

## **GENERAL TERMS AND CONDITIONS OF SALE**

Van Oers United B.V. (hereafter: "VOU") established at Heerle, also trading at Ridderkerk, Heinoord and Wervershoof, and its legal successors and/or undertakings associated with it have adopted the following General Terms and Conditions of Sale.

### **Article 1 Definitions**

1. Other Party: any person or legal person entering an agreement with VOU or to whom VOU makes a bid and/or offer, and furthermore, its representative(s), authorised agent(s), assign(s) and heirs;
2. Agreement: any agreement made between VOU and the Other Party, any change of addition thereto, and all actions and transactions in preparation and implementation of such Agreement.

### **Article 2 Applicability**

1. These General Terms and Conditions of Sale will apply to all quotations given, offers made, and all Agreements concluded and orders accepted by VOU. These General Terms and Conditions of Sale are therefore applicable to all (legal) transactions (including omissions) of VOU and its Other Party in this connection.
2. Agreements as stated in paragraph 1 of this article include sales, commission, consignment, framework and related agreements.
3. The Other Party permits VOU to make use of third parties other than employees of VOU to implement the provisions of the Agreement. The General Terms and Conditions of Sale also apply to legal transactions undertaken by such third parties – within the framework of executing the obligations placed on VOU under the Agreement.
4. Deviations from and/or additions to any provision of these General Terms and Conditions of Sale will only be binding on VOU if these deviations and/or additions are explicitly agreed unreservedly and in writing between VOU and the Other Party. Any deviations and/or additions agreed refer only to the Agreement concerned.
5. In the event that and insofar as the Other Party when accepting a quotation or an offer or entering into an Agreement refers to General Conditions other than these General Terms and Conditions of Sale of VOU in order to have such general conditions apply to the Agreement, General Conditions other than the present conditions will only apply to the agreement if VOU has explicitly accepted such General Conditions unreservedly in writing.
6. In the event that following the intervention of a judicial authority, any provision of these General Terms and Conditions of Sale appears to be null and void solely the provision concerned will cease to apply. All other provisions will apply without prejudice.

### **Article 3 Offers and prices**

1. All agreements concluded by VOU are deemed to have been concluded at Handelsweg 170, 2988 DC Ridderkerk, with regard to both execution of the agreement and payment thereunder.
2. All sums mentioned in quotations, special offers, Agreements and orders are stated in Euros unless the parties have agreed otherwise in writing. Moreover, all sums mentioned are exclusive of transport costs and turnover tax unless the parties have agreed otherwise in writing.
3. All offers made by VOU are without obligation.
4. VOU retains its right to refuse orders without giving reason.
5. VOU is not obliged to keep an offer and/or an agreement for a specified price if such price is based on a printing and/or writing error.

### **Article 4 Agreement**

1. In the event that a quote contains an offer without obligation which is accepted by the Other Party, VOU will be entitled to withdraw the offer within two working days after receiving acceptance.
2. The Other Party will receive a written confirmation of the order or a written record of the Agreement from VOU. Such written record may consist of the invoice and/or order form from VOU.
3. Any further and/or supplementary arrangements or changes agreed between the parties after the Agreement is effective and will be binding only if and insofar as such arrangements are recorded in writing. In this case, too, the written record may consist of the invoice and/or order form from VOU.

### **Article 5 Delivery**

1. The agreed delivery period is not decisive unless the parties have agreed otherwise.
2. Delay in delivery – provided it remains within reasonable bounds – does not entitle the Other Party to dissolve the Agreement or to damages of any kind.
3. The quantity supplied by VOU is regarded as to number and weight and the requirements laid down by public and/or private law as meeting what the parties agreed in that connection, subject to contrary proof shown by the Other Party. The parties explicitly agree on a presumptive evidence in this connection.
4. Delivery will be made at the Other Party unless the parties have agreed otherwise in writing in this connection. The time of delivery is the time when the goods are handed over at the Other Party.
5. In the event that the parties have agreed that VOU will store the goods to be supplied by it on the Other Party's behalf, whether on its own or on third party premises, delivery will be made at the point when the goods are taken into store.

6. VOU is entitled at all times to demand adequate security from the Other Party for the discharge of its payment obligations before fulfilling the obligations imposed on it under the Agreement.
7. In the event that the Other Party still has any payment obligation towards VOU, especially if the Other Party has left invoices from VOU wholly or partly unpaid, VOU will be entitled to suspend its supply obligations until the Other Party has discharged all its obligations.

