

## **GENERAL TERMS AND CONDITIONS VALLEY FARMS INTERNATIONAL**

Section A: Concerning Purchasing ( Article 1 - Article 9)

Section B: Concerning Sales (Article 10 - Article 19)

Section C: Concerning Purchasing and Sales (Article 20 - Article 24)

### **SECTION A: PURCHASING**

#### **Article 1.      Applicability**

1. The provisions of this Section of the General Conditions shall apply to all legal relations of Valley Farms International. (hereinafter referred to as "we") and its supplier/contractor (hereinafter referred to as 'Supplier'), concerning purchase of goods or services (hereinafter referred to as "Supply") - as well as to all inquiries and orders - unless expressly agreed otherwise in writing. If we and Supplier conclude agreements more than once, these General Terms and Conditions shall always apply even if they are not explicitly declared applicable in subsequent agreements.

2. To the extent that application of a provision of these General Terms and Conditions would conflict with a provision of a written agreement - not being general terms and conditions - between us and the Supplier, application of that provision will be omitted but the other provisions of these General Terms and Conditions will remain in full force.

3. Applicability of the Supplier's general terms and conditions is explicitly rejected.

#### **Article 2.      Offers, formation of agreement and prices**

1. All requests, orders or offers made by us in any form whatsoever are always without obligation, unless expressly stated otherwise.

2. An agreement is concluded when it is confirmed by us within 48 hours after the Supplier has sent its acceptance, or, if the offer originates from the Supplier, by its acceptance.

3. The agreed price cannot be increased by Supplier and includes, unless expressly agreed otherwise in writing, costs of packaging, transport, insurance and unloading.

#### **Article 3.      Quality**

1. Supplier guarantees:

a. That the Supply complies with the agreement, that it meets the quality, requirements and specifications stated therein and that the Supply is free of defects.

b. That the composition and quality of the Supply to be delivered pursuant to the order comply in all respects with all applicable requirements laid down in laws and/or other relevant government regulations in force at the time the agreement is concluded.

c. That the Supply shall at least meet the standards as stated in writing by Valley Farms International, unless he notifies us in writing to the contrary without delay.

#### **Article 4. Delivery and transfer of ownership**

1. Delivery shall take place within the specified delivery times, unless otherwise agreed in writing by the parties. In the event of late delivery, the Supplier shall immediately be in default without further notice of default.
2. The Supplier is obliged to notify us immediately in writing if it knows or expects that the Supply cannot be delivered on time, stating the circumstances causing the delay, the measures it has taken or will take and the probable duration of the delay. The Supplier's obligation to deliver remains. If Supplier has failed to do so, a subsequent appeal for exceeding the term, also in case of force majeure, cannot be honoured.
3. Supplier is liable for damages to us and our customers resulting from non-delivery or late delivery by Supplier.
4. Delivery shall take place at one of our specified locations (DDP Incoterms version 2020), unless otherwise agreed in writing.
5. Delivery and the passing of risk thereon shall in all cases, also in the event of deviation from the provisions of this fourth paragraph (e.g. in the event a different Incoterm is agreed upon), take place as soon as the Supply arrives at one of our locations or at another location designated by us.

#### **Article 5. Inspection**

1. Prior to acceptance, we have the right to inspect the Supply. The inspection and acceptance of the Goods shall take place at one of our specified locations, also in the event of deviation from Article 4.4.
2. Testing, inspection and/or testing may take place by us and/or a third party designated by us prior, during and after delivery. Supplier shall cooperate, among other things by granting access to the storage place of the Supply and by allowing inspection of the documents required for inspection.
3. If the Supply is rejected, we shall inform Supplier as soon as possible. Supplier is then obliged to take the necessary measures to still fulfil the agreement. Any defect discovered during the inspection shall - without proof to the contrary being allowed - be deemed to have already existed at the time of delivery.
4. If the Delivery is rejected after delivery, we shall notify Supplier as soon as possible. Supplier shall be liable for all costs which we have to incur as a result of the rejection of the Supply, including for example the costs of inspection and transport and dumping costs.
5. In the event of rejection of the Supply we shall have the following options:
  - a. Price reduction;
  - b. Return of the Supply at Supplier's expense and fulfilment, whether or not in combination with compensation;
  - c. Full or partial dissolution in accordance with Article 8, whether or not combined with damages.
6. The circumstance that the Supply has been inspected does not release Supplier from any liability, including damage we suffer as a result of hidden defects.

