

## **General Terms and Conditions of Sale of OV Fruit B.V.**

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### **1. Definitions**

- 1.1 **General Terms and Conditions of Sale:** these general terms and conditions of sale of OV Fruit.
- 1.2 **Customer:** the other party of OV Fruit.
- 1.3 **Agreement:** an agreement under which OV Fruit sells Products to the Customer.
- 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 Terms and Conditions of Sale.
- 1.5 **Products:** the products that OV Fruit sells to the Customer, either in a private capacity or on behalf of its client.

### **2. Applicability**

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

### **3. Formation of the agreements**

- 3.1 All quotations, offers and other communications from OV Fruit are without obligation, unless expressly stated otherwise in writing. Obvious mistakes, such as typing errors, in quotations, offers and other communications from OV Fruit do not bind OV Fruit.
- 3.2 OV Fruit reserves the right to revoke an offer made by it within two (2) working days of its acceptance.
- 3.3 If upon acceptance, the offer made by OV Fruit is deviated from, this acceptance will be regarded as an invitation to make an offer. In that case, OV Fruit, at its discretion, will make a new written offer, to which Articles 2.1 and 2.2 apply.
- 3.4 An Agreement is only concluded: (a) after written acceptance by OV Fruit of the Customer's request to enter into an Agreement, whether or not by OV Fruit sending an order confirmation to the Customer, or (b) by OV Fruit starting the actual execution of the request made by the Customer.
- 3.5 Verbal commitments made by staff of OV Fruit do not bind OV Fruit until and insofar as they have been confirmed in writing to the Customer.
- 3.6 If and insofar as multiple Customers are jointly party to an Agreement, all Customers

involved are jointly and severally liable to OV Fruit for all (payment) obligations arising from the Agreement.

#### **4. Prices**

- 4.1 Prices quoted by OV Fruit are in Euros, apply to delivery Ex Works (EXW) and are exclusive of transport costs, packaging, sales tax (VAT), excise duties, import duties and other surcharges imposed by the government, unless otherwise agreed in writing.
- 4.2 In the event of levies or special taxes after the conclusion of the Agreement, as well as in the event of changes thereto, OV Fruit has the right to increase the agreed price accordingly, even if that price increase was already foreseeable when entering into the Agreement.

#### **5. Delivery**

- 5.1 The Products sold by OV Fruit are delivered Ex Works (EXW), according to the Incoterms version applicable at the time of concluding the Agreement.
- 5.2 If OV Fruit arranges the transport of the Products at the Customer's request, OV Fruit will only do so on behalf of the Customer and at the Customer's expense and risk. Subject to specific transport instructions from the Customer, OV Fruit is free to organise the transport at its discretion.
- 5.3 If it has been agreed that delivery to the Customer is made *carriage paid*, OV Fruit will arrange the transport. In that case, delivery of the Products is made to the address agreed with the Customer.
- 5.4 The Customer must in all cases arrange transport insurance himself.
- 5.5 If OV Fruit carries out any customs formalities or similar activities for the Customer in relation to the execution of the Agreement, OV Fruit at all times does so at the expense and risk of the Customer.
- 5.6 The Customer guarantees OV Fruit that it always holds the required permits for the import or transit of the Products, and the Customer indemnifies OV Fruit in this regard against all claims (including product liability claims), taxes or fines from third parties, including governments or any European bodies.
- 5.7 The risk relating to the Products sold is transferred when they are made available to the Customer by or on behalf of OV Fruit.
- 5.8 The return of reusable packaging supplied via OV Fruit (including pallets, crates and boxes) and on which a deposit has been charged will be accepted at the price applicable at the time of return, increased by the standard packaging fee charged by OV Fruit, all this on condition that the packaging is not damaged and can be reused.

#### **6. Delivery periods**

- 6.1 (Delivery) periods stated by OV Fruit are without obligation and never final.
- 6.2 OV Fruit can never be in default due to the mere expiry of an agreed (delivery) period, but requires a written notice of default, taking into account a reasonable period to remedy of at least 14 (fourteen) days.

## **7. Failure to take delivery**

- 7.1 If the Products are delivered to the Customer, the Customer must arrange for the Products to be taken by a carrier designated by or on behalf of the Customer as soon as possible after the Agreement has been concluded, but in any case within 48 hours.
- 7.2 If for whatever reason the Customer fails to take delivery of the Products outside the will and control of OV Fruit, the Customer is still obliged to fulfil the agreed payment conditions as if it had taken delivery of the Products.
- 7.3 If the Customer does not take delivery of the Products, OV Fruit will be entitled to store them at a location chosen by the Customer, at the expense and risk of the Customer. OV Fruit is not obliged to compensate the Customer for any damage or loss, for example, but not exclusively, as a result of deterioration in quality or weight, in connection with the failure to take delivery of the Products. If the Products have not been taken or collected by or on behalf of the Customer after 48 hours have elapsed, OV Fruit has the right to destroy the Products or sell them to one or more third parties, without owing any compensation (for damage or loss incurred).