#### **Article 6 Acceptance and complaints**

1. The Other Party must by no later than delivery by VOU of the agreed goods examine and check them. Such examination and inspection must be carried out in the presence of the driver. The Other Party must verify whether the goods delivered comply with the provisions of the Agreement, namely:
  - a. whether the correct goods have been delivered;
  - b. whether the goods delivered comply with the quality requirements to be made of them and agreed in this connection or the requirements that may be made for normal use and/or commercial purposes. This will in any event be taken to mean that the Other Party must cut through a random sample of the goods delivered and check them for foreign components;
  - c. whether the quantity (number, amount, weight) of the goods delivered corresponds to what the parties have agreed in this connection. If the divergence noted by the Other Party is less than 10%, the Other Party will be obliged to accept the goods delivered fully, against a pro rata reduction of the agreed price.
2. In the event that the goods are delivered ex Ridderkerk, Heinenoord, Wervershoof and/or Heerle, the Other Party must check the goods supplied on VOU's sales premises.
3. The Purchaser will notify VOU by email or fax of complaints regarding visible defects, including internal defects in the driver's presence, during unloading and before departure of the means of transport, its rights otherwise lapsing. VOU must be notified of any non-visible defects by fax or email immediately they are discovered – but at the latest within 4 (four) hours following delivery and in any event before further processing and/or sale and delivery and/or transportation – its rights otherwise lapsing immediately. Should VOU fail to receive a complaint by fax or email within the above time limits, the goods will be deemed delivered in compliance with the provisions of the Agreement and without any defect, and the Other Party's rights of complaints and dissolution will be forfeit.
4. Should VOU not accept a prompt complaint from the Other Party within 4 (four) hours in writing, the Other Party will be obliged within 4 (four) hours following the end of the time limit to have AQS or an equivalent loss adjuster to be ap-

pointed by VOU carry out a survey in VOU's presence, its rights otherwise lapsing.

5. The provisions of this article will apply without prejudice in the event that the goods delivered by VOU are delivered to a third party on the Other Party's behalf. The Other Party may therefore never hold it against VOU on any account that it has not checked and inspected the goods supplied because they were stored elsewhere with a third party.
6. The Other Party undertakes to ensure custody of the goods at all times as a prudent debtor and/or possessor.

#### **Article 7 Payments**

1. The Other Party must pay the agreed price on receipt of the invoice relating to the supply – without discount or entitlement to offset – within 14 days following invoice date, unless this provision is departed from in writing.
2. The Other Party may not offset the amounts invoiced by VOU against a counterclaim made by it (the Other Party) or suspend payment having regard to a counterclaim made by it, unless VOU has expressly and unreservedly acknowledged the maturity of the counterclaim or the existence of the counterclaim has been irrevocably confirmed at law.
3. In the event that the term for payment is exceeded, the Other Party will owe penalty interest at 1% per month with prejudice to VOU's other rights.
4. Should the Other Party fail to pay the outstanding sums to VOU even after notice of default by VOU, the Other Party will also be obliged to make good the extra-legal collection charges and the legal expenses actually incurred. The amount of the extra-legal collection charges is fixed at 15% of the capital sum due, subject to a minimum of € 500.- excl. VAT. The legal expenses actually incurred consist inter alia of all charges by lawyers, experts, process-servers, court clerks, translators and witnesses.
5. Payments made by the Other Party serve in first instance to settle all interest and charge due and then to cover outstanding invoices that have been longest outstanding. The position is the same if the Other Party states that payment relates to a later invoice.

#### **Article 8 Retention of title**

1. Goods supplied by VOU remain its property up to the time of full payment of all claims by VOU against the Other Party in respect of the Agreements concluded between them, including interest and charges.
2. The Other Party will be authorised to resell goods supplied by VOU that are covered by the retention of title as stated in paragraph 1 above only if resale is one of the Other Party's normal business activities.
3. Should the Other Party fail to discharge its obligations or if VOU has a well-founded fear that the Other Party is not ca-

pable of discharging its obligations under the Agreement or if there is a suspicion that the Other Party does not intend to discharge the obligations placed upon it, VOU will be entitled to recover the goods supplied by it – that are subject to the retention of title referred to in paragraph 1 above – from the Other Party or the third party keeping the goods on the Other Party's behalf, or have them recovered, and for this purpose to enter the Other Party's lands and buildings. The Other Party undertakes to cooperate with such action on VOU's part. If the goods supplied by VOU no longer exist in the original form or packaging or if they have been processed into other products, an implicit pledge will be established in favour of VOU on such goods and will remain in force until what VOU is owed in any respect whatever by the Other Party has been fully paid.

