

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF VAN KOMPANY BV

Article 1 Definitions

In these General Terms and Conditions of Sale and Delivery (the 'General Conditions') the following terms have the following meanings:

- a. Kompany: Kompany BV, a private limited company registered in the commercial register under reference number 12060568.
- b. Offer: an offer/quotation for the sale and delivery of Products issued by Kompany to the Buyer.
- c. Buyer: each natural person, legal entity or company with which Kompany enters into a Contract or with which Kompany negotiates to agree a Contract.
- d. Contract: any contract for the sale and delivery of Products between Kompany and the Buyer, any amendment or addition thereto, and any steps involved in the preparation or implementation of such contract.
- e. Products: vegetables, fruit and related products.
- f. Product description: the list of characteristics for any Product, such as quality grade, type, packaging and other relevant features.
- g. Grower: the natural person, legal entity or company belonging to a cooperative that is a member of the Kompany U.A. cooperative, registered in the commercial register under reference number 14117708, that produces the Products in respect of which in its own name, but at the risk and expense of the Grower, Kompany enters into Contracts with Buyers.
- h. Delivery '*ex logistics centre*': delivery from the warehouse of Kompany or of a logistics supplier engaged by Kompany. It has the same meaning to the Buyer as delivery '*ex works*' under the Incoterms 2010.
- i. Delivery '*ex Grower*': delivery from the Grower's production premises. It has the same meaning to the Buyer as delivery '*ex works*' under the Incoterms 2010.
- j. '*direct delivery*': delivery to the address specified by the Buyer. It has the same meaning for the Buyer as '*Delivered at Place*' under the Incoterms 2010.

Article 2 General

- 2.1 Kompany acts at all times as the (sub) agent of the Grower. All juridical acts performed by Kompany, such as entering into Contracts with Buyers, are performed in its own name, but at the expense and risk of the Grower.
- 2.2 These General Conditions form part of, and govern, all Offers made by Kompany, all Contracts made at any time between Kompany and the Buyer, and all other legal relationships between Kompany and the Buyer.
- 2.3 These General Conditions apply to the exclusion of any general and special terms and conditions of the Buyer. Any conditions that are different to these are expressly rejected unless expressly agreed otherwise in writing.
- 2.4 Any exceptions to these General Conditions, or any provisions, conditions or agreements that depart from these General Conditions, are only binding insofar as they have been expressly confirmed in writing by Kompany.
- 2.5 A Buyer to which these General Conditions apply is also deemed to agree that they shall also govern any subsequent Offers made by Kompany, and any Contracts entered into by Kompany with the Buyer, as well as all other later legal relationships between Kompany and the Buyer.
- 2.6 If, in the opinion of the relevant court, any provision of these General Conditions is invalid, or in breach of public order or of any law, then the relevant provision will be disregarded, and the remainder of these General Conditions will remain fully in force. The invalid provision will be replaced by a provision that is as close as possible to the intention of the parties.

