amount of the net sales proceeds is higher than the minimum guaranteed price, Fruit Factor will also owe the difference between these amounts;
- (d) article 3 paragraph 2 letters c to f of these Conditions apply by analogy.

The other articles of these Conditions also (whether or not by analogy) apply to mpg contracts, except if such is not possible due to the nature of an mpg contract. Insofar as this article 3 paragraph 3 is in conflict with any other article or paragraph of these Conditions, the provisions of this article 3 paragraph 3 will prevail.

4. If Fruit Factor commits itself to the payment of one or more advances with a view to the delivery or provision of agricultural Products by the Seller under the terms of a contract of sale, consignment or mpg contract, the Seller will - to the satisfaction of Fruit Factor - take out and maintain harvest insurance with hail cover, naming Fruit Factor as the co-insured on the policy sheet and stating that any insurance payments will be made directly to Fruit Factor. The Seller will provide Fruit Factor on request with a copy of the policy sheet and proof of payment of premiums.

Article 4: offers, Agreements

1. In this article, an offer is defined as: an offer by the Seller.

2. In this article, an offer by Fruit Factor is defined as: a written order placed by Fruit Factor that deviates from an offer or a written order placed by Fruit Factor with the Seller without having received an offer.
3. All offers by Fruit Factor are free of obligation. Fruit Factor is entitled to revoke its offer within three working days after receipt of acceptance by the Seller.
4. Acceptance by the Seller that, whether or not on subordinate points, deviates from the offer by Fruit Factor, will at all times be regarded as a rejection of this offer and as a new offer. An Agreement in accordance with this new offer will only be concluded following written acceptance by Fruit Factor.
5. An Agreement is concluded when:
 - (a) Fruit Factor accepts an offer in writing; or
 - (b) three working days have expired after Fruit Factor has received acceptance of its offer from the Seller and Fruit Factor has not revoked its offer during this period; or
 - (c) Fruit Factor confirms the Agreement in writing.
6. Fruit Factor is not bound to an offer and/or an Agreement at a specified price if said price is based on a misprint and/or a writing error.
7. The Seller is, without the prior written permission of Fruit Factor, not permitted to transfer in full or part an Agreement or one or more of its rights or obligations under an Agreement. This prohibition has effect under both contractual and property law (as referred to in Article 3:83 paragraph 2 of the Dutch Civil Code).

Article 5: prices

1. All prices are stated in euros unless the Parties agree otherwise in writing.
2. All prices are quoted exclusive of VAT. For the remainder, the prices are "all inclusive".
3. All agreed prices are fixed. Price rises after conclusion of the Agreement, under any heading whatsoever, are and remain for the account of the Seller, irrespective of the period that has passed between the date of conclusion of the Agreement and the performance thereof.

Article 6: guarantee

1. The Seller guarantees that:
 - (a) the Products comply in full with the Agreement, which in any event means that they:
 - correspond with any sample shown or provided;
 - originate from GlobalGap-certified growers;
 - have not been exposed to banned crop protection products;
 - comply with the highest food safety standards;
 - have optimal quality, freshness and shelf life;
 - are free of disease (including but not limited to rot), pests, foreign bodies, contaminants, (other) substances hazardous to health and (other) visible and hidden defects;
 - comply with the specifications and requirements formulated by Fruit Factor and, insofar as these have not been formulated by Fruit Factor, with the specifications and requirements that apply to Class I Products;
 - comply with (i) all requirements under relevant Dutch and European laws and regulations that apply at the time of delivery or provision, including but not limited to the laws and regulations with respect to Maximum Residue Limits (MRL) and (ii) any supplementary and/or stricter requirements made by clients of Fruit Factor and about which Fruit Factor has informed the Seller prior to the delivery or provision;
 - (b) the Products are adequately and soundly packaged and in accordance with any instructions by Fruit Factor, the packaging and packing materials do not constitute a food safety hazard, the packaging is provided with all markings prescribed by law and all statutory labelling regulations are complied with;
 - (c) the Products are during the entire transport process transported under optimal temperature and other conditions, without interruption of the refrigeration chain;