## **8. Payment**

- 8.1 Payment must always be made within thirty (30) days after delivery, unless agreed otherwise in writing. The aforesaid payment term is a final deadline as referred to in Article 6:83(a) of the Dutch Civil Code.
- 8.2 In the event of late payment by the Customer, the Customer owes default interest equal to the statutory interest, increased by 2% per year, from the thirtieth (30<sup>th</sup>) day until the day of full payment.
- 8.3 In the event of late payment, OV Fruit is authorised to postpone delivery of other Products sold by it to the Customer until the Customer has fully fulfilled his payment obligations, including payment of interest due.
- 8.4 If the Customer applies for a moratorium or files a petition for bankruptcy, all outstanding invoices are immediately due and payable.
- 8.5 If the Customer is in default with regard to meeting his (payment) obligations towards OV Fruit, the Customer owes extrajudicial collection costs to OV Fruit to be calculated in accordance with the Extrajudicial Collection Costs (Fees) Decree, regardless of whether it applies to the claim of OV Fruit.
- 8.6 The Customer's right to suspension or set-off is excluded.
- 8.7 If the Customer disputes the amount of the invoice, he must communicate his objections in writing to OV Fruit within one (1) month after the invoice date, under penalty of forfeiture of rights.
- 8.8 OV Fruit is entitled to require the Customer to provide an advance and/or securities, including, but not limited to, an (abstract) bank guarantee, before OV Fruit is obliged to execute the Agreement. All (bank) costs associated with payment and providing security will be payable by the Customer.
- 8.9 The relevant documents and data from OV Fruit's records or systems serve as full evidence in all cases, unless the Customer proves otherwise.

## **9. Complaints**

- 9.1 Upon delivery, the Customer is obliged to inspect the delivered Products for visible damage. If the Products are made available to a carrier, the Customer must have the Products inspected by a person to be designated by the Customer. If no one is appointed, the driver taking delivery of the Products on behalf of the Customer is

- expected to inspect the goods on behalf of the Customer.
- 9.2 Complaints with regard to quantity and/or defects must be submitted in writing by the Customer to OV Fruit as soon as possible, but in any event within 12 hours of delivery, failing which the quantities stated on waybills, delivery notes, invoices or similar documents are considered to be correct and the Products are deemed to have been delivered without visible damage.
- 9.3 OV Fruit uses E-weight as referred to in Directive 76/211/EEC. In the event of a deviation in weight or quantity of up to 10%, OV Fruit is not obliged to pay any compensation. Only if the deviation in weight or number is more than 10%, will the Customer be entitled to a proportional purchase price reduction equal to the percentage that is short.
- 9.4 Complaints regarding damage and/or defects that were not visible at the time of delivery must be submitted to OV Fruit by the Customer in writing as soon as possible, but in any event within 24 hours after any defects have been discovered or could reasonably have been discovered, failing which the Customer will be deemed to have approved the delivered Products.
- 9.5 If the Customer has complaints regarding the quality of the delivered Products, he must have the Products inspected by a professional third party (such as Stichting Kwaliteits-Controle-Bureau) within 24 hours of delivery, or after any invisible defects have been discovered or could reasonably have been discovered, and offer OV Fruit the opportunity to carry out a counter-check (as much as possible at the same time). In this case too, the Products sold by OV Fruit are entirely at the risk and expense of the Customer in accordance with the provisions of Article 4.7.
- 9.6 Complaints submitted to OV Fruit late or incorrectly have no legal effect and release OV Fruit from any liability.
- 9.7 If, in accordance with the procedure as determined in Article 8, it is established that the delivered Products do not meet the agreed specifications, OV Fruit will have the opportunity to replace these during a period corresponding to the original delivery period. The payment conditions as laid down in Article 7 and based on the first date of delivery remain in full force.

## **10. Liability**

- 10.1 Overall liability of OV Fruit due to an attributable failure to perform the Agreement is limited per injurious event to the amount that OV Fruit's liability insurance pays out to it in the relevant case. If no payment is made, liability will be limited to the direct order value excluding turnover tax (VAT) to which the liability is related and in any case limited to an amount of € 100,000 (*in words: one hundred thousand Euros*).
- 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.
- 10.3 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 Customer, damage or loss due to exceeding a term or property damage consisting of destruction, damage or loss of items used by the Customer in the normal course of a profession or business is excluded, unless in the event of intent or deliberate recklessness on the part of OV Fruit.
- 10.4 The Customer is always fully liable towards OV Fruit for clearing customs and transit documents such as, but not limited to, T1 and T2 documents. On demand, the Customer will provide OV Fruit with sufficient security for the consequences of the possible non-payment of the documents referred to here, such as import duties and

- VAT, fines and interest becoming due.
- 10.5 The right to compensation in any case expires one (1) year after delivery of the Products from which the liability arises.
- 10.6 The restrictions detailed in these Terms and Conditions of Sale with regard to liability do not apply if the damage can be attributed to intent or gross negligence on the part of OV Fruit or its managerial subordinates.