Article 3 Offer, Contract and cancelation of orders

- 3.1 All Offers made by Kompany, wherever they are published or however else made, are without obligation and may be revoked by Kompany at any time, even if they specify a period for acceptance. If the Offer does not specify any period for acceptance, then this period is deemed to be 24 hours.
- 3.2 All images, descriptions, size and weight details and other information supplied by Kompany are without obligation and intended only as a general indication of the quality of the Products offered.
- 3.3 All Offers are made by Kompany to the best of its knowledge and with the greatest care. However, Kompany does not guarantee that there are no discrepancies with the Products actually supplied.
- 3.4 If the Buyer supplies Kompany with any documents, details, drawings, etc., then Kompany may assume that these are correct.
- 3.5 The Buyer must provide Kompany at all times, and in good time, with all information needed for the performance of the Contract, failing which the Buyer is liable to Kompany and the Grower for all loss arising therefrom. Kompany is only obliged to (continue to) perform the Contract once the Buyer has supplied all the information required by Kompany.
- 3.6 The Buyer must satisfy itself that the Products it has ordered / will order, together with their packaging, labels and other information, satisfy all government regulations applying in the country to which they are to be exported. The use of the Products and the conformity with the government regulations is at the risk of the Buyer.
- 3.7 Any (alleged) inaccuracies in the confirmation of order must be notified by the Buyer to Kompany in writing within one working day of the date of the confirmation, failing which the confirmation of order is deemed to be a complete and accurate reflection of the Contract.
- 3.8 Any changes or additions to the Contract are only binding if these have been agreed between the parties in writing or if the Contract is performed by Kompany in accordance with the changes or additions. These General Conditions apply in full to any changes to the Contract.
- 3.9 All juridical and other acts by, and any conduct of, an officer or employee of the Buyer in the context of drawing up, performing or changing a Contract between Kompany and the Buyer is deemed to be with the authority of the Buyer and therefore binds the Buyer. The Buyer cannot claim against Kompany that the party performing such acts, or behaving in such way, did not have the authority to lawfully represent or bind the Buyer.
- 3.10 Oral undertakings made by employees of Kompany only bind Kompany if and insofar as Kompany has confirmed this in writing to the Buyer.
- 3.11 The Buyer may only cancel an order if Kompany has agreed to this in writing. The Buyer must compensate Kompany within one week thereafter for any loss it has suffered as a result of the cancelation. This loss is fixed at a minimum of 30% of the sum invoiced, without prejudice to the right of Kompany to claim compensation for the full amount of its actual loss as a result of the cancelation of the order by the Buyer. The Buyer indemnifies Kompany and the Grower against all claims of any kind made against them by any third party for loss suffered by such third party as a result of the cancelation of the order by the Buyer.

Article 4 Prices

- 4.1 Unless agreed otherwise in writing, all prices are expressed in euros and based on delivery ex logistics centre. Unless expressly agreed otherwise, these prices are net of all packaging, transport and postage charges, insurance premiums, direct or indirect taxes, import and export duties and other duties. Unless agreed otherwise in writing, the said packaging, transport and postage charges, insurance premiums, direct or indirect taxes, import and export duties and other duties are at the risk and expense of the Buyer.
- 4.2 If the price of the Products to be delivered increases after the issue of the Offer or at any time during the Contract, for whatever reason, then Kompany is entitled to increase the price accordingly and pass this on to the Buyer without prior notice.

Article 5 Payment

- 5.1 Kompany invoices as a (sub) agent at the expense and risk of the Grower.
- 5.2 Kompany receives payment from the Buyer on behalf of the Grower.

- 5.3 Unless agreed otherwise in writing, all payments must be made in euros in the manner specified on the invoice
- a. if a daily invoice is sent, within eight days of the invoice, or
 - b. if a weekly invoice is sent, by no later than Tuesday of the week following that in which the weekly invoice is sent.
- 5.4 The Buyer is automatically in breach (i.e. without the need to first serve a formal demand or notice of default) if payment is not made within the relevant period specified in section 3 of this article.
- 5.5 In the event of a breach, the Buyer is liable to pay interest for late payment on the amount invoiced, or the unpaid part thereof, at the rate of 1.5% per month, calculated from the date the payment became due, up to the date of actual payment. All costs incurred in enforcing payment, including extrajudicial collection costs, are payable by the Buyer. The extrajudicial collection costs shall be at least 15% of the amount owed, or EUR 250, whichever is more.
- 5.6 If Kompany and/or the Grower issue any legal proceedings against the Buyer, including arbitration or conciliation proceedings, the Buyer must reimburse all costs actually incurred in the proceedings, including lawyers' fees, the fees of any arbitration or conciliation panellists, and court / arbitration fees. The provisions of this article apply even if the said costs exceed any order for costs made in proceedings pursuant to Article 237 et seq. of the Dutch Code of Civil Procedure.
- 5.7 Any payment by the Buyer will be first applied to clear any liability for costs, then to clear interest, and finally to clear the outstanding debts, in order of length of time outstanding, even if the Buyer specifies that the payment is in respect of a later invoice.
- 5.8 If payment of any invoice is not made on time, then all outstanding invoices, including those whose payment term has not yet expired, become immediately payable.
- 5.9 The Buyer must make a (partial) advance payment and/or provide such a guarantee of payment as Kompany considers appropriate, on demand by Kompany.
- 5.10 Any complaint about an invoice must be notified to Kompany in writing by no later than the payment date, failing which the Buyer is deemed to have accepted the invoice.
- 5.11 The Buyer is not permitted to set off any of its liability to Kompany with any liability it is owed by Kompany.
- 5.12 With regard to payments and settlement, the financial records of Kompany shall always constitute full proof.
- 5.13 Kompany is entitled to set off any liability it may have at any time to the Buyer against any liability of the Buyer and/or any persons or companies associated with the Buyer to Kompany and/or the Grower, whether or not due and payable, under conditions or subject to time limits.

