



GENERAL SALES CONDITIONS OF VIENTOSUR B.V.

Article 1: definitions

The definitions below are used in these general sales conditions ("Conditions").

- Vientosur:* the private limited company Vientosur B.V., having its registered office in Rotterdam;
- Buyer:* the Person with whom Vientosur has concluded an Agreement or with whom Vientosur is negotiating an Agreement;
- Parties:* Vientosur and the Buyer;
- Agreement:* every agreement between the Parties, irrespective of whether it is a framework or individual agreement, with the intent (a) that Vientosur supplies goods to the Buyer against monetary payment and/or (b) that Vientosur provides services to the Buyer and/or (c) that Vientosur delivers any other performance for the benefit of the Buyer, every change or supplement to this agreement, as well as all factual and legal acts in preparation or performance of this agreement, including offers by Vientosur;
- Products:* all goods and/or services and/or other performances that are the subject of an Agreement;
- Person:* natural or legal person or company without legal personality.

"Written" in the sense of these Conditions includes: by fax and email.

Article 2: general

1. These Conditions are - with the explicit exclusion of all other general conditions - applicable to all Agreements. If Vientosur at any time does not require strict compliance with these Conditions, this does not mean that Vientosur waives its right to require strict compliance with these Conditions in future - whether or not similar - cases. Clauses that deviate from these Conditions are binding only if agreed in writing and apply only to the case in question.
2. All the clauses of these Conditions are stipulated not only for the benefit of Vientosur, but also for the benefit of its directors and shareholders (including indirect directors and shareholders), all Persons working for Vientosur, all Persons engaged by Vientosur in the performance of an Agreement, and all Persons for whose actions or negligence Vientosur could be held liable.
3. If one or more provisions of these Conditions and/or an Agreement are void or declared void by a court of law, the remaining provisions of these Conditions and the Agreement will remain in force. The void or voided provisions will be replaced by valid provisions that, taking into consideration the purpose and scope of these Conditions and the Agreement, deviate as little as possible from the original provisions.
4. These Conditions are drawn up in various languages. If there is any difference of opinion regarding the content or scope of these Conditions, the Dutch text will be binding.
5. Vientosur is at all times entitled to amend these Conditions.

Article 3: offers, Agreements

1. All information and specifications accompanying offers by Vientosur are approximations only. Deviations up to 10% are permitted as a matter of course.



2. All offers by Vientosur are free of obligation. Vientosur is entitled to revoke its offer within three working days after receipt of the acceptance by the Buyer.
3. Acceptance by the Buyer that, whether or not on subordinate points, deviates from the offer by Vientosur, will at all times be regarded as a rejection of the offer and as a new offer by the Buyer. An Agreement in accordance with this new offer will only be concluded following written acceptance by Vientosur.
4. An Agreement is concluded when:
 - (a) three working days have expired after Vientosur has received the acceptance of its offer from the Buyer and Vientosur has not revoked its offer during this period; or
 - (b) Vientosur confirms the Agreement in writing; or
 - (c) Vientosur commences with the performance of the Agreement.
5. Vientosur is not bound to an offer and/or an Agreement at a specified price if said price is based on a misprint and/or a writing error.
6. All Agreements for the delivery of agricultural Products by Vientosur will be subject to a harvest reservation. If as a result of a disappointing harvest in terms of the quantity and/or quality of the agricultural Products, or as a result of the rejection of Products by the competent authorities, less Products are available than could reasonably have been expected at the time of conclusion of the Agreement, Vientosur is entitled to reduce the sold quantity accordingly. By delivering the quantities thus reduced, Vientosur complies in full with its delivery obligation. Vientosur is that case not obliged to deliver replacement agricultural Products and is not liable for any loss whatsoever.
7. The Buyer is, without the prior written permission of Vientosur, not permitted to transfer in full or part an Agreement or one or more of its rights or obligations under an Agreement. This prohibition has effect under both contractual and property law (as referred to in Article 3:83 paragraph 2 of the Dutch Civil Code).