- (d) full traceability of the Products is guaranteed and the Seller will, within three hours of a request thereto from Fruit Factor, digitally provide all relevant information with respect to the Products, including but not limited to the particulars of the growers and the plots, as well as a full and up-to-date registration of the crop protection products used;
 - (e) the Seller and the other links in the chain are IFS and/or BRC-certified;
 - (f) the Seller will immediately and in writing inform Fruit Factor of a disaster and the Seller will immediately and in writing inform Fruit Factor when the Seller (otherwise) expects or knows that the Products and/or the packing materials do not or will not comply with the requirements stated in this article.
2. The receipt, approval and payment of the Products by Fruit Factor will not entail acknowledgement that the Products comply with the Agreement, do not release the Seller from any other guarantee obligations or liability and are without prejudice to the rights of Fruit Factor under the Agreement, these Conditions and the law.

Article 7: delivery time, delivery, ownership

1. The agreed delivery time is regarded as a deadline. The Seller will, on exceeding the delivery time, be legally in default. The Seller will immediately notify Fruit Factor thereof in writing as soon as it knows or should know that performance of the Agreement will not take place at all, on time or properly.
2. Delivery will take place Delivery Duty Paid (DDP) Barendrecht. "DDP" will be interpreted in accordance with the latest version of the Incoterms.
3. At the time of the delivery or on such earlier moment as Fruit Factor requires, the Seller will make available to Fruit Factor the health certificates with respect to the Products and any and all other relevant documentation with respect to food safety
4. Part deliveries and deliveries before the agreed delivery time can be refused by Fruit Factor if it has not granted its written permission thereto.
5. As long as the delivery has not taken place, Fruit Factor is entitled to require from the Seller that the date and/or the place of delivery are changed. Fruit Factor's right referred to in the previous sentence only applies to the extent that the Seller can reasonably comply with Fruit Factor's request, while Fruit Factor is also obliged to compensate the Seller for the possible reasonable additional costs that the Seller has reasonably incurred.
6. Fruit Factor is at all times entitled to return the packing materials for the risk and account of the Seller.
7. Ownership of the Products will pass to Fruit Factor at the time of delivery. The Seller guarantees delivery of the full and unencumbered ownership of the Products.

Article 8: inspection and complaints

1. Prior to the delivery of the Products to its warehouse, Fruit Factor is at all times entitled, but never obliged, to inspect these or have them inspected, which for the purpose of this article is defined as: random and visual inspection. The Seller will lend its full cooperation to such an inspection.
2. Following delivery of the Products to its warehouse, Fruit Factor will inspect these or have them inspected within a reasonable period of time. If Fruit Factor has not rejected the Products within four days of the delivery, the Products are deemed approved, subject to the reservation that they have a normal shelf life and do not have any hidden defects.
3. If an inspection is performed prior to delivery of the Products, Fruit Factor is not subject to any duty of complaint. In all other cases, Fruit Factor is subject to a duty of complaint in the sense that it must make a complaint within four days of delivery or as much later as it has discovered that the Products do not comply with the Agreement or that the performance by the Seller is otherwise defective.
4. Fruit Factor is deemed to have made a discovery as referred to in paragraph 3 of this article on receipt of a complaint by one of its customers about the Products and investigation shows that this complaint is founded. Fruit Factor is in that case permitted to still reject the Products.
5. The Seller may only appeal to any violation of the duty of inspection and complaint resting on Fruit Factor if any of its concrete interests have been harmed as a result.

6. The violation referred to in paragraph 5 of this article does not lead to the forfeiting of rights on the part of Fruit Factor.

