

## **GENERAL PURCHASE CONDITIONS FOR FRUIT AND VEGETABLES of The Greenery B.V. (version 1.0 dated 1 January 2014)**

### **1. Definitions**

In these general purchase conditions for vegetables, fruit and mushrooms (hereinafter, "purchase conditions") the following terms have the following meanings:

The Greenery: the private limited company The Greenery B.V., with its registered office in The Hague.

Supplier: the natural person or legal person with whom the product supply contract is or will be concluded.

Parties: The Greenery and Supplier jointly, Party: The Greenery or Supplier separately.

### **2. Applicability**

These purchase conditions apply to the purchase of vegetables, fruit and mushrooms between The Greenery and Supplier when these are disclosed to Supplier before or at the formation of a contract between them, other than as agreed otherwise in writing. The Greenery reserves the right to amend these purchase conditions unilaterally. The amended purchase conditions come into force as from the moment that Supplier reasonably had the opportunity to become aware of them.

### **3. Other general conditions**

The applicability of any general conditions of Supplier is explicitly excluded, unless The Greenery and Supplier agree otherwise and The Greenery confirms this in writing.

### **4. Conflicting stipulations**

Insofar as any stipulation of these purchase conditions should be contrary to any provision of a written agreement which is not these general conditions between The Greenery and Supplier, that stipulation shall not apply but all other stipulations of these purchase conditions remain fully in force.

### **5. Formation of a contract**

- 5.1 A contract is understood to mean a written document issued by The Greenery that constitutes an expression of intent for supply by Supplier. This order can include an acceptance of a tender by Supplier, but applies as an offer by The Greenery if this order deviates from the tender or as the case may be if The Greenery places an order without a prior tender by Supplier.
- 5.2 A tender is an offer by Supplier.
- 5.3 An order confirmation is an acceptance by Supplier or the order placed by The Greenery. Any differing order confirmation by Supplier constitutes an offer by Supplier.

### **6. Prices**

The prices agreed are fixed, expressed in Euros, exclude VAT but include costs for packaging, insurance, and loading.

## 7. Changes

- 7.1 The Greenery is authorized to request that the amount and/or properties of the goods to be supplied are changed. The Greenery can change the nature and/or amount of services to be performed by Supplier.
- 7.2 If this in the Supplier's opinion has consequences for the agreed price and/or quantity and/or delivery time, it will so notify The Greenery in writing as quickly as possible, before acting on the change, but no later than 2 days after notice of the change requested. If these consequences for price and/or delivery time are unreasonable in The Greenery's opinion, The Greenery and Supplier will re-negotiate this. If such negotiation does not lead to consensus, The Greenery reserves the right to cancel the contract. The Greenery is obliged in such a case to reimburse Supplier for its reasonable costs already incurred.
- 7.3 Changes shall be agreed in writing. Supplier may not make any changes or carry out any changes without The Greenery's written order or consent.

## 8. Quality

- 8.1 Supplier guarantees that the delivered goods conform to the contract, that they meet the quality, requirements and specifications set therein and that the goods are free of defects.
- 8.2 Supplier guarantees for purchases made against sample that the quality and characteristics of the delivered goods possess a quality and characteristics matching those of the sample.
- 8.3 Supplier guarantees that the delivered goods and/or services satisfy at the time of delivery all applicable law, decrees, and other regulations promulgated by government.
- 8.4 Supplier must be GlobalGAP certified for the delivered goods and hold a GlobalGAP certificate.
- 8.5 Supplier also guarantees with respect to the delivered goods that:
  - a. only plant protection products permitted by law in the country of production have been used and that the goods contain no residue (traces) of any such products that are not admitted for agricultural use in the country of production;
  - b. the goods are in compliance with Maximum Residue Levels in accordance with EU Regulation 396/2005 and with the maximum levels for contaminants in accordance with EU Regulation 1881/2006, as well as supplementary rules under the same Regulations;
  - c. a current and complete register of plant protection products used is maintained and that Supplier can furnish this current and complete at the request of The Greenery within 4 hours (digitally);
  - d. all outer packaging and consumer packaging are marked in such a way that their traceability is guaranteed down to the grower/plot level;
  - e. packaging materials offer no danger to food safety in accordance with EU Regulation 1935/2004 and any other applicable regulation;
  - f. these are not genetically modified products and/or products that have undergone ionizing radiation;
  - g. these comply with all relevant legislation on allergens;
  - h. if wood is used for pallets and/or packaging on which and/or in which the goods are delivered, this wood is handled in accordance with applicable international regulation;
  - i. Supplier will immediately notify The Greenery when the products delivered or to be delivered do not meet the requirements set out above, as well as in cases of contingencies.
- 8.6 Supplier guarantees that the delivered goods in normal use are not harmful to the environment.
- 8.7 When performing services for The Greenery Supplier will collect and/or have collected all waste generated and processed in accordance with applicable standards. Supplier guarantees that all it will observe all food safety rules that are made known on site on bulletin boards or otherwise.