## **Article 6. Payment**

1. Payment shall take place within 30 days after receipt of the invoice and after the Supply has been received and approved in full.
2. Payment by us does not imply acknowledgement that Supplier has fulfilled all its obligations (properly and/or in full) vis-à-vis us.

## **Article 7. Liability**

1. Supplier is liable for and indemnifies us for all damage, of whatever nature, that we and/or third parties may suffer as a result of the Supply by Supplier.
2. Supplier indemnifies us against claims by third parties for compensation for damage as referred to in the first paragraph.
3. Supplier shall take out adequate insurance against liability as referred to in this article, excluding recourse against us or our buyers. Supplier shall allow us to inspect the policy on request.

## **Article 8. Suspension and dissolution**

1. If the Supplier fails to fulfil, fails to fulfil properly or fails to fulfil on time any obligation arising from the agreement or other agreements arising therefrom and/or if the Supplier is the subject of bankruptcy, suspension of payments, seizure, cessation of business, revocation of the environmental permit, liquidation or any similar condition of the Supplier's business, it shall be in default by operation of law and without notice of default.
2. In the cases mentioned in the previous paragraph, we have the right to dissolve the agreement in full or in part and/or to suspend the payment obligation and/or to assign the execution of the agreement in full or in part to third parties, without us being obliged to pay any compensation and without prejudice to any other rights to which we are entitled, such as the right to full compensation and restitution of the purchase price.
3. In the cases referred to in paragraph 1 of this article, all claims which we may have or acquire against Supplier shall become immediately due and payable in full.

## **Article 9. Transfer**

1. The Supplier shall not outsource the performance of its obligations under the agreement to third parties either in whole or in part without our prior written consent.

## **SECTION B: SALES**

## **Article 10. Applicability**

1. The provisions of this section of the General Terms and Conditions shall apply to Valley Farms International (hereinafter referred to as: "we") and its third parties (hereinafter referred to as: "Purchaser"), including, for example: offers, quotations, agreements such as delivery of the goods intended for sale (hereinafter referred to as: "Products"), unless expressly agreed otherwise in writing. If we and the Customer conclude agreements more than once, these General Terms and Conditions shall always apply even if they are not explicitly declared applicable in subsequent agreements.

2. To the extent that application of a clause from these General Terms and Conditions would be in conflict with a clause from a written agreement -not being general terms and conditions- between us and the Customer, application of that clause shall be omitted but the other clauses from these General Terms and Conditions shall remain in full force.

3. Applicability of general terms and conditions of the Other Party, explicitly including any transferability and/or pledge clause in respect of claims of us against the Other Party in those terms and conditions, are explicitly rejected.

#### **Article 11. Offers, quotations, formation and prices**

1. All offers and tenders issued by us are without obligation, unless explicitly stated otherwise.

2. Agreements shall be deemed to have been concluded

a. upon signature by both parties of an agreement drawn up for that purpose;

b. in the absence thereof, after written acceptance and confirmation by Us of an order placed by the Customer;

c. in the absence thereof, by the actual delivery of the Products sold.

3. Further and/or supplementary agreements or amendments shall only apply if made with the written consent of the parties.

4. The person placing the order on behalf of the Purchaser hereby declares that he is authorised to represent the Purchaser and that all necessary formalities have been completed.

5. Verbal promises by and agreements with employees of Us shall only bind Us after and insofar as they have been confirmed by Us in writing by the persons authorised to do so.

6. We are allowed to pass on price increases of more than 10% if price changes have occurred between the time of acceptance and delivery with regard to, for example, prices of the product to be delivered, exchange rates, wages, raw materials and packaging materials.

#### **Article 12. Delivery**

1. Delivery takes place from one of our locations (EXW Incoterms version 2020), unless agreed otherwise in writing. The Customer is obliged to take delivery of the products purchased by him at the agreed location(s).

2. The risk of loss or damage of sold products shall be borne by the Customer from the moment of delivery and - if the Customer does not cooperate in the delivery - from the moment that delivery is refused or no cooperation is provided while the Customer is obliged to do so. As soon as the Products have left our site, the Customer shall bear the risk for all damage, direct or indirect, that may be caused to or by these Products, also in the event of deviation from the provisions of Article 2(1).

3. The Customer is obliged to take delivery of the Products at the agreed location(s) and times. If the Customer does not take receipt of the Products on the day they are offered for delivery, we shall be entitled to store, sell or destroy them at the Customer's expense and risk, whereby the costs of transport, storage, sale or destruction of the Products shall be at the expense of the Customer.

