



# The General Terms and Conditions of Sale and Delivery of Fruit Market International BV based in Barendrecht

## Article 1 Definitions

1. In these terms and conditions, "Buyer" means: the natural person or legal entity to whom an offer is made or addressed and/or with whom an agreement is entered into within the context of these terms and conditions.
2. "Seller" means: **Fruit Market International BV**, based in Barendrecht.

## Article 2 Applicability

1. The following terms and conditions apply to all the Seller's offers and all agreements entered into, or transactions carried out, by the Seller.

## Article 3 Price quotations and offers

1. Acceptance of a price quotation or offer made by the Seller is subject to acceptance of these terms and conditions.
2. All the Seller's price quotations and offers, including those listed in brochures and price lists, are non-binding and may be revoked in no prescribed form.
3. Where a price quotation contains a non-binding offer and this is accepted, the contractor reserves the right to revoke the offer within two working days of receipt of acceptance.

## Article 4 Applicable law, disputes

1. All agreements entered into with the Seller are governed by Dutch law whereby these terms and conditions constitute a supplement and, insofar as binding provisions do not dictate otherwise, apply as derogation. Applicability of the Vienna Convention is expressly excluded. The Dutch language version of these terms and conditions shall be normative and will take precedence should there be any differences between it and the texts of other language versions of these terms and conditions.
2. Any disputes between the Seller and third parties will fall under the jurisdiction of the competent court in Rotterdam, including any

provisions made in interlocutory proceedings, barring exceptions by virtue of statutory rights.

## Article 5 Delivery, packaging and risk

1. Goods sold by the Seller will be supplied from the warehouse, unless expressly agreed otherwise. Delivery times are approximate only. They will never be considered binding, unless expressly agreed otherwise. Consequently, in cases of non-timely delivery, the Seller is to be issued with a written default notice.
2. Reusable packaging supplied by the Seller (including pallets, crates and boxes) for which a deposit has been charged, will be accepted for return against the current invoice price at the time of return, plus fixed compensation for packaging where necessary.
3. The Buyer is obliged to accept the purchased goods at time of delivery, or when they are made available as per the agreement. If the Buyer should refuse delivery, or is negligent in providing information or instructions required to facilitate delivery, the goods will be stored at the risk of the Buyer. In that case, the Buyer will be liable for all additional costs, including, in any event, storage costs.
4. All risks and liabilities relating to the goods sold will lapse as of the moment that these are made available by the Seller to the Buyer.
5. Goods cannot be returned without prior permission from FMI.

## Article 6 Right of recovery and retention of title

1. The Buyer is obliged to immediately inspect the Products, packaging and consumer packaging once they have been made available. Any defects or damages found in the Products, packaging or consumer packaging discovered during inspection will be reported by the Buyer on the delivery note, unless otherwise agreed or published by the Seller, failing which the Buyer cannot rely upon these defects or damages.

2. Upon discovery thereof, the Buyer must immediately inform the Seller in writing of any defects that could not have been discovered during the inspection referred to in the previous paragraph. In any event, the Buyer must report any defects within 12 (twelve) hours after the Products have been made available to the Buyer, or after such time that they are considered to have been made available. Should the Buyer fail to make written report of any defects, the Buyer cannot later rely upon the defects.
3. The Buyer may not refuse to accept delivery of the Products without the Seller first being consulted in this regard. Should the Seller not be consulted, delivery of the Products will be considered to have been accepted. As of the moment that the Products have been made available to the Buyer, or are considered to have been made available to the Buyer, they will be at the risk of the Buyer.
4. All delivered Products carry an extended and extensive retention of title. The title shall be retained until all rights that accrue to the Seller under the current and future trade relationship with the Buyer have been secured, up to and including the settlement of all open debts. The property-law consequences of the extended and extensive retention of title are subject to the laws of the country of destination.
5. Should the Products sold and delivered by the Seller be brought under the jurisdiction of Germany, please refer to our German General Terms and Conditions of Sale and Delivery, also filed at the Chamber of Commerce in Rotterdam.

## Article 7 Force majeure

1. Circumstances beyond the control of the Seller, which are of such a nature that fulfilment of the agreement, either partially or in its entirety, can no longer be expected of the Seller, entitle the Seller to terminate the agreement either partially or in its entirety and/or to

suspend its execution without any liability for compensation.

