

General Purchasing Conditions of OV Fruit B.V.

1. Definitions

- 1.1 **General Purchasing Conditions:** these general purchasing conditions of OV Fruit.
- 1.2 **Supplier:** the other party of OV Fruit under an Agreement.
- 1.3 **Agreement:** an agreement under which OV Fruit purchases Products from the Supplier.
- 1.4 **OV Fruit:** OV Fruit B.V., a private liability company, with its registered office in Barendrecht and principal place of business in (2988 DG) Ridderkerk, at Selderijweg 90, listed in the Commercial Register of the Chamber of Commerce under file reference number 86880780 and/or entities affiliated to it that make use of these General Purchasing Conditions.
- 1.5 **Products:** the products that the Supplier sells and delivers to OV Fruit, or that OV Fruit sells on behalf of the Supplier (in case of consignment).

2. Applicability

- 2.1 These General Purchasing Conditions apply to every legal relationship between OV Fruit and the Supplier. It has been agreed between OV Fruit and the Supplier that, once these General Purchasing Conditions apply to their mutual legal relationship, such as an Agreement, they apply fully to any subsequent legal relationships as well.
- 2.2 Deviations from these General Purchasing Conditions can only be agreed in writing. The Supplier cannot rely on deviations agreed with OV Fruit previously.
- 2.3 OV Fruit is entitled to change these General Purchasing Conditions unilaterally. The Agreement is always subject to the latest version of these General Purchasing Conditions.
- 2.4 Insofar as these General Purchasing Conditions are drawn up in another language as well, the Dutch text will always be decisive in the event of any differences in interpretation.

3. Offers, agreements

- 3.1 All requests, orders and/or offers made by OV Fruit in whatever form are without obligation, unless indicated otherwise.
- 3.2 The content of the Agreement is evident from the purchase order/confirmation of purchase from OV Fruit and the agreements entered into subsequently, only insofar as these have been confirmed in writing by OV Fruit. If the Supplier does not agree with the purchase order/confirmation of purchase, the Supplier must indicate this in writing no later than one (1) hour after receipt of the purchase order/confirmation of purchase.
- 3.3 After the conclusion of the Agreement, the Supplier is obliged to implement all non-fundamental changes desired by OV Fruit, without the Supplier being entitled to additional compensation.

4. Prices

- 4.1 An agreed price cannot be increased by the Supplier, not even as a result of a cost price increase for whatever reason, unless OV Fruit B.V. agrees to this.
- 4.2 Unless otherwise agreed in writing, all prices communicated by the Supplier are in

Euros, exclusive of turnover tax (VAT), but including transport costs and all levies, surcharges, exchange rate increases, insurance costs and other levies imposed on OV Fruit with regard to the (import and delivery of the) Products.

4.3 Prices and/or fees are agreed per delivery or per supply contract/seasonal contract/programme.

4.4 If and insofar as the Products are not in compliance with the agreement, any minimum price agreements or variable price agreements will lapse. This occurs, for example, in the event of a defect in quality or quantity. In that case, instead of the lapsed price agreements, OV Fruit will be entitled to the agreed commission percentage and, in the absence thereof, the commission percentage that is usual for OV Fruit, calculated on the gross sales price set by OV Fruit that would have been achieved if the Products had complied with the Agreement, except for evidence to the contrary by the Supplier. In all cases, OV Fruit will be entitled to at least a commission percentage that is usual for OV Fruit, calculated on the realised gross sales price.

5. Delivery

5.1 The delivery periods stated by the Supplier are final deadlines as referred to in Article 6:83(a) of the Dutch Civil Code. In the event of late delivery, the Supplier will be immediately in default, and OV Fruit will be entitled to dissolve the Agreement and/or claim compensation.

5.2 If the Supplier reasonably knows or suspects that the (delivery) period to which it has committed cannot be met, the Supplier is obliged to immediately notify OV Fruit thereof in writing, stating the relevant circumstances and the expected consequences.

5.3 In the event of (partial) termination of the Agreement due to late delivery, OV Fruit has the right to return any deliveries made up to that point at the risk and expense of the Supplier.

5.4 In the event of late delivery and (partial) termination of the Agreement, OV Fruit will be entitled to reimbursement of additional costs incurred for reasonable replacement of the Products not received, including additional costs of any replacement purchases, without prejudice to the right to compensation.

5.5 Unless otherwise agreed in writing, the Supplier is responsible for transport and the Products are delivered in accordance with the current Incoterms, Delivery Duty Paid (DDP), location Ridderkerk.

5.6 The Supplier ensures that the Products are always stored and transported under conditions that ensure that the quality is guaranteed and that at least meet all legal and agreed requirements. As regards temperature-sensitive Products, the Supplier ensures that the temperature does not become higher and/or lower than is desirable and/or necessary to maintain the correct quality. The Supplier is obliged to regularly check and record the temperature.

5.7 Upon delivery of the Products, the Supplier must provide OV Fruit, the OV Fruit customer or the party receiving the products with a delivery note. This must in any case state the transport conditions, such as temperature and humidity, as well as a description of the Products and the volume.

6. Transfer of ownership

- 6.1 The ownership and risk of the Products transfer at the time of delivery. If any payment has already been made to the Supplier before delivery, ownership is transferred at the time of the first payment. The risk, however, only passes upon delivery.
- 6.2 If the Products are subject to rights other than the Supplier's ownership rights, the Supplier will immediately notify OV Fruit thereof in writing.