4. If the Products are stored by or on behalf of us for the Customer with us or a third party, delivery shall be deemed to have taken place at the moment the Products are stored. Such storage takes place at the Customer's expense and risk.

5. Delivery times are indicative. If an order confirmation covers several delivery days, an attempt will be made to achieve a balanced distribution over the various delivery days. Delay in delivery, insofar as permanent within reasonable limits, does not entitle the Customer to dissolve the agreement or to damages.

#### **Article 13. Products to be delivered**

1. The quantity delivered is deemed to comply with what has been agreed or prescribed as regards number and weight, as well as public and/or private law requirements, subject to evidence to the contrary to be provided by the Customer.

2. Even in the event of minor deviations in properties such as size, quality and colour, the delivered Products shall be deemed to comply with the agreement.

3. Products delivered from the company of a supplier/grower only entitle the Buyer to delivery of the quantity and quality of the Product available from the grower in question on the day determined for that purpose. The buyer is obliged to sign a delivery note for receipt on the spot. If the supplier/grower has insufficient Products available for delivery on the day in question, we can, in consultation with the Customer, supplement the order with Products of the same type, price and quality available elsewhere.

4. All agreements pertaining to the sale of (agricultural) products are subject to harvest and processing reservations. If, as a result of a disappointing harvest with regard to the quantity and/or quality of agricultural products, so many fewer products are available, including rejection by the competent authorities, than could reasonably be expected when the agreement was concluded, we shall be entitled to reduce the quantities sold by us accordingly. By delivery of such reduced quantity, we shall fulfil our delivery obligations in full. We shall then not be obliged to deliver replacement products and shall also not be liable for any damage whatsoever.

#### **Article 14. Complaints**

1. The Customer must check the Products and packaging immediately upon delivery and ascertain whether the delivered Products comply with the agreement, namely:

a. Whether the correct Products have been delivered;

b. Whether the Products delivered meet the agreed quality requirements for normal use and/or commercial purposes;

c. Whether the Products delivered correspond in terms of quantity (number, quantity, weight) to what has been agreed. In the event of deviation less than 10% of the total, the Customer shall be obliged to accept the delivered Products in full at a proportionate reduction of the price.

2. Any complaints shall be stated by the Customer on the delivery note/cargo document, in the absence of which the Customer cannot invoke any shortcomings.

3. The Customer must report shortcomings which could not have been discovered during the inspection referred to in the first paragraph of this clause to Us in writing by e-mail via our relevant commercial contact person immediately after discovery. In any case, he must have reported the deficiency within 8 hours in case of soft fruit delivery and within 12 hours in all

other cases after the Products have been delivered or deemed to have been delivered to the Customer. The written complaint shall include at least a detailed description of the complaint and accompanying photographic material. In the absence of timely written notification, the Customer cannot invoke any shortcomings.

4. The Products complained about must be kept in their entirety and the Customer must give us the opportunity to view these items. The Customer must take care of the preservation of the Products as a prudent debtor.

5. The Customer may return Products only after we have agreed to this in writing. All returns are at the expense and risk of the Customer.

6. In the event Products are wrongly rejected by the Customer, all costs incurred in this respect, including costs of (re)inspection (whether or not by third parties), handling and storage, shall be at the expense of the Customer.

7. In the event we declare the complaints well-founded, we may, at our discretion, take back and replace the Products or credit the Customer for the relevant part of the delivery. In the event of a justified and correctly submitted complaint, we shall only be liable within the limits of Article 9.

#### **Article 15. Retention of title**

1. Ownership of the Products delivered by us shall only pass to the Customer after the Customer has fulfilled all its obligations towards us, including payment of invoices, contractual interest and extrajudicial collection costs. The property law consequences of the extended and extended retention of title shall be governed by the law of the country of destination.

2. The Products delivered by us, which are subject to retention of title pursuant to paragraph 1, may only be used or resold by the Customer within the scope of its normal business operations.

3. In the event that we wish to exercise our property rights referred to in this article, the Customer hereby unconditionally and irrevocably authorises us or third parties to be appointed by us to enter all those places where our property is located and to repossess Products.

4. If third parties wish to establish or enforce any right to the Products delivered under retention of title, the Customer shall be obliged to inform us thereof as soon as may reasonably be expected.

5. The Customer undertakes to insure the Products delivered under retention of title and to keep them insured against fire, explosion and water damage and against theft, and to make the policy of this insurance available for inspection at our first request.

#### **Article 16. Invoicing and payment**

1. Payment of the Products delivered shall take place within 14 days of the invoice date unless this arrangement has been deviated from in writing.

