

ARTICLE 1 Definitions and general provisions

1.1 The following terms used in these general terms and conditions (the 'General Conditions') are defined as follows, unless expressly indicated otherwise elsewhere:

Seller: the party relying on these General Conditions, i.e. Growers United U.A. or direct subsidiary Growers United B.V. whose objects include the sale of products grown or produced by, inter alia, the members of Growers United.

Buyer: the party that contracts with the Seller, acting in the course of a business or profession.

Contract: a contract between the Seller and the Buyer.

Owner: the owner of goods sold or delivered by the Seller to the Buyer, namely a member of Growers United that has grown or produced the goods sold or delivered.

1.2 These General Conditions govern any invitation to treat, offer, Contract, and delivery by the Seller that the Seller specifies to be governed hereby, insofar as they are not in conflict with any written agreement between the Seller and the Buyer to the contrary. These General Conditions also govern all Contracts of which the performance of any part is assigned to any third party.

1.3 Any general terms and conditions (of purchase, or otherwise) of the Buyer are only binding alongside these General Conditions if the parties have expressly agreed this in writing. In the event of any conflict between the general conditions of the Buyer and these General Conditions, these General Conditions shall take precedence.

1.4 If any provision of these General Conditions is void or voidable, the other provisions shall remain fully enforceable. In such a case, the Seller and the Buyer shall agree a new provision to replace the void or voidable provision that where, and insofar as, possible takes account of the purpose and scope of the original provision.

ARTICLE 2 Offers and representation of the Buyer

2.1 Any invitation to treat and offer from the Seller is always subject to contract, and acceptance must be without any change to that offered. Any invitation to treat or offer is deemed to have expired if it is not accepted within a period of one month.

2.2 The person that signs on behalf of the Buyer confirms, by his signature, that he is authorized to represent the Buyer and that all necessary formalities in this regard have been satisfied.

ARTICLE 3 Prices

3.1 All prices are quoted in euros, excluding postage and packaging costs and net of VAT. All taxes, duties, surcharges, extra costs, etc., charged by government or regulatory bodies to the Seller in respect of the products are the liability of the Buyer.

3.2 The Seller is not obliged to fulfill a Contract at a quoted price that is clearly a typing or handwriting error.

3.3 Oral undertakings by, and agreements made with, an employee of the Seller will only bind the Seller once, and insofar as, the relevant employee has confirmed the undertaking or agreement in writing.

ARTICLE 4 Place for performance, method of delivery, and risk

4.1 The place for performance will be agreed per Contract. In the absence of agreement, the Seller will determine the place of performance as that closest to the location of the cultivation, production, or packaging.

4.2 If it is agreed that the goods are to be transported by or under the responsibility of the Seller, delivery is deemed to have been made when the goods are delivered to the agreed location.

4.3 The Buyer is obliged to purchase the goods as soon as they have been delivered by or on behalf of the Seller, or as soon as the goods are available to the Buyer according to the Contract.

4.4 The goods need not be delivered further than the place beyond which the means of transport used by the Seller or a third party engaged by the Seller cannot access via a sufficiently accessible road, from which place the Buyer must take immediate receipt of the goods and check them in accordance with Article 7 of these General Conditions.

4.5 If the goods are stored by, or on behalf of, the Seller for the Buyer, delivery takes place the moment the goods go into storage.

4.6 Any delay in delivery, insofar as it is within reasonable limits, does not entitle the Buyer to terminate the Contract.

4.7 The risk attached to the goods passes to the Buyer as soon as they are delivered or, if the Buyer fails to assist in delivery being made, at the moment that delivery is refused.

ARTICLE 5 Quantity delivered

5.1 The quantity delivered, in terms of number, weight, and public or private law prescribed standards, is deemed to meet the standards agreed or prescribed unless the Buyer can prove to the contrary.

ARTICLE 6 Delivery term

6.1 A specified or agreed delivery term or date is not a deadline. Accordingly, there will be no breach until notice of default has been served in accordance with Book 6, Article 82 of the Dutch Civil Code. A reasonable term for compliance is deemed to be at least a reasonable term as applied within the industry of the Seller.

6.2 A specified or agreed delivery term or date is based on the work situation, production forecasts, or the delivery in good time to the Seller of stock, materials, or parts the Seller has ordered, as at the time the Contract is entered into.

6.3 If delivery is impossible, or the delivery term is exceeded, irrespective of the origin of the goods, this does not oblige the Seller to pay any form of compensation.

6.4 The exceeding of any delivery term does not entitle the Buyer to terminate the Contract or to suspend or not comply in time with its payment obligations.