Article 4: prices

1. All prices are stated in euros unless the Parties agree otherwise in writing.
2. The prices are stated exclusive of VAT and other taxes and levies and transport costs.
3. The prices are based on cost price determining factors applicable at the time of conclusion of the Agreement. If after conclusion of the Agreement, yet before delivery of the Products, these factors undergo a change outside the reasonable scope of control of Vientosur, Vientosur is entitled to charge the ensuing costs to the Buyer.

Article 5: conformity, delivery time, delivery and risk

1. The conformity of the Products is assessed on the basis of the laws and regulations applicable in the Netherlands at the time of delivery. Vientosur is not held to comply with any other laws and regulations unless the Parties agree otherwise in writing.
2. The delivery times indicated by Vientosur are always an approximation and will never be regarded as deadlines.
3. The Products sold by Vientosur will be delivered Ex Works, unless the Parties agree otherwise in writing. "Ex Works" will be interpreted in accordance with the latest version of the Incoterms.
4. If the Parties have agreed that Vientosur will store Products for the Buyer, whether at Vientosur or at a third party, and these Products have not yet been delivered to the Buyer, the Products are



deemed to have been delivered at the time that they are entered into storage. Vientosur is not obliged to insure the Products during the term of storage.

5. Vientosur is entitled, yet never obliged, to deliver the sold Products in parts and to invoice each part separately.
6. The Buyer will take receipt of the purchased Products. The obligation to take receipt consists of: a) the performance of all actions that may reasonably be expected of the Buyer in order to enable Vientosur to make delivery and b) to take receipt of the Products. If the Products are not taken into receipt within 5 hours of being made available to the Buyer, the Buyer is in default without any notice being required, and Vientosur, without prejudice to its other rights, including the right to store the Products for the risk and account of the Buyer, is entitled to terminate the Agreement and demand compensation from the Buyer.

Article 6: inspection and complaints

1. The Buyer will immediately after delivery - and thus prior to transport - inspect the Products or have them inspected, in the sense that the Buyer will thoroughly and accurately determine whether the Products comply in full with the Agreement, more in particular:
 - (a) whether the correct Products have been delivered;
 - (b) whether the delivered Products comply both internally and externally with the quality requirements that may be imposed for normal use and/or commercial purposes; and
 - (c) whether the delivered Products comply in terms of quantity (number, amount, weight) with what the Parties have agreed.

With a view to the inspection of the internal quality of the Products, the Buyer will conduct random cuts of the Products and random checks for the presence of foreign bodies and other defects, or have such cuts and checks carried out.

If the delivery falls short by less than 10% of the total quantity, the Buyer is obliged to accept the delivered quantity subject to a proportionate reduction of the price.

2. Complaints about the delivered quantity and visible defects, including internal defects that were or should reasonably have been discovered during the inspection referred to in paragraph 1 of this article will, on pain of lapse of all rights, be reported to Vientosur immediately after the inspection - and thus prior to transport - and subsequently be confirmed in writing within 4 hours, accompanied by (a) a precise and detailed description of the nature of the shortcoming, (b) clear and representative pictures showing the shortcoming, the pallet identification labels, the boxes in question and the grower codes on the said boxes and (c) a quantitative estimation (%) of the shortcoming.
3. Complaints about hidden defects will, on pain of lapse of all rights, be reported to Vientosur in writing, accompanied by the description, the pictures and the estimation referred to in paragraph 2 of this article, immediately after these defects have or should reasonably have been discovered, yet no later than within eight hours after delivery and in any event prior to (re)sale and delivery by the Buyer and/or further transport by or on the instructions of the Buyer.
4. Complaints about minor and/or customary and/or technically unavoidable deviations in quality, size, weight, colour, quantity and suchlike and complaints about processed Products are inadmissible.
5. If Vientosur does not accept a complaint by the Buyer within 4 hours, the Buyer will, on pain of lapse of all rights, have an independent survey performed by a certified expert within 12 hours. Both time periods referred to in this paragraph commence at 07:00 hours (local time at Vientosur)



on the first working day following the day on which the Buyer reported the complaint. The Buyer will allow Vientosur to be present or represented at the aforementioned survey. Vientosur is entitled to have a counter survey carried out.