2. The circumstances referred to in the previous clause of this article include, among others: failure to deliver or incomplete/delayed delivery by a supplier of the Seller, war or risk of war, complete or partial mobilisation, import and export prohibitions, measures implemented by Dutch and/or foreign government authorities that make execution of the agreement more problematic or costly than could have been anticipated, frost, labour strikes and/or occupation of business premises, epidemics, traffic disruptions, loss or damage during transportation, fire, theft, disruptions to energy supply, machine defects, whether within the Seller's business or that of third parties from whom the Seller obtains goods in their entirety, and all other arising causes that are beyond the control of the Seller.

#### **Article 8 Liability**

1. The Seller's liability is limited to the amount covered by the Seller's insurance policy, if and insofar as such liability is covered by the Seller's insurance. If the insurer fails to pay out, or the loss is not covered by insurance, liability is limited to the value of the invoice.

2. However, in the case of intentional damage or gross negligence by the Seller or the Seller's managing subordinates, the Seller is fully liable for losses.

#### **Article 9 Prices**

1. The prices advised by the Seller apply to delivery from the warehouse and exclude transport costs, packaging and VAT, unless expressly agreed otherwise.

#### **Article 10 Payment**

1. Unless otherwise agreed in writing, payment is due within thirty (30) days of the invoice date.

2. If the Seller does not receive payment within the agreed term, the Buyer is legally in default and is liable to pay the Seller interest at 1% per month on the sum

outstanding, with effect of the due date, without recourse to any reminder or default notice, this without prejudice to the Seller's right to claim immediate recovery of the amount owed, plus interest and costs for judicial or extrajudicial recovery. The costs of extrajudicial recovery will be determined by the parties based on the applicable tiered collection rate, the costs of which will be payable in addition to legal costs in the case of judicial recovery. If the Seller can show that he incurred higher costs which were reasonably necessary, these will also qualify for compensation.

#### **Article 11 Retention of title**

1. Goods supplied by the Seller remain the property of the Seller until the Buyer has fulfilled all obligations arising from any sales agreements entered into with the Seller:

a. the quid pro quo concerning the goods themselves supplied, or to be supplied;

b. the quid pro quo concerning the services carried out, or to be carried out by the Seller in accordance with the sales agreement(s);

c. any claims due to failure of the Buyer to comply with (a) sales agreement(s).

2. The Buyer is permitted to resell goods supplied by the Seller within the context of normal business operations. If the Buyer should fail to comply with his obligations, or there exists justifiable concern that he will fail to do so, the Seller is entitled to repossess, or have repossessed, items on which retention of title rests with the Buyer or third parties who are holding the goods on behalf of the Buyer. The Buyer is obliged to cooperate, or be liable for a penalty amounting to 10% of the sum owed to the Seller per day.

#### **Article 12 Compensation/settlement**

1. At all times, the Seller is entitled to defer any obligation on his part if any of his claims against the Buyer are not settled in a timely

manner, or if no alternative/or additional security is forthcoming after the first such request.

2. If the Seller is liable, or may become liable, to pay a sum to the Buyer, the Buyer cannot appeal for compensation concerning any amount owing to the Seller.

#### **Article 13 Buyer's inability to pay**

1. If the Buyer should fail to settle his debts in a timely manner, or enters into an agreement with his debtors regarding these, if the Buyer is declared bankrupt, or has applied for suspension of payment or debt restructuring as per the [Dutch] Natural Persons Debt Rescheduling Act, or if the Buyer fails to fulfil his obligations arising from any agreement with the Seller, the Seller is entitled to terminate all agreements with the Buyer with written notification.

2. In circumstances as described in 13.1, the Seller is not liable for any compensation and remains entitled to demand payment from the Buyer as per the agreed purchase price, less a sum for non-delivery of goods and any instalments already paid, plus compensation for losses suffered, or to be suffered by the Seller.

#### **Article 14 Right of termination**

1. If the Buyer fails culpably to fulfil his obligations in respect of any agreement, the Seller is entitled to terminate the agreement with immediate effect without the provision of proof of default or summons being required and without legal recourse, this being without prejudice to the Seller's claim for full compensation.

#### **Article 15 Amendments to terms and conditions**

1. The Seller reserves the right to amend these terms and conditions. Such amendments will come into effect at the time indicated. The Seller will provide the amended terms and conditions to the Buyer in a timely fashion. If no start date for the amendments is indicated, such amendments come into effect as soon as the Buyer has been informed of these.