Article 9: refusal and rejection

1. Without prejudice to its other rights by law and/or the Agreement and/or these Conditions, Fruit Factor is, in the event of refusal and rejection of the Products, entitled:
 - (a) to return the delivered Products for the risk and account of the Seller and to require fulfilment, whether or not in combination with compensation;
 - (b) to terminate the Agreement and require compensation;
 - (c) to partly terminate the Agreement and require fulfilment for the remaining part, whether or not in combination with compensation;
 - (d) to partly terminate the Agreement by reducing the price (including any agreed minimum guaranteed price);or
 - (e) to sell the Products on consignment.
2. The Seller will bear the risk to the Products from the time the Products are refused or rejected in full or part.

Article 10: rights of third parties

1. The Seller guarantees that the Products and the accompanying packaging and packing materials, all in the broadest sense of the word, do not infringe upon the intellectual property rights or any other rights of third parties and that Fruit Factor has the unconditional and irrevocable right to import, store, offer for sale, sell or otherwise market, export and otherwise use the Products, all in the broadest sense of the word.
2. The Seller will indemnify Fruit Factor against all claims by third parties in connection with an infringement or alleged infringement of one or more of the rights referred to in paragraph 1 of this article. The Seller will compensate Fruit Factor for all losses incurred by the latter as a result of such an infringement or alleged infringement, including the reasonable costs of defence against third-party claims.

Article 11: payment

1. All invoices of the Seller will be addressed to Fruit Factor for the attention of the accounts payable administration, with reference to the relevant order number, properly specified and in accordance with the invoicing requirements applicable in the Netherlands. Fruit Factor reserves the right not to handle invoices that do not meet the aforementioned requirements and to return these to the Seller.
2. Unless the Parties have agreed otherwise in writing, payment will take place within 45 days of receipt of the relevant correct and complete invoice or, if receipt and approval of the Products takes place later, within 45 days of receipt and approval of the relevant Products.
3. Payment by Fruit Factor will first be deducted from the principal, subsequently from any interest owed and finally from any costs owed.
4. Any compensation owed by Fruit Factor for late payment will not consist of the statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code, but instead the statutory interest as referred to in Article 6:119 of the Dutch Civil Code.
5. Any compensation owed by Fruit Factor for costs as referred to in Article 6:96 paragraph 2 letter c of the Dutch Civil Code will not be determined with the aid of the staggered scale of Article 2 of the Extrajudicial Costs Compensation Decree (*Besluit vergoeding voor buitengerechtigde incassokosten*), but will instead consist of the minimum amount as referred to in Article 3 of the aforementioned decree.
6. In the event of full or partial prepayment or payment of one or more advances, Fruit Factor is entitled to require that the Seller provide adequate security for the performance of its obligations, whether or not in the form of a bank guarantee callable on request by Fruit Factor and provided by a first-class Dutch bank.
7. Fruit Factor is at all times entitled to set off the amounts that it owes under any heading to the Seller or an affiliated Person ("Seller et al.") against amounts that Fruit Factor or any affiliated

Person ("Fruit Factor et al.") may claim under any heading from the Seller et al. The aforementioned right to set off also exists if the payment of the claims is not yet enforceable and if the performance claimed by Fruit Factor et al. does not correspond with its debt.

Article 12: right of retention and pledge

1. Until such time as the Seller has fulfilled all its obligations to Fruit Factor under any heading whatsoever, Fruit Factor will have both a right of retention and pledge to all assets held or to be acquired, either directly or indirectly, by Fruit Factor in connection with an Agreement. Assets in the sense of this article are defined as: movable property, bearer or order rights, monetary instruments, documents and funds.
2. The Seller has, by accepting these Conditions, committed itself to granting Fruit Factor a right of pledge as referred to in paragraph 1 of this article. The right of pledge is established by bringing the assets under the control of Fruit Factor or a third party that will hold the assets for Fruit Factor, including but not limited to a transport operator or a storage and transshipment company.
3. The right of summary execution will be exercised in the manner determined by law. Private sale is possible with the agreement of the Parties or, on condition that Fruit Factor has a sound valuation report, if the goods are subject to such rapid spoiling that it cannot in all reasonableness be expected of Fruit Factor to seek an interim injunction. All judicial and extrajudicial costs incurred by Fruit Factor with a view to exercising its right of summary execution, including but not limited to the actual costs of legal assistance and valuation incurred by Fruit Factor, are for the account of the Seller and will be recovered from the (gross) sales proceeds.