4. Should third parties wish to establish or exercise any rights to goods supplied by VOU under retention of title, the Other Party must notify VOU accordingly by return. The Other Party must further point out to such third party that the goods were supplied under retention of title. The Other Party will place the Agreement concluded between the parties at the third party's disposal, indicating that retention of title was imposed with regard to the goods supplied.
5. The Other Party is obliged to cooperate with all measures that VOU wishes to take to protect its right of title regarding the goods supplied by it.

#### **Article 9 Liability and risk**

1. Should the Other Party have goods supplied by VOU to which VOU has title (including packaging) at its disposal and/or should they fall under the retention of title as stated in article 8 of these General Terms and Conditions of Sale, the Other Party will remain liable for loss caused by and/or with such goods from the point when the goods are delivered to it to that when such goods are returned, or the time when title to the goods is transferred.
2. The Other Party is further liable – should it have goods in its possession to which title is held by VOU (including packaging) or that fall under the retention of title as stated in article 8 of these General Terms and Conditions of Sale – for loss sustained by VOU as a result of damage, loss or destruction of such goods if such damage originated in the period between the point when VOU supplied the goods and that when these goods were returned or that when title to the goods was transferred.
3. In the event that as a result of circumstances attributable to the Other Party, VOU must resort to its retention of title but nonetheless sustains loss, the Other Party will be liable for the loss sustained by VOU
4. Should it have goods in its possession – in connection with the execution of the Agreement – to which VOU has title (including packaging) and/or that fall under the retention of

title as stated in article 8 of these General Terms and Conditions of Sale, the Other Party will in the event of theft, loss or damage affecting the goods supplied to it by VOU notify VOU accordingly without delay. The Other Party will further in the event of theft or malicious damage immediately notify the police of the municipality where the theft occurred or the malicious damage was done. The Other Party will provide VOU with a copy of such notification.

5. Should VOU have supplied goods to the Other Party to which a third party has title, the Other Party will indemnify VOU against all claims by such third party connected with the loss caused by and/or with the goods that VOU has supplied to the Other Party, and for damage to goods supplied by VOU to the Other Party.
6. The Other Party will indemnify VOU against all claims by third parties for loss connected with goods supplied by VOU
7. Should VOU be liable for any loss, any liability on VOU's part will be limited to the amount paid under VOU's operator's liability insurance in the case concerned, plus the excess under such insurance. If for any reason whatever no payment is made under such insurance, any liability will be limited to the net amount of the invoice corresponding to the goods supplied on the basis of which the Other Party is claiming, provided that any liability will at all times be limited to a sum of € 10,000.

#### **Article 10 Force majeure**

1. In the event of force majeure, VOU will be entitled to suspend performance under its contracts for the duration of the force majeure. If the duration or seriousness of the force majeure so requires – this being exclusively at VOU's discretion - VOU will be entitled to regard the purchase agreement, insofar as it has not yet been executed, as dissolved without recourse to the courts, and VOU will not be bound to pay damages. VOU may dissolve the agreement, without a right to compensation, if the force majeure should continue for more than 10 (ten) calendar days and/or it appears that the force majeure will continue for more than 10 (ten) calendar days.
2. Unless stated otherwise below, force majeure is taken to mean any exceptional circumstance that makes discharge of VOU's delivery obligations impossible or so difficult that discharge cannot reasonably be expected of it, such as war, mobilisation, strike, sickness of personnel, industrial disputes, revolution, riot, civil commotion, storm and tempest, icing, flood, suspension of the electrical or water supply, industrial fire, suspension of working through machinery breakdown or difficulties with the energy supply, traffic obstructions, transportation problems, entire or partial failed harvest, abnormal drought or continuous and/or abnormal quantities of precipitation and/or frost, disease in the crop, vermin attack, failure by sub-suppliers, etc. In addition, VOU will be entitled to dissolve the agreement, insofar as not discharged, without being

obliged to make good any loss, if government measures prevent the importation, export or transiting of goods sold and/or make it financially more disadvantageous to it and the Other Party is unwilling to make good the disadvantage it incurs through this measure in supplying the goods.

3. Force majeure at VOU's suppliers, also including growers, is regarded as force majeure for VOU
4. In the event that VOU has already partly discharged its obligations when the force majeure occurs, or can discharge its obligations only partly, it will be entitled to invoice what has been supplied or the part supplied separately. The Other Party will then be obliged to settle the invoice as if a separate agreement were concerned.
5. All purchase agreements for agricultural products concluded by VOU are subject to harvesting, irrespective of whether VOU or third parties have grown the product. If as a result of a disappointing harvest so much fewer products are available, in terms of quantity and/or quality of agricultural products, which will also include rejection by the bodies authorised to do so, than could reasonably have been expected on concluding the agreement, VOU will be entitled to reduce the quantities sold by it accordingly. This will be the case inter alia if products bought in by VOU under growing contracts are insufficient to satisfy all its customers. By delivering the quantity thus reduced, VOU will have fully discharged its supply obligations. VOU will not then be bound to supply replacement agricultural products nor be liable for any loss whatever.