2. We are entitled to send invoices periodically.

3. Costs associated with payment in a currency other than that in which invoiced, such as bank charges and exchange rate differences, shall be borne in full by the Customer.

4. Complaints, complaints and/or objections to the amount of the invoice do not suspend the payment obligation.

5. The Customer is not entitled to set off what it owes us against other claims.
6. After expiry of the payment term, the Purchaser is in default without any notice of default being required. The Customer shall then owe compound interest of 1% per month over the entire outstanding amount. The Customer shall also owe extrajudicial costs set at 15% of the principal amount due, with a minimum of € 500.
7. Payments made by the Customer always serve first to settle all interest and costs due and subsequently the longest principal sum due.
8. We may assign a credit limit to the Customer. A credit limit is the maximum balance of all outstanding claims and orders together at any given time.
9. We may require an advance payment or other form of security from the Other Party if the parties have not done transactions before, the payment behaviour towards us and/or the size of the transactions of the Other Party or special circumstances give reason to do so, this at our discretion.
10. In case of liquidation, bankruptcy or suspension of payments of the Purchaser, our claims shall become immediately due and payable.

#### **Article 17. Force majeure**

1. In case of temporary force majeure, we shall be entitled to suspend the agreement and in case of force majeure of a permanent nature (a continuous period of at least 2 months), we shall be entitled to dissolve the agreement with immediate effect, without owing any damages.
2. Force majeure is in any case -but not exclusively- understood as all circumstances that prevent or seriously interfere with the execution of the agreement, such as: war, threat of war, civil war, riots, flooding, water damage, fire, a pandemic/epidemic, (government) measures to combat a pandemic/epidemic (such as a (semi-)lockdown), transport difficulties, unforeseen technical complications, business interruptions, strikes, blockades, import and export bans full or partial seizure or requisition of stocks by civil or military authorities, lack of transport capacity, non-delivery or late delivery by our suppliers, as well as a shortage as a result of which delivery is completely or temporarily impossible or made more difficult, all this both for us and for third parties engaged by us for the delivery.

#### **Article 18. Liability**

1. Any liability on our part for damage of whatever nature, direct or indirect, including trading loss and consequential damage is excluded, barring intent or gross negligence on our part.
2. Under no circumstances shall we be liable, directly or indirectly, for damage caused by auxiliary persons and subordinates.
3. If it is established in court that there is nonetheless a liability for damage, it shall be limited to a maximum of the invoice amount excluding VAT, at least that part of it that can be attributed to the damage in the case in question, or the amount that is paid out under the insurance agreement taken out by us, as the case may be.
4. We are never liable for indirect damage, including consequential damage, loss of profit, missed savings, damage due to business stagnation and all damage not covered by direct damage in the sense of these General Terms and Conditions.

5. Any legal claim for compensation of damage by us shall lapse if the Purchaser has not notified us of it in writing within 10 calendar days after it arose and subsequently, within at least 3 months after the Purchaser could have been aware of both the damage and our liability for that damage, has taken us to court by issuing a summons.

6. The Customer shall indemnify us, our employees and any auxiliary persons engaged by us against all (damage) claims by third parties arising from, or in any way related to, the sale or delivery of Products by us or the Customer, including claims based on (an infringement of) intellectual property rights, such as plant breeders' rights, and liability arising from any defect in delivered Products.

#### **Article 19. Suspension and dissolution**

1. For all agreements, we are entitled to suspend the agreement in whole or in part by a written statement and without prior notice of default or notification, or to dissolve the agreement with immediate effect:

- a. if the Customer imputably fails in respect of one or more of its obligations and/or performance is impossible;
- b. if it is plausible for us that the Customer is or will not be able or willing to fulfil its obligations, including if the Customer's goods are seized for substantial debts and this seizure is maintained for more than two months;
- c. if the Customer has applied for a moratorium, is in a situation of moratorium, has filed for bankruptcy, is in a state of bankruptcy, submits a request for the application of a debt rescheduling scheme, or the Customer is placed under guardianship or administration, proceeds to wind up its business or ceases its activities or becomes insolvent in any way;
- d. in the event of drastic changes in the ownership or control relations at the Customer or ourselves, including mergers and takeovers.
- e. In case of permanent force majeure as described in Article 8.

2. In the event of suspension or dissolution, we shall never be liable for any form of compensation.

3. If we suspend fulfilment of the obligations, we retain our claims under the agreement and the law. If the agreement is dissolved, all our claims on the Customer shall be immediately due and payable.

