

General conditions of Sale and Delivery of FresQ with its registered office in De Lier filed with the Haaglanden Chamber of Commerce

ARTIKEL 1 Definitions and general rules

1.1 In these general terms and conditions the following definitions will have the following meanings, unless expressly stated otherwise:

Seller: the user of the general terms and conditions, namely FresQ or an (indirect) subsidiary of FresQ, that aims to sell the cultivated or produced goods by the members of FresQ.

Buyer: the opposite party of Seller, carrying on a company or a business.

Agreement: an Agreement between Seller and Buyer.

Owner: the owner of the goods sold or delivered by Seller to Buyer, namely the paragraph of FresQ relating to the sold or delivered goods that have been cultivated or produced.

1.2 These conditions apply to all offers, tenders, Agreements and deliveries by Seller, to which Seller has declared these conditions applicable in as far as they do not conflict with the agreements as laid down between Seller and Buyer. These conditions also apply to all Agreements whose execution involve third parties.

1.3 The Buyer's general (purchase) terms and conditions only apply in addition to these conditions if expressly agreed by parties in writing. In the event of any conflict between the terms and conditions of the Buyer and these terms and conditions, then these conditions shall prevail.

1.4 If any provision in these terms and conditions is null and void or [is avoided], the other provisions in these terms and conditions will remain fully in effect. Seller and Buyer shall consult with each other to agree new provisions to replace the void or avoided ones. In doing so, the purpose and the meaning of the void or voided provision will be taken into account as far as possible.

ARTIKEL 2 Buyer's Offers and representation

2.1 Offers and tenders made by Seller are free of obligation and are only accepted without deviations. Offers and tenders are deemed expired if they are not accepted within one month.

2.2 By placing their signature, the person who signs on behalf of Buyer declares that they are authorised to represent Buyer and that all the necessary formalities have been fulfilled.

ARTIKEL 3 Prices

3.1 All prices are in Euros, excluding transport and packaging costs and excluding BTW (Dutch VAT). All levies, surcharges, taxes, extra costs, etc., imposed by (semi-) government bodies on Seller concerning the products sold, will be payable by Buyer.

3.2 Seller is not obliged to fulfil an Agreement at a price mentioned that is clearly based on a print or writing error.

3.3 Oral promises by, and agreements with, Seller's employees only obligate Seller after and in as far as confirmed in writing by the employee concerned.

ARTIKEL 4 Delivery location, method of delivery and risk

4.1 The place of delivery is determined per (purchase) Agreement. If this has not been agreed then this will be determined by Seller, the location will be as close as possible to the cultivation, production or packaging location.

4.2 If it is agreed that the products sold will be transported by or on behalf of Seller, then the transfer will occur on delivery of the products sold at the agreed location.

4.3 If the products sold will be stored for Buyer by or on behalf of Seller, then the delivery will occur when the products sold are stored.

4.4 A delay in the delivery, in as far as this stays within reasonable limits, does not Buyer the right to dissolve the Agreement.

4.5 The risk of the products sold will be passed to Buyer on delivery of the products sold and, if Buyer does not cooperate with the delivery, at the time of refusing delivery.

ARTIKEL 5 Delivered quantity

5.1 The delivered quantity is deemed to meet the agreed or respectively prescribed conditions regarding number, weight and requirements under public or private law unless Buyer provides evidence to the contrary.

ARTIKEL 6 Delivery period

6.1 Specified or agreed delivery times or dates are not strict deadlines. Default commences only after a notice of default is given. A reasonable term for compliance is based on the reasonable term as applicable in Seller's sector.

6.2 The specified or agreed delivery times or dates are based on the working conditions, production expectations or timely delivery to Seller of ordered stocks, materials or parts applicable at the time of entering into the Agreement.

6.3 If delivery is not possible or if the delivery period is exceeded, irrespective of the cause of the problem, Seller is not liable to pay any damages.

6.4 If the delivery period is exceeded, this does not entitle Buyer to cancel the purchase or to suspend his payment obligations or to fail to meet these on time.