Article 13: prohibition of assignment and pledge

The Seller is, without the prior written permission of Fruit Factor, not permitted to assign, pledge or otherwise transfer or encumber its claims against Fruit Factor. This prohibition has effect under both contractual and property law. The claims of the Seller against Fruit Factor are not transferable (in the sense of Article 3:83 paragraph 2 of the Dutch Civil Code) and not pledgeable (in the sense of Article 3:83 paragraph 2 in conjunction with Article 3:98 of the Dutch Civil Code).

Article 14: force majeure

1. The Seller may invoke force majeure only if:
 - (a) the (potential) shortcoming by the Seller is not due to its fault or for its risk pursuant to law, the Agreement, these Conditions or generally accepted standards;
 - (b) the circumstances that constitute the force majeure have arisen prior to when the Seller was obliged to fulfil its obligation; and
 - (c) the Seller informs Fruit Factor immediately, but in any event within 24 hours after the (potential) situation of force majeure has arisen, in writing, specifying the circumstances that gave rise to the (potential) force majeure.
2. Fruit Factor is entitled in the event of temporary force majeure on the part of the Seller:
 - (a) to grant the Seller postponement of its obligations under the Agreement for a reasonable period not exceeding two months. If the Seller, on expiry of the term, remains unable to fulfil its obligations under the Agreement, Fruit Factor is entitled to terminate the Agreement;
or, at the discretion of Fruit Factor:
 - (b) to terminate the Agreement.Fruit Factor is entitled to terminate the Agreement in the event of permanent force majeure on the part of the Seller.
3. Force majeure on the part of the Seller will in any event not include: shortage of personnel, sickness of personnel, strikes, and default ("attributable failure") and/or unlawful actions on the part of suppliers or transporters of the Seller or on the part of other third parties engaged in the performance of the Agreement.

4. Fruit Factor is, in the event of force majeure on its part, entitled to suspend performance of its obligations or a part thereof. If the period of force majeure on the part of Fruit Factor lasts longer than one month or it becomes certain that the period will last longer than one month, Fruit Factor is entitled to terminate the Agreement in full or part. Force majeure on the part of Fruit Factor is understood as: every circumstance for which Fruit Factor bears no subjective blame and which makes it impossible or practically too onerous for Fruit Factor to fulfil its obligations or a part thereof, including - but explicitly not limited to - force majeure on the part of clients of Fruit Factor, as well as government measures that hinder or financially impede the import, export or transit of Products.
5. Termination of the Agreement as referred to in this article will take the form of a written notice to the Seller, without requiring any notice of default or legal intervention and without Fruit Factor being held to pay any compensation.

Article 15: suspension, termination

1. Without prejudice to its other rights by law and/or the Agreement and/or these Conditions, Fruit Factor is entitled to suspend its obligations or, without requiring any notice of default or a legal intervention, or to terminate the Agreement in full or in part if:
 - (a) the Seller fails to properly and promptly fulfil any of its obligations under the Agreement; and/or
 - (b) Fruit Factor has good grounds to fear that the Seller will default in the fulfilment of one or more of its obligations;
 - (c) the Seller is declared bankrupt or its bankruptcy has been applied for;
 - (d) the Seller has been granted a, whether or not provisional, suspension of payments or an application thereto has been filed;
 - (e) the Seller is declared subject to a statutory debt rescheduling scheme or an application thereto has been filed;
 - (f) the business of the Seller is liquidated; or
 - (g) the assets of the Seller are subject to executory attachment or subject to prejudgment attachment which is not lifted within one month of the date of attachment.
2. If the default of the Seller under law, the Agreement and these Conditions takes effect only after notice of default, Fruit Factor will, in the case referred to in paragraph 1(a) of this article, not proceed with full or partial termination of the Agreement until it has provided the Seller with a written reminder stating a reasonable term for fulfilment, which term was not complied with.
3. If Fruit Factor terminates the Agreement in full or in part, it is not obliged to pay any compensation and all its claims against the Seller will immediately become payable in full.