4. In case of dissolution of the agreement, the Customer shall be obliged to reimburse all costs already incurred by us immediately, without prejudice to our right to claim full damages.

## SECTION C: PURCHASING AND SALES

### **Article 20. Intellectual Property**

1. We reserve all intellectual property rights to items we use or which rest on items we make available to the Customer or Supplier, as the case may be.
2. The graphic designs, tools, packaging, etc. produced at our instruction are and remain our property, may not be used by third parties without our written consent and all intellectual property rights thereon are vested exclusively in us.
3. The Customer or the Supplier guarantees that the use of Products delivered or supplied by it or tools purchased or manufactured by it for our benefit will not infringe any patent rights, trademark rights, model rights, copyrights or other intellectual property rights of third parties.
4. The Customer or Supplier shall indemnify us against claims arising from any infringement of the rights referred to in the previous paragraph and shall compensate us for all damage resulting from any infringement.

### **Article 21. Delivery in Pooling Fust/other packaging**

1. We make use of various Pooling Partners. If the parties agree that delivery will take place via a Pooling system, clauses 2 to 6 in this article apply. The Customer or Supplier is aware that general terms and conditions of use of the relevant Pooling Partner may apply to the use of the Pooling Packaging made available to it and that it is obliged to comply with these terms and conditions.
2. We provide no warranty in relation to delivery of the ordered Pooling Fust.
3. The Pooling Packaging will remain the inalienable property of the relevant Pooling Partner. The Customer or the Supplier may not make the Pooling Packaging made available to it empty to third parties unless a contract for (re)use has been concluded with Pooling Partner. The Customer or Supplier is also obliged to use the Pooling Packaging exclusively for the performance of the agreement.
4. A deposit will be charged for the Pooling Packaging issued by us to the Customer or Supplier. The amount of the deposit will be determined by us and communicated separately. Deposit is due and payable upon acceptance of the Pooling Packaging. If the Pooling Barrel is returned in good condition - as described in the following paragraph - the Customer or Supplier will receive the deposit back.
5. The Customer or the Supplier is obliged to maintain and transport Pooling Packaging properly. The Customer or the Supplier is obliged to return the Pooling Partner depot empty, clean and undamaged packaging (damage includes staples or stickers that cannot be removed), sorted by type and on approved pallets. Collapsible Pooling Packaging must be returned collapsed.
6. In case of non-compliance, we will be entitled to deduct the costs of emptying, disposal, repair, removal of stickers and staples and the like from the deposit.
7. Other packaging is subject to our Packaging Protocol.

## **Article 22. Confidentiality**

1. The buyer or supplier undertakes to keep confidential all business information which he has obtained from Valley Farms International or from another source within the framework of the agreement, such as information about products and know-how in the broadest sense of the word, unless he has a legal or professional obligation to disclose or if Valley Farms International has released him from the duty of confidentiality in writing.
2. The buyer or, as the case may be, the Supplier shall also impose the obligation mentioned in this article on his personnel and/or on third parties engaged by him in the execution of the agreement.

## **Article 23. Final provisions**

1. Amendments to the agreement and deviations from these General Terms and Conditions shall only apply if they have been agreed in writing (always including by e-mail).
2. If any provision of these General Terms and Conditions is null and void or annulled, the other provisions of these Terms and Conditions shall remain in full force.
3. We are authorised to re-adopt these terms and conditions as amended. These amended conditions will come into force at the time the Customer or, as the case may be, the Supplier has had a reasonable opportunity to take note of them.
4. Obligations of the Customer or the Supplier which by their nature are intended to continue even after termination of the agreement, continue to exist. The termination of the agreement explicitly does not release the Customer or the Supplier from the provisions with regard to, inter alia: intellectual property rights, confidentiality, applicable law and competent court.
5. In the event of discrepancies between different translations of the agreement and/or this text, the Dutch version shall prevail.

## **Article 24. Applicable law and Disputes**

1. All agreements and agreements resulting therefrom between us and the Customer or the Supplier are exclusively subject to Dutch law with the exclusion - insofar as this is possible - of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention).
2. All disputes that may arise between the parties in connection with this agreement and any agreements arising therefrom shall be submitted exclusively to the competent court of the District Court within the district in which we have our registered office, unless we wish to submit such disputes, as the case may be, to the opinion of the Netherlands Arbitration Institute (N.A.I.) in accordance with their Arbitration Regulations. The place of arbitration in that case will be Rotterdam.