ARTIKEL 7 Inspection by Buyer after delivery and complaints period

7.1 If Seller will provide the transport (as referred to in article 4 paragraph 2), then Buyer must inspect the delivered products with regard to whether they meet the conditions of the Agreement, namely:

a. If the correct goods have been delivered;

b. If the delivered goods meet the quality requirements for normal use or commercial purposes in accordance Dutch law; and

c. If the quantity of delivered goods (number and weight) is in accordance with the agreements. If a difference in weight or quantity of up to and including 3% of the total is established, then Seller will not owe a refund. If a difference in weight or quantity of between 4 and 10% of the total is established, then Buyer shall fully accept the delivery subject to a proportionate price reduction or increase.

7.2 Complaints on shortcomings, including differences in quality or quantity, must be reported to Seller as soon as possible after the defect could have reasonably been discovered, but no later than 24 hours after the delivery, and must subsequently be confirmed in writing and via photos within eight hours. Seller is not liable for unidentifiable defects to fresh products, unless Buyer proves that Seller or his manufacturers were aware of this.

7.3 If the delivery will take place at Seller's selling location, Buyer must inspect the purchased goods immediately after delivery in accordance with paragraph 1. Acceptance of the delivery also means acceptance of the delivered quality and quantity.

7.4 If the goods are delivered to a third party who will keep them on behalf of Buyer, then Buyer is obligated to conduct an inspection as referred to paragraph or to have the goods inspected by the third party concerned, and the periods in accordance with article 7 paragraph and 2 apply from the time of delivery to the third party.

7.5 In the event of a defect, Buyer must store the entire delivered goods and must allow Seller, or a third party as appointed by Seller, to view the delivered goods, unless parties agree otherwise.

7.6 Buyer must always act as a prudent debtor with regard to storing the goods.

7.7 Submitting a complaint does not release Buyer from his payment obligations in accordance with article 8 of these terms and conditions, unless Seller has accepted the complaint in writing and has agreed to releasing Buyer from his payment obligations.

7.8 If Seller considers the complaint well-founded, it is at Seller's discretion to take back the goods upon a refund of the purchase price or to replace the goods. Buyer is not entitled to damages. In the event of a well-founded complaint, in particular outside of Europe, the costs of taking back the goods and refunding the purchase price and/or replacing the goods will be 50% for the account of Seller and 50% for the account of Buyer.

7.9 Goods can only be returned by Buyer, after Seller has agreed to this in writing. All return shipments will occur at the expense and risk of Buyer.

ARTIKEL 8 Payment

8.1 Seller must receive payment within 14 days after the invoice date.

8.2 Each payment of unpaid invoices is deemed to apply to the oldest unpaid invoices.

8.3 Buyer has only fulfilled his payment obligations after the invoiced amount is added to Seller's bank account, this also applies to cheques. If the credit date exceeds the agreed payment period, Seller has the right to charge interest by means of an interest invoice.

8.4 In the event of a failure in the fulfilment of the Agreement, any costs of legal proceedings incurred by Seller will be payable by Buyer. Extrajudicial collection charges amount to at least 15 of the total amount owed, subject to a minimum of € 20.00. In the event of an overdue payment, the interest payable by Buyer amounts to 1% of the invoice amount for each month or part of a month that the expiry date is exceeded.

8.5 Buyer is not entitled to a payment discount, nor is he entitled to deduct or settle amounts with the invoice amounts, pursuant to any reason whatsoever. Buyer is only entitled to settle Seller's credit notes.

8.6 Complaints, the issuing of credit notes or a failure in the performance by Seller can never give cause to not paying the undisputed part of the invoice on time. Article 8 paragraphs 3, 4 and 5 continue to apply fully here.

8.7 In the event of a failure to pay an amount that is due and payable, an application for a suspension of payment, bankruptcy, debt rescheduling, winding up of Buyer's business or seizure of Buyer's property, Seller is entitled to dissolve the Agreement, or the unfulfilled part of the Agreement, and to take back unpaid goods, without prejudice to the right to payment for loss of profit and/or direct/indirect loss suffered. In these cases every claim by Seller against Buyer is immediately due and payable.

8.8 Seller always has the right to request a bank guarantee or similar security from Buyer for (part of) the purchase price.

ARTIKEL 9 Retention of title

9.1 Goods delivered by Seller will remain in the possession of Owner until full payment of all claims by Seller against Buyer pursuant to all Agreements, including interest and costs.

9.2 Buyer is only permitted to sell goods supplied by Seller under retention of title, that pursuant to paragraph fall under the retention of title, in the context of his normal business activities.