- 8.8 By delivering the contracted goods Supplier consents to the content of the supplier's declaration sent to it in advance by The Greenery.

## **9. Packaging**

- 9.1 The goods must be properly packed and loaded onto EPS-pallets, EU/Europallets, Düsseldorfer pallets or (single use) DPA pallets and must reach their destination by normal transport in good condition. Packaging must also be suited for storage. If and to the extent that Supplier has not packaged the goods well, The Greenery is entitled to return these goods. Supplier is liable for damage caused by inadequate packaging.
- 9.2 If Supplier delivers the goods on EU/Europallets, Düsseldorfer pallets or (single use) DPA pallets, it is bound to take these pallets from The Greenery's central container organization or, in consultation with The Greenery's central container organization, from some other container organization.
- 9.3 Insofar as the goods are supplied at the request of The Greenery in packaging materials affixed with some Greenery-specific imprint (such as trademarks or logos owned by The Greenery), such packaging materials must be obtained via The Greenery.
- 9.4 The Greenery is entitled at all times to return the packaging materials and pallets to Supplier. Return shipments of packaging materials are done on account and at the risk of Supplier and to the address provided by Supplier to The Greenery. If Supplier has not provided The Greenery with the address for return shipments The Greenery will ship packaging materials and pallets to Supplier's nearest location.
- 9.5 If The Greenery provides Supplier with requirements for the manner of packaging Supplier is bound to comply with these requirements.

## **10. Delivery**

- 10.1 Unless the Parties agree otherwise in writing, the contracted delivery date is a strict deadline. If Supplier fails to deliver on time it is thereby in default by operation of law and without default notice.
- 10.2 Unless the Parties agree otherwise in writing, delivery shall be free domicile at the agreed location of The Greenery.
- 10.3 As soon as Supplier knows or should know that it will fall short in the timely or correct fulfilment of the contract, it shall so notify The Greenery in writing as quickly as possible but no later than within 12 hours stating the reasons for this.
- 10.4 Supplier is liable for damage by The Greenery and its customers that is a consequence of Supplier's failure to deliver at all or on time.
- 10.5 The Greenery is deemed with each acceptance of a delivery to have made a reservation with respect to the quality and contents of the delivery. If the delivered goods are not as contracted, The Greenery has the rights as set out in article 12.4, sub a, b and c.

## **11. Transfer of ownership**

Ownership of the goods transfers from Supplier to The Greenery at the moment of delivery within the meaning of article 10. Supplier holds the goods at its own risk and account until the moment at which ownership is transferred.

## **12. Inspection and consequences of rejection**

- 12.1 The Greenery, or any third party of its designation, is entitled to subject the goods to inspection before, during, and after delivery of the goods. Supplier shall lend its cooperation to this, including by giving access to the place where the goods are stored and by allowing the inspection of documents needed for inspection.

