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:
1.2 Buyer: the party that enters into a contract with the Seller, whether the Buyer is acting as a consumer or as a professional.
1.3 Seller: the party relying on these General Conditions, i.e. Growers United U.A. or direct subsidiary Growers United, which objects include the sale of products grown or produced by, or inter alia, the members of Growers United.
1.4 Member: a member of Growers United.
1.5 Buyer as soon as possible after such time as the defects could reasonably be expected to be discovered.
1.6 The exceeding of any delivery or service time limit for complaints.
1.7 The filing of a complaint does not relieve the Buyer of its obligation to pay. Any delay in delivery, in terms of number, weight, and public or private law prescribed standards, is always subject to contract void or voidable.
1.8 The Seller undertakes to assist within reasonable limits with all steps taken by or on behalf of the Seller to prevent destruction of the goods.
1.9 The Buyer is entitled to terminate the Contract, or the part of the Contract still to be performed, and to recover any amount not yet paid for, without prejudice to its right to compensation for any loss of profit or pecuniary or other damage in such cases, all claims of the Seller against the Buyer become immediately due and payable.
1.10 The Buyer may always require the Seller 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 Buyer up to the time of payment in full of all of the Seller's claims against the Buyer, including, but not limited to, all claims of the Seller against the Buyer's debtors and representatives.
9.2 Goods delivered by the Seller under retention of title, being goods referred to in section 1 of this article, may not be sold or delivered by the Buyer in its commercial business.
9.3 The Buyer will insure goods delivered under retention of title against theft and damage by fire, explosion, or water.
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 Buyer on the Owner's behalf, is entitled to recover the goods held by the Buyer or a third party in respect of which the Buyer has a claim or security, subject to the Buyer paying to the Seller the amount invoiced, on any ground whatsoever involved.
ARTICLE 10 Force majeure
10.1 If a permanent situation of force majeure arises, the Seller is entitled to terminate the Contract immediately without any notice being given by the Seller or the Buyer, and all of the Seller's claims against the Buyer, including, but not limited to, all claims of the Seller against the Buyer's debtors and representatives, will become immediately due and payable.
10.2 The Seller will provide the Buyer with a letter stating reasons for termination of the Contract, for which purpose the Seller will request the Buyer to pay an invoice within 10 working days of the receipt of such a letter.
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.
12.1 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 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 or terminate performance of the Contract with immediate effect without thereby being liable to pay compensation. Any damage caused by the Seller in such a situation is recoverable from the Buyer.
13.1 Packaging delivered by the Seller – including, but not limited to, pallets, crates, cases, boxes – in respect of returned packaging shall, insofar as the Buyer has not paid for it, be returned by the Buyer to 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.
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 insor as the Seller uses the transportation costs in its own range.
ARTICLE 14 Intellectual property rights
14.1 The Seller expressly reserves all 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 the 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, 3, and 4 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 5 Jurisdiction and choice of forum
15.1 All Contracts are governed by Dutch law. The provisions of the Uniform Sales Acts 1964 (Eenomkerige Koopwet) 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, the Dutch source text takes precedence.