ARTICLE 7 Examination by the Buyer after delivery, and time limit for complaints

7.1 In the event of transport by the Seller (as referred to in Article 4 (2)), the Buyer should examine whether the goods are in accordance with the Contract terms relating to:

- the correct description of the goods;
- the quality standards regarding normal use and commercial purposes in accordance with Dutch law; and
- their number and weight.

A difference in weight or quantity of up to 3% either way does not incur the Seller in any liability to pay compensation. A difference in weight or quantity of between 4% and 10% will be accepted in full by the Buyer, subject to a proportionate increase or reduction in the price.

7.2 Any complaint about defects, including discrepancies in quality or quantity, must be notified to the Seller as soon as possible after such time as the defects could reasonably have been discovered, but no later than 24 hours following delivery, and confirmed in writing within 8 hours thereafter, together with photographic evidence. The Seller is not liable for non-recognizable defects to fresh goods, unless the Buyer can prove that the Seller or its producers was/were aware of this.

7.3 If delivery takes place at the sales premises of the Seller, the Buyer should immediately examine the goods after delivery in accordance with section 1 of this article. Acceptance of the goods implies acceptance of the quality and quantity of those goods.

7.4 If the goods are delivered to a third party that keeps them on behalf of the Buyer, the Buyer or the keeper of the goods must conduct the examination referred to in section 1, whereby the time limits as specified in sections 1 and 2 of this article commence from the moment of delivery to the holder.

7.5 In the event of any defect, the Buyer must keep all the goods and enable the Seller, or a third party designated by the Seller, to examine the goods, unless the parties agree otherwise.

7.6 The Buyer must treat the goods at all times as a prudent debtor.

7.7 The filing of a complaint does not relieve the Buyer of its payment obligations under Article 8, unless the complaint and a discharge from the payment obligation are accepted by the Seller in writing.

7.8 If the Seller finds a complaint to be justified, it may choose either to accept return of the goods and a refund of the purchase price, or to replace the goods. However, the Buyer is not entitled to any compensation. In the event of a justified complaint, especially outside Europe, the cost of returning the goods and refunding the purchase price, or replacement of the goods, will be divided between the Seller and the Buyer in equal shares.

7.9 Goods can only be returned by the Buyer once the Seller has agreed to this in writing. All returns are at the risk and expense of the Buyer.

ARTICLE 8 Payment

8.1 Payment is to be made by direct debit within seven (7) days of receipt of the invoice. The Seller will specify on the invoice (i) the amount to be transferred, and (ii) the date on which the payment will be debited.

8.2 Any payment towards outstanding invoices is deemed to be made in satisfaction of the longest outstanding invoice.

8.3 Even if it has issued cheques, the Buyer is not deemed to have paid until the amount invoiced has been credited to the account of the Seller. If the date of this credit is after the agreed payment date, the Seller is entitled to charge interest on this late payment by means of a claim for interest.

8.4 Any costs incurred by the Seller in the context of judicial proceedings due to any breach of the Contract are payable by the Buyer. Extrajudicial enforcement costs are to be at least 15% of the total amount owed, or €100.00, whichever sum is more. The Buyer is liable to pay interest in the event of late payment at the rate of 1% of the amount invoiced per month or part month by which the payment has exceeded the payment date.

8.5 The Buyer is not entitled to any payment discount, nor to deduct or set off any sum from or against the amount invoiced, on any grounds whatsoever. Only credit notes from the Seller may be set off.

8.6 Complaints, the drawing up of credit notes, or breaches of the Seller's performance cannot ever justify failure to pay an undisputed part of an invoice on time. Article 8, sections 3, 4 and 5 therefore apply in full to this part.

8.7 In the event of non-payment of any sum that is due and payable, of an application for a moratorium, of insolvency, of a debt rescheduling arrangement for natural persons (under the Debt Management (Natural Persons) Act, 'WSNP'), of liquidation of the Buyer's business, or an attachment of the Buyer's assets, the Seller is entitled to terminate the Contract, or the part of the Contract still to be performed, and to recover any goods not yet paid for, without prejudice to its right to compensation for any loss of profit or other pecuniary or other loss. In such cases, all claims of the Seller against the Buyer become immediately due and payable.

8.8 The Seller may always require the Buyer to provide a bank guarantee or equivalent security in respect of all or any part of the purchase price.

ARTICLE 9 Retention of title

9.1 Goods delivered by the Seller remain the property of the Owner up to the time of payment in full of all claims of the Seller against the Buyer under all Contracts, including interest and costs.

9.2 Goods delivered by the Seller under retention of title, being goods referred to in section 1 of this article, may only be sold on by the Buyer in its ordinary course of business.