## **11. Indemnity**

- 11.1 The Customer indemnifies OV Fruit against third-party claims for whatever reason, in connection with the Products delivered by OV Fruit, in particular on account of personal injury or death.

## **12. Force majeure**

- 12.1 If, due to a non-attributable shortcoming on its part (force majeure), OV Fruit cannot fulfil its obligations towards the Customer, those obligations will be suspended for the duration of the force majeure situation.
- 12.2 Force majeure of OV Fruit is taken to mean any circumstance beyond the control of OV Fruit, as a result of which the fulfilment of (the relevant part of) its obligations towards the Customer is prevented, delayed or made economically temporarily or permanently impossible, as a result of which the fulfilment of these obligations cannot reasonably be expected from OV Fruit. Force majeure further includes a shortcoming of auxiliary persons engaged by OV Fruit, technical or computer failures, disruptions or delays in telecommunications services, fire, (water) damage, restrictive government measures (regardless of whether those government measures are directly aimed at the OV Fruit's business operation), strikes in the company of OV Fruit or those of third parties engaged by it and/or epidemics. In particular, force majeure includes the situation in which auxiliary persons engaged by OV Fruit fail in their performance towards OV Fruit (imputably or not).
- 12.3 If a force majeure situation has lasted longer than fourteen (14) days, then both the Customer and OV Fruit will have the right to terminate the Agreement by written notice, without judicial intervention. Any part delivered and performed under the Agreement up to that point will be settled pro rata, without OV Fruit and the Customer owing each other (additional) compensation.

## **13. Retention of title**

- 13.1 The ownership of all Products supplied by OV Fruit is expressly reserved by OV Fruit until full payment of all its claims, regardless of whether those claims arise from the same Agreement, including any interest and costs owed thereon, under any legal relationship with the Customer.
- 13.2 The Customer may only dispose of the Products subject to retention of title in the context of his normal business operations. In that case, OV Fruit's right of ownership will only lapse when the relevant Products have been delivered to a third party.
- 13.3 The Customer undertakes to make the unpaid goods available to OV Fruit on demand and it hereby irrevocably authorises OV Fruit, or the person or persons to be appointed by OV Fruit, to enter the place where those goods are located, in order to take those Products back and to store them as OV Fruit sees fit.
- 13.4 If the Products are delivered in Germany then, in addition to the 'normal' retention of title, the 'extensive' and 'extended' retention of title under German law applies to these Products as well. This means that all deliveries and future deliveries are

subject to (extended) retention of title. In addition, OV Fruit's retention of title remains vested in Products that are processed, modified, mixed, traced and resold by the Customer (extended retention of title). Unlike all other provisions in these general terms and conditions of sale, this article 13.4 is governed by German law, with the exclusion of the Vienna Sales Convention.

#### **14. Termination**

14.1 OV Fruit is entitled to fully or partially terminate an Agreement by notice of termination or dissolution, with immediate effect and without notice of default and judicial intervention, if:

- (a) the Customer fails to meet his (payment) obligations and the Customer has not fully remedied his shortcoming(s) within seven (7) days after having been notified in writing;
- (b) the Customer is granted suspension of payments, provisionally or otherwise;
- (c) bankruptcy is filed with regard to the Customer or if his company is liquidated or terminated, or, if the Customer is a natural person, if he applies for admission to the Debt Restructuring (Natural Persons) Act or if a request has been submitted to that end, or in the event of the Customer's death, or
- (d) one or more other parties in any way gain control of the activities of the Customer's company or if there is a change in the composition of his management;

and without OV Fruit being obliged to pay any compensation (for damage or loss) and/or refund due to this termination.

#### **15. Final provisions**

15.1 All intellectual property rights relating to the Products remain vested in OV Fruit or its licensors.

15.2 The claims (of delivery) of the Customer against OV Fruit are not transferable. This provision is intended to have effect under property law.

15.3 The legal relationship between OV Fruit and the Customer, including the Agreement, is exclusively governed by Dutch law (with the exception of the provisions of Article 13.4). Applicability of the Vienna Sales Convention is excluded.

15.4 If the Customer 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.

15.5 If the Customer 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 Customer who is not located in the European Union to the court with exclusive jurisdiction in the place where OV Fruit is established.