6. The Buyer will lend all cooperation required for investigation of the complaint. The complaint will be deemed inadmissible if the Buyer does not lend its cooperation or if an investigation is not or no longer possible.
7. If the complaint by the Buyer, taking into account the provisions of this article, is deemed well founded, Vientosur will, after consultation with the Buyer, deliver the shortfall in Products, repair or replace the delivered Products or adjust the price. No other obligation or liability will rest upon Vientosur. Full or partial termination of the Agreement, including reduction of the price, requires the written approval of Vientosur.
8. The Buyer will at all times treat the Products as befits a good custodian.
9. The Buyer is not permitted to return the Products before receiving written approval from Vientosur. If Vientosur stores or otherwise takes receipt of the returned Products, such will be for the risk and account of the Buyer. These measures can at no time be interpreted as the approval or acceptance of the return.
10. Violation of the Buyer's duty of inspection and complaint will at all times lead to the lapse of all rights, irrespective of whether as a result any concrete interests of Vientosur have been harmed.
11. If the Buyer violates its duty of inspection and complaint and Vientosur nevertheless accepts a complaint for handling, such will be subject to the reservation of all rights and the actions of Vientosur will be regarded as goodwill without acceptance of any liability or obligation.
12. If it appears that a complaint is unfounded, all internal and external costs made by Vientosur within the context of the handling of the complaint will be for the account of the Buyer.
13. Legal claims will, on pain of lapse of all rights, be submitted within one year after timely report of the complaint.

Article 7: retention of title

1. Vientosur retains title to all delivered Products until the purchase price therefor has been paid in full. The retention of title also applies to the other claims referred to in Article 3:92 paragraph 2 of the Dutch Civil Code, which have been or will be acquired by Vientosur in relation to the Buyer.
2. As long as ownership of the Products has not passed to the Buyer, the Buyer is not permitted, without the prior written permission of Vientosur, to pledge the Products or to grant a third party any other rights thereto. This prohibition has effect under both contractual and property law (as referred to in Article 3:83 paragraph 2 in conjunction with Article 3:98 of the Dutch Civil Code). The Buyer is permitted to sell and deliver the Products delivered under retention of title to third parties within its normal business operations, on the understanding that the Buyer will in the event of resale stipulate a retention of title in accordance with this article. The Buyer is, without the prior written permission of Vientosur, not entitled to assign, pledge or otherwise transfer or encumber its claims against its clients. This prohibition has effect under both contractual and property law (as referred to in Article 3:83 paragraph 2 in conjunction with Article 3:98 of the Dutch Civil Code). The Buyer will on request by Vientosur pledge its claims against its clients to Vientosur in the manner stated in Article 3:239 of the Dutch Civil Code as additional security for the fulfilment of its obligations to Vientosur under any heading whatsoever.



3. If the Buyer defaults in the fulfilment of one or more of its obligations or Vientosur has good grounds to fear that it will do so, Vientosur is entitled to recover the Products delivered under retention of title. The Buyer will lend its full cooperation thereto. The Buyer hereby in advance waives any retention rights with respect to the Products and will not impose attachment thereon. Following recovery, the Buyer will be credited for the market value, which will never be higher than the original purchase price, minus the costs of recovery and other loss of Vientosur.
4. If the right of the country of destination of the purchased Products recognises a more extensive scheme for the retention of title than stipulated in the previous paragraphs of this article, the Parties will be deemed to have stipulated the more extensive scheme on behalf of Vientosur, on the understanding that if the scheme cannot be objectively determined, the provisions of the previous paragraphs of this article will remain applicable.
5. If the Buyer is established in Germany and/or the Products are destined for Germany, the following extended and enlarged retention of title according to German law will apply between the Parties, whereby Vientosur is indicated as "wir" and the Buyer as "Käufer":

Das Eigentum an den gelieferten Waren bleibt zu Sicherung aller Ansprüche vorbehalten, die uns der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Käufer zustehen.

Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Käufer stellt die neue Sache unter Ausschluss eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.

Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen anderen Lieferanten - unter Ausschluss eines Miteigentumserwerbs des Käufers - Miteigentum an der neuen Sache zu deren vollem Wert (einschliesslich Wertschöpfung) wie folgt: a) Unser Miteigentumsanteil entspricht dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren. b) Verbleibt ein von Eigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Käufer erstreckt haben, so erhöht sich unser Miteigentumsanteil um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht uns an ihm nur ein Anteil zu, der sich aus dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten bestimmt.

Der Käufer tritt bereits jetzt seine Forderungen aus der Veräusserung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab. Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten.

Solange der Käufer seinen Verpflichtungen aus der Geschäftsverbindung mit uns ordnungsgemäss nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Käufers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen, jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn wir dies ausdrücklich schriftlich erklären. Übersteigt der Wert der uns eingeräumten Sicherheiten unsere Forderungen um mehr als 10%, so werden wir auf Verlangen des Käufers insoweit Sicherheiten nach unserer Wahl freigeben.



Scheck-/Wechsel-Zahlungen gelten erst nach Einlösung der Wechsel durch den Käufer als Erfüllung.

Article 8: payment

1. The invoices of Vientosur will be paid within the term stated on the invoice. Payment will be made unconditionally and without suspension, discount or set off on any grounds whatsoever. The Buyer is not entitled to attach own assets.
2. The Buyer will be in default on expiry of the payment term, without any notice of default being required. If the Buyer defaults on any payment, all claims by Vientosur against the Buyer will be immediately payable in full. The Buyer will during the period of default owe late payment interest of 1% per month or a part thereof on the outstanding claims.
3. All internal and external costs of Vientosur related to the collection of invoices and/or determining the loss and liability and/or the collection of damages, including but not limited to the actual costs of attorneys, bailiffs, experts and translators incurred by Vientosur, are for the account of the Buyer.
4. The extrajudicial costs owed by the Buyer will amount to at least 15% of the first €5,000 (with a minimum of €250), 10% of any remaining amount up to €10,000, 8% of any remaining amount up to €20,000, 5% of any remaining amount up to €60,000 and 3% of any remaining amount in excess of €60,000.
5. Payments made by or on behalf of the Buyer will, irrespective of the attached payment instructions, first be deducted from the costs (including but not limited to the extrajudicial collection costs), then from the due interest and finally from the principal and the current interest.
6. Further to a request thereto by Vientosur, which can be made both before and during performance of the Agreement, the Buyer will make a full or part prepayment or, for its own account, provide adequate security for the fulfilment of its obligations. Adequate security will in any event be understood as a bank guarantee callable at the first request of Vientosur, provided by a first-class Dutch bank, to the sum of 110% of the amounts owed by the Buyer (100% of these amounts with a surcharge of 10% for interest).
7. Vientosur is at all times entitled to set off the amounts that it owes under any heading to the Buyer or an affiliated Person ("Buyer et al.") against amounts that Vientosur or any affiliated Person ("Vientosur et al.") may claim under any heading from the Buyer et al. The aforementioned right to set off also exists if the payment of the claims is not yet enforceable and if the performance claimed by Vientosur et al. does not correspond to its debt.