#### **Article 11 Default and termination**

1. Should the Other Party not or not properly or not in time comply with any obligation that might be imposed on it under the Agreement concluded with VOU or by law, including the obligation as to timely payment as stated in article 7 of these General Terms and Conditions of Sale, the Other Party will be in default without notice and VOU will be entitled to suspend execution of the Agreement and/or wholly or partly to dissolve such Agreement and Agreements directly associated with it, without VOU being in any way liable in damages and without prejudice to the rights further vested in VOU
2. Should the Other Party be in default, it will be liable towards VOU for legal (commercial) interest and all legal and extra-legal expenses that VOU has reasonably had to incur to ascertain the Other Party's liability and/or to achieve settlement of its claim, and as covered within the scope of article 6:96 (2) Civil Code.
3. In the event of a legal suspension or provisional legal suspension of payments or the bankruptcy of the Other Party, closure or liquidation of the Other Party's business, all Agreements with the Other Party will be dissolved de jure, unless VOU notifies the Other Party within a reasonable

period that it requires discharge of the Agreement(s) concerned (or part thereof), in which case VOU will be entitled without notice of default to suspend execution of the Agreement(s) concerned until payment has been adequately secured, without prejudice to the further rights vested in VOU.

4. VOU is entitled to terminate the Agreement in the event of ongoing force majeure on the Other Party's side. The Other Party will then make good to VOU all expenses incurred and still to be incurred by VOU.
5. In each of the cases mentioned in paragraphs 1, 2, 3 and 4 of this article, all claims by VOU against the Other Party will immediately mature and the Other Party will be obliged immediately to return articles hired or remaining unpaid.
6. The Other Party must notify VOU immediately on an attachment being made of movable or immovable property in the ownership of VOU and that the Other Party has in its possession for the purpose of executing the Agreement.
7. The Other Party will in the event of bankruptcy or legal suspension of payments immediately notify VOU accordingly and show the Agreement without delay to the bailiff, receiver or administrator and in doing so point to the rights of title of VOU.

#### **Article 12 Packaging**

1. VOU uses packaging in order to supply its goods. Packaging includes – inter alia – pallets and crates. Should VOU require a deposit for this, the packaging may be returned at the invoice price applicable at the time of return (in the event that business is done in foreign currency, the packaging may be returned at the rate applicable at the point of delivery). For the take-back of return packaging, a fixed contribution towards costs may be debited, in accordance with the relevant rules. These rules will be provided to the Other Party at the latter's request.
2. Packaging that the Other Party wishes to return must be sufficiently clean and fresh to be suitable for use for fresh edible horticultural products – without further action on VOU's part.
3. In the event that packaging is to be returned on VOU's own means of transport, the Other Party will ensure that the packaging is sorted and ready for transport.
4. Packaging not supplied by VOU will be taken back only if and insofar as VOU keeps the products concerned in its own range and the packaging is in good condition.

#### **Article 13 Industrial and intellectual property rights**

1. VOU expressly reserves any rights of intellectual and/or industrial property (trademarks) with regard to products supplied by it.
2. The Other Party is not permitted to infringe a third party's intellectual and/or industrial property rights by using prod-

ucts supplied by VOU The Other Party will hold VOU harmless against any claims by third parties for breach of intellectual and/or industrial property rights made with the aid of goods supplied by VOU, and that occur after VOU has supplied the goods to the Other Party.

**Article 14 Applicable law**

- 1.The legal relationship between VOU and the Other Party is governed by Dutch law.
- 2.The provisions of the Vienna Sale of Goods Convention are excluded.

**Article 15 Disputes**

- 1.Disputes resulting from an order, offer, bid or Agreement to which these General Terms and Conditions of Sale apply, including conflicts regarding these General Terms and Conditions of Sale, will be settled exclusively by the competent court in the district of Rotterdam, provided that this choice of jurisdiction leaves VOU's entitlement to have a dispute settled by arbitration or binding recommendation unaffected.
- 2.Notwithstanding the provisions of paragraph 1 above, the parties may agree in writing to leave settlement of the dispute to the competent court in another district.

This is a free translation of the original Dutch version of our general terms and conditions of Sales. In the case of a dispute due to errors in translation or interpretation then the original Dutch-language version shall prevail.