Article 6 Delivery and transfer of risk

- 6.1 The Products are delivered ex logistics centre, unless agreed in writing that delivery is to be ex Grower or direct delivery. The parties may agree, irrespective of this section, that Kompany, a member of Kompany or the Grower is responsible for the transport of the Products, in which case the Buyer remains, however, liable for the risk of storage, loading, transport and unloading of the Products, unless agreed otherwise in writing.
- 6.2 The delivery periods stated by Kompany are approximate only and can never be regarded as deadlines. If Kompany fails to deliver in time, it must be served with notice of default by the Buyer within 24 hours, in which notice the Buyer must specify a reasonable period within which Kompany must comply with its obligations. The Buyer is not entitled to compensation for any direct or indirect loss of any kind resulting from failure by Kompany to deliver within the delivery period contractually agreed or stated by Kompany. In the event of failure to deliver within the delivery period, the Buyer is not entitled to cease or suspend its own obligations, or to terminate the Contract, unless the delay in delivery is such that the Buyer cannot reasonably be expected to continue with the Contract. In the latter case, the Buyer has no right to any compensation.
- 6.3 The delivery period is based on the working circumstances and anticipated weather conditions existing at the time the Contract is entered into and on the timely delivery of the goods required for the performance of the Contract. If any change to weather and working conditions and/or the failure to deliver the necessary goods on time results in any delay, the delivery period will be extended insofar as necessary.
- 6.3 Kompany is entitled to perform the Contract in parts and to invoice separately for each part delivery.

- 6.4 If the Products to be delivered are not purchased within the delivery period or if the Buyer does not comply with the agreed demand period, then Kompany is entitled to store, sell or destroy the Products at the expense and risk of the Buyer, without prejudice to its right either to enforce performance of the Contract or to terminate the Contract (without a court order) and without affecting its claim for damages to compensate it in full for loss, costs and loss of profits.
- 6.5 If the quantity of Products on any day is insufficient to meet all the delivery requirements of Kompany under any contract with the Buyers, then Kompany may divide the quantity of available Products between the Buyers on the basis of such allocation as it shall consider reasonable in all the circumstances, such that the allocation to season contracts shall have take priority over weekly contracts, and weekly contracts shall take priority over daily contracts.

Article 7 Inspections and complaints

- 7.1 The Buyer must inspect the Products for any defects or damage immediately they are delivered. If there are any defects or damage to Class I Products, the Buyer must notify Kompany in writing within 24 hours following delivery. Any defects or damage to Class II Products must be notified in writing by the Buyer within 4 hours following delivery and no later than 5 p.m. on the day of delivery. In all cases the complaint must specify the order number and the grower code contained on the packaging. If any complaint is made out of time or contains incomplete information, then any claim against Kompany and/or the Grower will lapse.
- 7.2 The Buyer cannot in any event establish any claim if a complaint is made to Kompany later than 48 hours after the time at which the Buyer could reasonably have discovered any defects or damage.
- 7.3 After discovering any defect or damage, the Buyer must take all steps, and refrain from any act, as is reasonably possible and necessary to prevent any further damage. The Buyer must also comply with any instructions from Kompany and cooperate fully with Kompany to enable the complaint to be investigated by, for example, enabling Kompany to investigate the circumstances surrounding the use of the Products. If the Buyer fails to cooperate or if any investigation of the complaint is not or no longer possible for any other reason, the Buyer can no longer establish any claim.
- 7.4 Delivered Products are deemed to comply with the Contract if any discrepancy in quantity/weight, size, quality or colour is limited. A discrepancy of up to 5% either way in the actual weight or quantity of the delivered Products is deemed to be a limited discrepancy. Any complaint about the quantity/weight of the delivered Products must be recorded on the delivery note upon receipt of the Products, failing which the quantities specified on the delivery note constitute absolute proof of the delivery of such quantities against any allegation by the Buyer to the contrary.
- 7.5 The Products are offered in accordance with a Product description. Buyers are deemed to understand the meaning of the Product description attributed by Kompany.
- 7.6 Products delivered by Kompany may only be returned with the prior written consent of Kompany, in which case they must be returned in their original condition and in their original packaging. The cost of returning the Products is the responsibility of the Buyer.
- 7.7 If Kompany finds any complaint to be justified, then it may, without being further liable to pay compensation, choose either to replace the relevant Products or to issue a credit note in respect of these Products, up to an amount not exceeding the sum invoiced. The guarantee set out in this article does not extend to defects that occur during, or as a result of, the processing or re-sale of the Products by the Buyer, due to normal ageing, due to any process, use, treatment or storage of any Products by the Buyer or its employees that is careless, incorrect or in breach of any instructions given by or on behalf of Kompany or the Grower, or due to any other cause other than normal use.
- 7.8 The existence of any defect or damage as referred to in this article does not entitle the Buyer to suspend any of its payment obligations. Any defects affecting some of the Products delivered will not entitle the Buyer to reject or return the entire batch of Products.