Article 9: right of retention and pledge

1. Until such time as the Buyer has fulfilled all its obligations to Vientosur under any heading whatsoever, Vientosur will have both a right of retention and pledge to all assets held or to be acquired, either directly or indirectly, by Vientosur in connection with an Agreement. Assets in the sense of this article are defined as: movable property, bearer or order rights, monetary instruments, documents and funds.
2. The Buyer has, by accepting these Conditions, committed itself to granting Vientosur a right of pledge as referred to in paragraph 1 of this article. The right of pledge is established by bringing the assets under the control of Vientosur or a third party that will hold the assets for Vientosur, including but not limited to a transport operator or a storage and transshipment company.



Article 10: packaging

1. Packaging delivered via Vientosur subject to a deposit will be taken back at the return price applicable at the time it is taken back, possibly minus a fixed packaging fee.
2. The packaging to be returned by the Buyer will be completely empty, completely undamaged (thus also free of staples or stickers) and be sufficiently clean to serve as packaging of fresh fruit and vegetable products. If the packaging does not meet these requirements, Vientosur is entitled to refuse to take it back or to have the packaging cleaned, replaced, repaired and/or cleaned at the expense of the Buyer.
3. If Vientosur takes back the packaging by using own transport, the packaging will be sorted according to type and ready for transport.
4. Packaging that is not delivered via Vientosur will not be taken back, unless the Parties have agreed otherwise in writing.

Article 11: intellectual and industrial property

1. All rights of intellectual and industrial property with respect to the Products and the related packaging and packing materials, all in the broadest sense of the word, will be held solely by Vientosur and its licensors.
2. The Buyer will for each infringement of a right as referred to in paragraph 1 of this article forfeit an immediately payable penalty of €5,000, increased by an immediately payable penalty of €1,000 for each day, including a part day, that the infringement continues. This penalty clause is without prejudice to the other rights of Vientosur, including but not limited to its right to damages by law.

Article 12: suspension, termination

1. Without prejudice to its other rights by law and/or the Agreement and/or these Conditions, Vientosur is entitled to suspend its obligations or, without requiring any notice of default or a legal intervention, to terminate the Agreement in full or in part by means of a written notice to the Buyer if:
 - (a) the Buyer fails to properly and promptly fulfil any of its obligations;
 - (b) Vientosur has good grounds to fear that the Buyer will default in the fulfilment of one or more of its obligations;
 - (c) the Buyer is declared bankrupt or its bankruptcy has been applied for;
 - (d) the Buyer has been granted a, whether or not provisional, suspension of payments or an application thereto has been filed;
 - (e) the Buyer is declared subject to a statutory debt rescheduling scheme or an application thereto has been filed;
 - (f) the business of the Buyer is liquidated; or
 - (g) the assets of the Buyer are subject to executory attachment or subject to prejudgment attachment which is not lifted within one month of the date of attachment.
2. If the default of the Buyer under law, the Agreement and these Conditions takes effect only after notice of default, Vientosur will, in the case referred to in paragraph 1(a) of this article, not proceed with full or partial termination of the Agreement until it has provided the Buyer with a written reminder stating a reasonable term for fulfilment, which term was not complied with.
3. If Vientosur terminates the Agreement in part or in full, it is not obliged to pay any compensation and all its claims against the Buyer will immediately become payable in full.



Article 13: force majeure

1. Force majeure ("non-attributable failure") within the context of these Conditions is defined as: every circumstance for which Vientosur bears no subjective blame and which makes it impossible or practically too onerous for Vientosur to fulfil its obligations or a part thereof, including - but explicitly not limited to - full or partial crop failure, crop diseases, pest plagues, default ("attributable failure") and/or unlawful actions on the part of suppliers or transporters of Vientosur on the part of other third parties engaged in the performance of the Agreement, abnormal weather circumstances, frost, storm damage and other damage caused by natural disasters, strikes, transport problems, epidemics, fire, theft, war and threat of war, terror attacks and the threat of terrorism, as well as government measures, such as the prohibition of import, export and transit, levies, import duties and quotas.
2. Vientosur is entitled in the event of force majeure to suspend the performance of its obligations in full or part, whereby the Buyer is not entitled to require fulfilment or compensation for damages. If the period of force majeure lasts longer than two months, either Party is entitled to terminate the Agreement in full or part without being held to pay compensation, on the understanding that Vientosur retains its right to a proportionate part of the price if it has partly fulfilled its obligation before or after the occurrence of force majeure. Vientosur is also entitled to invoke force majeure if such arises after the date on which it should have fulfilled its obligation.