9.3 Buyer will insure the goods delivered under retention of title against theft and fire, and from damage due to explosions and/or water damage.

9.4 If Buyer fails to meet his obligations or if there is a reasonable fear that he shall fail to meet his obligations, then Owner, or on his behalf Seller, is entitled take back the delivered goods which fall under the retention of title as referred to in paragraph 1 or to have them taken back. Buyer and the holder on behalf of Buyer are obligated to provide their full cooperation.

9.5 If a third party wants to claim a right to goods supplied under retention of title, Buyer is obligated to immediately notify Seller of this.

9.6 Buyer undertakes to provide cooperation, within reasonable limits, to all measures taken by Owner, or on his behalf taken by Seller, to protect the ownership right concerning the delivered goods.

ARTIKEL 10 Force majeure

10.1 In the event of force majeure of a permanent nature, Seller is entitled to dissolve the Agreement with immediate effect without any obligation to pay damages.

10.2 In the event of force majeure of a temporary nature, Seller is entitled to suspend the fulfilment of the Agreement or to immediately dissolve the Agreement.

10.3 Force majeure of a temporary or permanent nature is understood to mean: all circumstances preventing the fulfilment of the Agreement, even if they were reasonably foreseeable at the time of realising the Agreement, including but not limited to storm damage and other weather conditions or their consequences, fire, war, threat of war, state of siege, mobilisation, hostilities, lockout, labour shortage, transport problems, import, export or transport bans, failure or untimely delivery by our suppliers, stagnation in ports or during the transport, strikes and all other circumstances that Seller was not reasonably able to avoid.

ARTIKEL 11 Seller's liability

11.1 Seller is not liable for damage in the event of force majeure. Additionally, Seller is only liable for direct damage in the event of intent or gross negligence by him or his subordinates up to a maximum amount as mentioned on the invoice of the goods concerned. Seller is not liable for any other damage, under whatever name, including consequential and/or trading loss.

11.2 Buyer indemnifies Seller for claims by third parties concerning the delivered goods.

ARTIKEL 12 Seller's rights concerning Buyer's breach of contract

12.1 If Buyer fails to (timely) meet his obligations as described here, then Buyer will be in default and Seller will be entitled to suspend further delivery and to dissolve the Agreement via a written notice and without judicial intervention. Buyer is also liable for all damage/loss suffered by Seller, including loss of profit, loss suffered, product damage, costs, interest, transport costs, commission, judicial or extrajudicial costs, including all further direct or indirect damage or costs concerning the purchase.

ARTIKEL 13 Packaging

13.1 Packaging supplied via Seller including - pallets, casks, crates and boxes – on which a deposit has been agreed and calculated, will remain the property of Seller or his supplier and will be returned at the invoice price applicable at the time of return, plus a fixed packaging refund in accordance with the applicable and agreed arrangement. The cask that is to be returned must be in a clean and fresh state, such that it is suitable for fresh, edible horticulture products.

13.2 Packaging that is to be collected via Seller's own means of transport will be sorted and ready for transport.

13.3 Packaging that has not been delivered via Seller is only collected by Seller in as far as this is part of his own product range.

ARTIKEL 14 Intellectual property rights

14.1 Seller expressly reserves intellectual property rights (including brands) in connection with products supplied by him.

14.2 Buyer is only permitted to resell the supplied goods in the delivered packaging and capacity using Seller's brand or specifications.

14.3 Buyer is not permitted to supplement the supplied goods with goods of a different origin than from Seller, with the intention of reselling this as one whole with the Seller's brands and specifications.

14.4 Derogations to paragraphs 1, 2 and 3 are only permitted with the Seller's express, written approval, and shall contain a description of the permitted deviation and the period within which the granted permission applies.

ARTIKEL 15 Applicable law and choice of forum

15.1 All Agreements are exclusively governed by Dutch law. The applicability of the so-called Uniform Sales Acts and the Vienna Sales Convention are expressly excluded.

15.2 In the event of a difference in interpretation between a translation of these conditions and the Dutch text of these terms and conditions, the Dutch version shall serve as the guiding version.

15.3 All disputes arising from offers or tenders or Agreements by Seller shall firstly be settled by the competent court (within the district) of The Hague (the Netherlands). If the opposite party is a Dutch party and the claim amounts to €5,000 or less, then contrary to the foregoing the statutory relative competency rules.