9.3 The Buyer will insure goods delivered under retention of title against theft and damage by fire, explosion, or war.

9.4 If the Buyer does not comply with its obligations or there are reasonable grounds to fear that it may not do so, the Owner, or the Seller on the Owner's behalf, is entitled to recover the goods held by the Buyer or a third party holding them on the Buyer's behalf, and that are subject to the retention of title described in section 1 of this article. The Buyer or any third party holding the goods on the Buyer's behalf must immediately assist in this.

9.5 If a third party wishes to create or enforce any right in respect of goods that are subject to a retention of title, the Buyer must notify the Seller of this fact as soon as can be reasonably expected.

9.6 The Buyer undertakes to assist within reasonable limits with all steps taken by or on behalf of the Seller to protect its right of ownership of the goods.

ARTICLE 10 Force majeure

10.1 If a permanent situation of force majeure arises, the Seller is entitled to terminate the Contract with immediate effect without thereby being liable to pay compensation.

10.2 If a temporary situation of force majeure arises, the Seller is entitled to suspend or terminate performance of the Contract with immediate effect without thereby being liable to pay compensation.

10.3 'Force majeure of a permanent or temporary nature' includes all situations that hinder performance of the Contract, even if these situations had been foreseen at the time of entering into the Contract, such as damage by storm and other weather conditions, or the consequences thereof, or fire, war, threat of war, civil unrest, mobilization, enemy action, lock-out of employees, lack of labour force, transportation problems, prohibitions on import, export or transit, failure by suppliers to the Seller to deliver on time or at all, business stoppage in ports or in transportation, strikes, and all other situations that the Seller could not be reasonably expected to have avoided.

ARTICLE 11 Liability of the Seller

11.1 The Seller is not liable for loss in the event of force majeure. Furthermore, the Seller is only liable for direct loss in the event of any deliberate act by itself or its employees, up to a maximum of the amount invoiced for the goods in question. The Seller is not liable for any other loss, howsoever described, including consequential loss and business loss.

11.2 The Buyer indemnifies the Seller unconditionally against any third-party claims in respect of the goods.

ARTICLE 12 Rights of the Seller in the event of breach by the Buyer

12.1 If the Buyer fails to comply on time or at all with its obligations as described herein, it is in breach of Contract and the Seller is entitled to suspend all further deliveries under the Contract and to terminate the Contract in writing without the need for a court order. The Buyer is also liable for all loss suffered by the Seller, including loss of profits, loss of property, damage to products, costs, interest, transport costs, commission, judicial and extrajudicial costs, and all other direct or indirect loss or costs connected with the purchase of the goods.

ARTICLE 13 Packaging

13.1 Packaging delivered by the Seller – including, but not limited to, pallets, casks, crates, and boxes – in respect of which a deposit has been agreed and charged, remain the property of the Seller or its supplier at all times and will be taken back in exchange for the price specified on the invoice as applies at the time they are returned, plus, where relevant, a fixed fee for packaging in accordance with the relevant, agreed terms. A returned cask should be in such a clean state that it is suitable for fresh, edible, horticultural products.

13.2 In respect of returned packaging by means of the Seller's own transportation, the packaging to be returned should be sorted and ready for transport.

13.3 Packaging not delivered via the Seller will only be taken back by the Seller insofar as the Seller uses the relevant packaging in its own range.

ARTICLE 14 Intellectual property rights

14.1 The Seller expressly reserves any intellectual property rights (including brand names) relating to the goods.

14.2 The Buyer may only sell on the goods if they remain in the same packaging and same quantities, and retain any name or logo of the Seller.

14.3 The Buyer may not combine the goods with products from any different source than that of Seller for the purposes of selling the combined goods as one entity bearing the brand names or logos of the Seller.

14.4 Exceptions to sections 1, 2, and 3 of this article are only permitted with the express written consent of the Seller, which must include a description of the permitted exception and the length of time for which this exception applies.

ARTICLE 15 Jurisdiction and choice of forum

15.1 All Contracts are governed by Dutch law. The provisions of the Uniform Sales Acts 1964 (*Eenvormige Koopwetten*) and the Vienna Sales Convention are hereby expressly excluded.

15.2 In the event of any difference in interpretation between a translation of these General Conditions and the Dutch source text of these General Conditions, the Dutch source text takes precedence.

15.3 Any dispute arising from any invitation to treat or offer from the Seller, or any Contract, shall first be submitted to the competent court within the judicial district of The Hague, in the Netherlands. If the Buyer is Dutch and the claim is in the sum of €25,000 or less, then as an exception to the above provision, the statutory relative competency rules will apply.