Article 16: liability

1. The Seller is liable for all direct and indirect losses incurred by Fruit Factor and/or third parties as a result of attributable failure on the part of the Seller or as a result of attributable unlawful acts or omissions by the Seller or by a subordinate, non-subordinate or representative of the Seller.
2. The loss as referred to in paragraph 1 of this article comprises, but is not limited to, all penalties (including contractual) imposed on Fruit Factor, all loss and costs related to a product recall at the initiative of the competent authorities and/or the Seller and/or Fruit Factor and all internal and external costs of Fruit Factor related to determining the loss and liability and to the collection of damages, including but not limited to the actual costs of attorneys, bailiffs, experts and translators incurred by Fruit Factor.
3. The Seller will indemnify Fruit Factor against all third-party claims for the compensation of loss as referred to in paragraph 1 of this article. The Seller will compensate Fruit Factor for the reasonable costs of defence against the aforementioned claims. The Seller will not be obliged to indemnify Fruit Factor insofar as the loss is the direct consequence of intent or deliberate recklessness on the part of Fruit Factor or its management.
4. For application of this article, third parties will include personnel, employees and clients of Fruit Factor.

5. The Seller will take out and maintain adequate insurance to cover the loss as referred to in paragraph 1 of this article. The Seller will provide Fruit Factor on request with a copy of the policy sheet(s) and proof of payment of premiums.
6. If Fruit Factor is liable for losses incurred by the Seller and/or third parties, its total liability under any heading whatsoever will be limited to the amount paid out in that case by the liability insurance of Fruit Factor, increased by the amount of the excess which is not for the account of the insurers according to the policy conditions. If, for any reason whatsoever, no insurance payment takes place, the total liability of Fruit Factor under any heading whatsoever is limited to the amount of the net invoice value of the relevant Products, being the price excluding turnover tax and other taxes and levies and excluding transport costs or, in the event of consignment, the amount of the net sales proceeds of the relevant Products, subject at all times to a maximum of €5,000. Fruit Factor will not invoke a limitation of its liability insofar as the loss is the direct consequence of intent or deliberate recklessness on the part of Fruit Factor or its management.

Article 17: applicable law, disputes, litigation and arbitration costs

1. The legal relationship between the Parties is governed by Dutch law, with exclusion of the Vienna Sales Convention.
2. Subject to provisions of mandatory law, all disputes between the Parties relating to an Agreement and/or these Conditions will in the first instance be submitted exclusively to the Court of Rotterdam (proceedings on the merits) or the interim injunction judge of the Court of Rotterdam (interim injunctions and other provisional measures), without prejudice to the right of Fruit Factor to submit a dispute to any other competent court.
3. Without prejudice to the provisions of paragraph 2 of this article, Fruit Factor is at all times entitled to have a dispute resolved in accordance with the Regulations of the Netherlands Arbitration Institute. The tribunal will consist of one arbitrator. The place of arbitration and oral hearing(s) is Rotterdam. The proceedings will be conducted in English. The tribunal will decide according to the rules of law.
4. The costs related to judicial and arbitration proceedings, including but not limited to the actual costs of attorneys, bailiffs, experts and translators incurred by Fruit Factor will be for the account of the Seller if it is held to be entirely or predominantly in the wrong.

May 2017