7. Termination of the Agreement

- 7.1 OV Fruit has the right to fully or partially terminate an Agreement by written notice of termination or dissolution, with immediate effect, without notice of default and without judicial intervention, in the following cases:
- (a) the Supplier fails to meet its (delivery) obligations and the Supplier has not fully remedied its shortcoming(s) within seven (7) days after having been notified in writing;
 - (b) the Supplier is granted suspension of payments, provisionally or otherwise;
 - (c) bankruptcy is filed with regard to the Supplier or if its company is liquidated or terminated, or
 - (d) one or more other parties in any way gain control of the activities of the Supplier's company or if there is a change in the composition of its management;
- 7.2 If a circumstance referred to in Article 7.1 occurs, the Supplier will be in default by operation of law and OV Fruit will be entitled to claim compensation. All claims OV Fruit may have against the Supplier will become immediately due and payable.
- 7.3 In the cases as referred to in Article 7.1, OV Fruit may opt to have the ordered Products delivered, manufactured or completed by third parties in whole or in part, at the risk and expense of the Supplier, subject to written notification to the Supplier.

8. Payment

- 8.1 OV Fruit will pay for the Products within 30 (thirty) days after: (a) the Products have been delivered and approved by OV Fruit and (b) the invoice from the Supplier has been received. Payment does not release the Supplier from any guarantee and/or compensation to which it is obliged under the Agreement or the law.
- 8.2 OV Fruit is at all times entitled to set off outstanding invoices against its claims against the Supplier and/or affiliated companies.
- 8.3 In the event of late or poor delivery, OV Fruit is at all times entitled to suspend its (payment) obligations or to set these off against its claims against the Supplier.

9. Quality and inspection

- 9.1 The Products must:
- (a) comply with the specifications included in the Agreement,
 - (b) comply with all Dutch and European (food) laws and regulations,
 - (c) comply with the laws and regulations of the country in which the Products will be sold by (the customer of) OV Fruit,
 - (d) be free from substances hazardous to health,
 - (e) not infringe third-party (intellectual property) rights.
- 9.2 The Supplier is at all times obliged to cooperate with an inspection of the Products by one or more third parties, such as Stichting Kwaliteits-Controle-Bureau (KCB).
- 9.3 If the Products are not in compliance with the Agreement, OV Fruit and/or its

customer are not obliged to accept the Products. Acceptance by OV Fruit and/or its customer of the delivered Products does not affect the guarantees provided by the Supplier or its liability.

- 9.4 If the Products are not in compliance with the Agreement, OV Fruit may, at its discretion or that of its customer, (a) require the Supplier to take back the defective Products and collect them at his own risk and expense, without the Supplier being entitled to any compensation (for damage), whilst the agreed (purchase) price is proportionately reduced or (b) to fully or partially terminate the Agreement in accordance with Article 7. In all cases in which the Products are not in compliance with the Agreement, the Supplier is obliged to fully reimburse the costs incurred by OV Fruit or its customer, including the costs of inspection, as well as to compensate any damage suffered by OV Fruit or its customer.

10. Liability

- 10.1 Liability of OV Fruit is excluded, except in the case of intent or deliberate recklessness on the part of OV Fruit executives.
- 10.2 An injurious event is defined as a single event or behaviour or a connected series of events or behaviours, as well as any event related to the event that caused the damage, in the sense that OV Fruit can only be held liable for an injurious event once. OV Fruit's liability for indirect damage or loss, consequential damage or loss, lost profits, damage or loss resulting from third-party claims against the Supplier, damage or loss due to exceeding a term or property damage consisting of destruction, damage or loss of items used by the Supplier in the normal course of a profession or business is excluded. Liability of OV Fruit due to an attributable shortcoming in the performance of an Agreement as referred to in Article 10.1 of these General Purchasing Conditions only arises if the Supplier gives OV Fruit proper written notice of default within three (3) months after the Supplier having become aware of the shortcoming, whilst granting a reasonable period to remedy the shortcoming, and OV Fruit continues to culpably fail to fulfil its obligations even after that period.
- 10.3 The Supplier irrevocably and unconditionally indemnifies OV Fruit against any third-party claims regarding the Products supplied by the Supplier. If the Products have to be retrieved due to (food) safety issues or other necessary reasons ('recall'), the Supplier is obliged to provide every cooperation, at its own expense, The Supplier is furthermore obliged to reimburse all (legal) costs incurred by OV Fruit and/or its customers.

11. Final provisions

- 11.1 The claims (of payment) of the Supplier against OV Fruit are not transferable. This provision is intended to have effect under property law.
- 11.2 The relevant documents and data from OV Fruit's records or systems serve as full evidence in all cases, including the issuance of a mandate, unless the Supplier proves otherwise.
- 11.3 Unless with the prior written approval by OV Fruit, the Supplier is not permitted to have the Products produced, packaged or processed by third parties. Written approval by OV Fruit does not release the Supplier from any obligation and/or liability arising from the Agreement.
- 11.4 The Supplier's right to suspension or set-off, or (partial) termination (by cancellation, dissolution or annulment) of the Agreement, is excluded.
- 11.5 The legal relationship between OV Fruit and the Supplier, including the Agreement, is exclusively governed by Dutch law. Applicability of the Vienna Sales Convention

is excluded.

- 11.6 If the Supplier is located within the European Union, a dispute arising from or related to the Agreement will be submitted to the court with exclusive jurisdiction in the place where OV Fruit is established.
- 11.7 If the Supplier is located outside the European Union, a dispute arising from or related to the Agreement will be settled by arbitration, in accordance with the arbitration regulations of the Netherlands Arbitration Institute. The place of arbitration is Rotterdam. The arbitration tribunal will consist of one arbitrator. The arbitrator will be appointed by the Netherlands Arbitration Institute. Notwithstanding the foregoing, only OV Fruit is entitled to submit a dispute with a Supplier who is not located in the European Union to the court with exclusive jurisdiction in the place where OV Fruit is established.