Article 14: liability and indemnification

1. Without prejudice to the provisions in the articles above, the scheme below applies with respect to the liability of Vientosur for losses incurred by the Buyer and/or third parties and indemnification of Vientosur by the Buyer.
2. The total liability of Vientosur under any heading whatsoever is limited to the amount paid out in the relevant case by its liability insurance, increased by the amount of the excess, which is not for the account of the insurers according to the policy conditions. If, for any reason whatsoever, no insurance payment takes place, the total liability of Vientosur under any heading whatsoever is limited to the amount of the net invoice value for the relevant Products, being the price excluding turnover tax and other taxes and levies and excluding transport costs, subject to a maximum of €5,000.
3. Vientosur is not liable for - and the Buyer is required to take out insurance against - indirect loss, consequential loss, trading loss, stagnation loss, loss of profit, missed savings, loss resulting from claims by customers of the Buyer, loss of customers, loss of goodwill and reputational damage.
4. Without prejudice to the provisions of the previous paragraphs of this article, the liability of Vientosur for Products that it has acquired from third parties will not exceed the liability of those third parties to Vientosur.
5. Vientosur accepts no liability for failure by third parties that it has engaged in the performance of an Agreement.
6. Insofar as fulfilment by Vientosur is not permanently impossible, Vientosur is only liable on grounds of attributable failure in the fulfilment of an obligation if the Buyer has promptly provided Vientosur with a written notice of default, precisely describing the nature of the default and giving a reasonable term for fulfilment, which term was not complied with.
7. The right to compensation is subject to the condition that Buyer promptly reports the loss to Vientosur, yet no later than 14 days after the loss has, or should reasonably have, become known to the Buyer.



8. Legal claims will, on pain of lapse of all rights, be submitted within one year after timely report of the loss.
9. The Buyer will indemnify Vientosur against all third-party claims that could be brought against Vientosur with respect to Products delivered or to be delivered by Vientosur. The Buyer will compensate Vientosur for any reasonable costs of defence against third-party claims.
10. Vientosur will not invoke a limitation of its liability, and the Buyer will not be obliged to indemnify Vientosur, insofar as the loss results directly from intent or deliberate recklessness on the part of Vientosur or of its management.
11. The above scheme does not apply insofar as provisions of mandatory law oppose this.

Article 15: applicable law, disputes, litigation and arbitration costs

1. Without prejudice to the provisions of article 7 paragraphs 4 and 5 of these Conditions, the legal relationship between the Parties is governed by Dutch law, including the Vienna Sales Convention.
2. Subject to provisions of mandatory law, all disputes between the Parties relating to an Agreement and/or these Conditions will in the first instance be submitted exclusively to the Court of Rotterdam (proceedings on the merits) or the interim injunction judge of the Court of Rotterdam (interim injunctions and other provisional measures), without prejudice to the right of Vientosur to submit a dispute to any other competent court.
3. Without prejudice to the provisions of paragraph 2 of this article, Vientosur is at all times entitled to have a dispute resolved in accordance with the Regulations of the Netherlands Arbitration Institute. The arbitral tribunal will consist of three arbitrators. The place of arbitration and oral hearing(s) is Rotterdam. The proceedings will be conducted in English. The tribunal will decide according to the rules of law.
4. The costs related to judicial and arbitration proceedings, including but not limited to the actual costs of attorneys, bailiffs, experts and translators incurred by Vientosur will be for the account of the Buyer if it is held to be entirely or predominantly in the wrong.

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