- 12.2 If the delivered goods both before and during delivery do not fulfil the contract and are rejected for that reason The Greenery shall so notify Supplier. Supplier is then bound to take the measures necessary in order to fulfil the contract.
- 12.3 If the delivered goods are rejected after delivery, The Greenery shall so notify Supplier as quickly as possible. When the rejected goods are included in the schedule "Qualitätscontrole claimtermijnen" [Quality Control Claim Periods], annexed to and forming part of these purchase conditions, The Greenery must have given notice of the rejection within the period of time shown there so that Parties can determine whether the goods can determine whether the goods meet the stated quality class within (at a minimum) the stated claim period. The claim period commences at the moment of delivery within the meaning of article 10.2. The claim period in the annex has no effect on The Greenery's right to reject the goods at some later time due a latent or hidden defect.
- 12.4 The Greenery shall also notify Supplier simultaneously with its rejection notice what consequences it wishes to attached to the rejection of the goods. The Greenery may elect to:
  - a. return the delivered goods at the cost of Supplier and to demand performance, whether or not in combination with damages;
  - b. dissolution of the contract in whole or in part in accordance with article 14, whether or not in combination with damages;
  - c. price reduction with the proviso that the Parties must achieve agreement on the amount of the price reduction.
- 12.5 Supplier is liable for all costs The Greenery must incur due to the rejection of delivered goods, such to include the cost of inspection.
- 12.6 Ownership of the goods passes at the moment of their rejection to Supplier. As from that moment The Greenery is holding the goods at Suppliers risk and account.
- 12.7 The circumstance that the goods are inspected does not relieve Supplier of any liability, including for damage suffered by The Greenery in consequence of hidden defects in the delivered goods.

### **13. Payment**

- 13.1 The Greenery shall pay the invoice within 30 days of its receipt provided the delivered goods have been received and approved.
- 13.2 Payment by The Greenery does not constitute waiver of any right.
- 13.3 The Greenery is entitled to set off payments it owes to Supplier for delivered goods and/or services by any amounts still owed by Supplier. Set-off by Supplier is possible only with the consent of The Greenery. The Greenery is entitled to suspend payment of amounts it owes to Supplier for delivered goods and/or services without giving notice when Supplier fails to fulfil its obligations to The Greenery or, as the case may be, set off by other amounts owed by Supplier.

### **14. Dissolution**

- 14.1 In case of shortcoming by Supplier in the fulfilment of its obligations under the contract or other agreements that may ensue from it, as well as when Supplier is bankrupt, has a moratorium, is attached, ceases operations, has its environmental permit withdrawn, is in liquidation or any similar situation for Supplier's company, Supplier is thereby in default by operation of law and without need for any notice.
- 14.2 The cases named in paragraph 1 of this article entitle The Greenery to dissolve the contract in whole or in part and/or to suspend its payment obligation and/or to transfer implementation or all or part of the contract to third parties without The Greenery being bound to make any compensation and without prejudice to The Greenery further rights, such to include the right to full compensation for damages and refund of the purchase price.

- 14.3 In the cases named in paragraph 1 of this article all claims that The Greenery may have or acquire on Supplier fall immediately due and payable in full.

### **15. The Greenery's Liability**

The Greenery's liability towards Supplier is limited to the purchase price of the goods for which the contract (of purchase) has been concluded.

### **16. Confidentiality**

- 16.1 Supplier guarantees the confidentiality of all business information from third parties, such as recipes, the launch of new products, as well as know-how in its broadest meaning, coming from The Greenery that comes or is brought to its knowledge in any way.
- 16.2 Supplier is not permitted to publicize the implementation of the contract in any way, without The Greenery's prior written consent. The Greenery can attach conditions to its consent.
- 16.3 Supplier is not permitted to duplicate any documents pertaining to the contract, or to duplicate any other company information and disseminate or disclose it to third parties other than as required in the framework of implementing the contract and with The Greenery's prior written consent.
- 16.4 Supplier shall also impose the obligations of this article on its own personnel and/or third parties engaged for the implementation of the contract that are involved in the implementation of the contract.

### **17. Intellectual property**

- 17.1 Supplier guarantees that the use of the goods it delivers, or of auxiliary materials purchased or fabricated on behalf of The Greenery shall not result in any infringement of patent rights, trademark rights, design rights, copyrights, or any other third party intellectual property rights.
- 17.2 Supplier indemnifies The Greenery for claims ensuing from any infringement of the rights referred to in the preceding paragraph and will reimburse The Greenery for all damage consequent to any infringement.
- 17.3 The graphic designs, printing plates, print proofs, reproduction materials, auxiliary materials, packaging, etc. that are fabricated on behalf of The Greenery is and remains property of The Greenery, may not be used by third parties, and all intellectual property rights to these are held exclusively by The Greenery. Supplier must return these properties immediately and at no additional cost to The Greenery.