Article 8 Retention of title

- 8.1 Until the Buyer has paid in full all its obligations under all Contracts with Kompany, including for any work performed or to be performed by Kompany for the Buyer under such a Contract, and paid any claim for any breach by the Buyer of its obligations under such Contracts, Products delivered, or to be delivered, by Kompany remain the property of the Grower.

- 8.2 Kompany is entitled to recover from the Buyer at the Buyer's expense Products that remain the property of the Grower if the Buyer remains in breach of its obligations to Kompany and/or the Grower. The Buyer must enable Kompany to recover the Products.
- 8.3 Whilst the Products are subject to a retention of title, the Buyer is not entitled to dispose of these Products or to give them to any third party in any other way or under any title whatsoever, or to secure any form of security thereon, except in the normal course of its business. The Buyer has no right of retention in respect of the Products.
- 8.4 The Buyer must keep the Products separate from other products as clearly belonging to the Grower and to handle these Products with the appropriate skill and care.
- 8.5 As an exception to the provisions of Article 14 (1) of these General Conditions the property law consequences of the retention of title are governed by the law of the country with jurisdiction in the location where the Products are delivered.
- 8.6 In the case of Products intended for export, then as an exception to section 5 of this article, the property law consequences of the retention of title are governed by the law of the country to which they are to be exported if pursuant to such law the right to retention of title is not lost as soon as the price is paid in full.

Article 9 Force majeure

- 9.1 In the event of force majeure, Kompany and the Grower are released from their obligations under the Contract, without the Buyer having any right to compensation for costs and any direct or indirect loss of any kind whatsoever.
- 9.2 'Force majeure' affecting compliance by Kompany and/or the Grower means any independent circumstance outside the control of Kompany and/or the Grower that partially or entirely prevents their compliance with any obligation to the Buyer or as a result of which they cannot be reasonably expected to comply with such obligations, irrespective of whether such circumstance was foreseeable at the time the Contract was entered into. Such circumstance would include work stoppages, a stoppage in the transport of Products, disasters affecting Kompany or the Grower, adverse weather conditions, failed harvest, (civil) war, threat of war, natural or man-made disaster, lock-out, blockade, unrest, riot, fire, other business interruptions or government-imposed measures.
- 9.3 In the event of force majeure, Kompany is authorised as (sub) agent of the Grower to terminate the non-performable part of the Contract by written notice.
- 9.4 If when the force majeure arises any part of the Contract can still be performed, then Kompany is entitled to invoice separately for the Products already delivered and capable of delivery and the Buyer must pay such an invoice as though it related to a separate contract.

Article 10 Liability

- 10.1 Except insofar as liability and loss are covered by the insurance taken out by Kompany and/or the Grower, then Kompany and the Grower are not liable for any loss (including consequential loss, non-pecuniary loss, commercial loss and environmental damage) of any nature, whether direct or indirect, irrespective of how such loss arose and the persons who caused it. Insofar as liability and loss are covered by the insurance taken out by Kompany and/or the Grower, then Kompany and the Grower are only liable to compensate for loss up to the maximum amount paid out by their insurer(s).
- 10.2 The Buyer indemnifies Kompany and the Grower against any third-party claim of any kind against Kompany or the Grower for loss, including future loss, that exceeds any liability that Kompany and/or the Grower could have to the Buyer, except where any mandatory law specifies otherwise.
- 10.3 Any claim against Kompany and/or the Grower, except any claim which they acknowledge, will automatically lapse at the end of a twelve-month limitation period commencing on the date that the claim first arises.

Article 11 Suspension and termination

- 11.1 Without prejudice to their further right to compensation, and without the requirement to serve notice of default or seek a court order, Kompany and the Grower are entitled to (a) suspend and/or (b) terminate all or any part of the Contract and all further contracts related thereto, if:
- a. The Buyer fails to comply with any obligation under the Contract on time, correctly or at all;

- b. Insolvency or a moratorium is sought by or on behalf of, or been granted to, the Buyer, or - if the Buyer is a natural person - he applies for, or is granted, a debt rescheduling arrangement;
 - c. The Buyer's business is wound up, liquidated or ceased;
 - d. An attachment order is secured upon a substantial part of the Buyer's assets;
 - e. Kompany has justifiable grounds to fear that the Buyer is/will be unable to meet its obligations under the Contract and is unable to comply with any request by Kompany to provide any or adequate security for compliance with those obligations.
- 11.2 All claims that Kompany and/or the Grower may have at any time against the Buyer in the cases listed in section 1 of this article are immediately payable in full.
- 11.3 The Buyer is not entitled to claim any right to suspend or set off against Kompany and/or the Grower.
- 11.4 The Buyer is not entitled to terminate all or any part of the Contract if it is itself in breach of any of its obligations.
- 11.5 In the event of any termination or suspension under this article, neither Kompany nor the Grower have any liability to pay compensation to the Buyer.

Article 12 Intellectual and other property rights on, and use of, Products, packaging, labelling trade marks and trade names

- 12.1 Kompany is always free in its choice of packaging materials.
- 12.2 Unless the parties have agreed otherwise in writing, the packaging materials supplied by Kompany to the Buyer remain the property of Kompany. The Buyer is not permitted to sell, lease or otherwise encumber or supply to any third party any packaging materials. The Buyer must treat the packaging materials with the appropriate skill and care, and return them to Kompany in the same condition in which they were supplied to the Buyer. The cost of cleaning and repairing the packaging materials are payable by the Buyer.
- 12.3 Kompany is entitled to charge the Buyer for the use by the Buyer of the packaging materials, which payment will be refunded to the Buyer or set off against any liability of the Buyer once the Buyer has returned the packaging materials undamaged, to the satisfaction of Kompany.
- 12.4 The Buyer is liable for damage to, and/or loss of, packaging materials supplied by Kompany.
- 12.5 The Buyer may only use the trade and brand names and packaging used by Kompany in its business operations with the written consent of, and in accordance with the instructions of, Kompany.
- 12.6 The Buyer must closely follow the instructions of Kompany concerning the use of the trade and brand names and packaging supplied by Kompany.
- 12.7 All intellectual and industrial property rights and copyright belong at all times to Kompany.

Article 13 General provisions

- 13.1 The Buyer is not entitled to transfer to any third party any or all of its obligations under the Contract or any contracts derived thereunder.
- 13.2 If the circumstances based on which the parties entered into the Contract change in such a way that it is unreasonable to expect one or other of the parties to comply with one or more of these General Conditions, then the parties will negotiate to make changes to the Contract.

Article 14 Jurisdiction and disputes

- 14.1 All transactions to which these General Conditions apply are governed by Dutch law, to the exclusion of international treaties such as the Vienna Sales Convention, insofar as they do not include any mandatory rules of law.
- 14.2 All disputes arising between the parties will be brought exclusively before the court with competent jurisdiction for the district of Roermond, without prejudice to the right of Kompany to issue proceedings against the Buyer in any other court authorised by the law or by treaty. A dispute arises as soon as one party notifies the other of this in writing.
- 14.3 In the event of any discrepancy between the General Conditions and this English translation thereof, the Dutch version will take precedence.

Article 15 Commencement

These General Conditions come into force on 1 January 2011 and are filed by the Netherlands Chamber of Commerce for Limburg under reference number 12060568.