### **18. Assignment**

- 18.1 Supplier shall not assign its rights and obligations ensuing from the contract in whole or in part to third parties without The Greenery's prior written consent. Claims of Supplier on The Greenery cannot be assigned without The Greenery's prior written consent.
- 18.2 Supplier shall not subcontract the implementation of its obligations under the contract in whole or in part to third parties without The Greenery's prior written consent.
- 18.3 The Greenery is entitled to deny its consent within the meaning of this article or to attach conditions to it.

### **19. (Product)liability and insurance**

- 19.1 Supplier is liable for and indemnifies The Greenery against all loss of whatever its nature that may be suffered by The Greenery or by third parties in consequence of defects in Supplier's product and in goods delivered by it, whereby these do not offer the safety that one might expect of them.

- 19.2 Supplier is liable for and indemnifies The Greenery for all damage that may be suffered by The Greenery or by third parties in consequence of its own acts and omissions, those of its personnel, or of those it engages for the implementation of the contract.
- 19.3 Supplier indemnifies The Greenery for third party claims for compensation of damage on the ground of liability within the meaning of the two preceding paragraphs.
- 19.4 For the application of this article personnel and employees of The Greenery are also deemed to be third parties.
- 19.5 Supplier shall insure itself sufficiently against liability within the meaning of this article, with an exclusion of right of recourse against The Greenery or its customers. Supplier shall allow The Greenery to inspect the policy on request.

## **20. Force Majeure**

- 20.1 A Party is not bound to fulfil its obligations under the contract to the extent it gives evidence:
  - a. that it was prevented from fulfilment due to one or more events that lie out of the area of influence of the Party concerned, and;
  - b. that the event concerned could not be foreseen at the time of concluding the contract and the Party concerned reasonably also did not need to allow for such an event occurring such that this Party would be prevented from fulfilment, and;
  - c. that the Party concerned also reasonably does not have to take the consequences of the circumstances named above at a. and b. for its own account and risk.
- 20.2. In case of force majeure, the obligations of both Parties are suspended for the duration of the force majeure situation, all this excepting any part of its obligations that can still be carried out. The Greenery is bound in such a situation to pay only for any contractual commitments that are in fact carried out .
- 20.3 The Greenery and Supplier will each pay for the damages and costs it incurred insofar as these are a consequence of the force majeure situation.

## **21. Applicable law and competent court**

- 21.1 Dutch law applies to the contract and to all agreements ensuing from it. The application of the United Nations Convention on Contracts for the International Sale of Goods ( Vienna, 1980) (CISG) is thereby excluded.
- 21.2 All disputes (including any so deemed by only one Party) that may arise pursuant to or ensuing from agreements between Parties will be adjudicated the District Court of The Hague.

These general purchase conditions were deposited on 1 January 2014 with the Chamber of Commerce of Rotterdam

## Qualitätscontrole Claimtermijnen

[Quality Control Claim Periods]

These claim periods apply to defects that were not visible at the time of delivery of the product.

**These claim periods do not apply to Class II and industry products.**

Claim period per product (in days, unless stated otherwise).

Product	Class I Number of days
strawberries	2
woody small fruit, stone fruit	2
endives (glass/open ground)	2
apples/pears	4
asparagus	2
aubergines	3
gherkin	2
celery	2
cauliflower	2
broccoli	2
Chinese cabbage	2
courgette yellow	2
courgette green	3
fennel	2
cucumbers	3
mini cucumbers	3
kohlrabi	2
head lettuce	2
melon	3
paksoy	2
mushrooms	2
paprika	3 (far destinations 5)
paprika green from green	2
paprika green	2
peppers	3
leek	3
rhubarb	2
radish	2
spinach	2
Brussels sprouts	2
snap beans	2
cabbage	10
tomato, round & meat	4
tomato, cherry	4
French endive	2
Radicchio rosso	2
winterpeen carrot	5
bospeen carrot	2