

## **EOSTA B.V. General Terms and Conditions of Sale and Delivery**

### **1. General**

Unless provisions to the contrary have been explicitly agreed upon in writing, these General Terms and Conditions will apply to all our offers and to all agreements of purchase and sale concluded by us, and will prevail over any and all terms and conditions of the Purchaser, even in the event that these latter terms and conditions stipulate their exclusive applicability.

### **2. Offers: agreement**

1. All offers will be without obligation unless provisions to the contrary have been laid down in writing.
2. An agreement will be deemed to have been concluded upon explicit written or oral acceptance of the relevant order by the Seller.
3. Upon or after the conclusion of an agreement, the Seller will be entitled before effecting any (additional) performance to demand security from the Purchaser with respect to the performance of its payment obligations.

### **3. Prices**

1. Unless provisions to the contrary have been stipulated, prices stated by the Seller will be:
  - a. ex works of Seller; and
  - b. exclusive of VAT and inclusive of costs of packaging material.
2. The Seller will be entitled after making an offer or after accepting an order to charge increases with respect to the prices, also in the event that such increases are a consequence of a decrease in value of the currency agreed upon.

### **4. Deliveries**

1. Unless provisions to the contrary have been agreed upon, the Seller's works will be the place of delivery.
2. The Seller will be obliged to deliver the volume/amount agreed upon, unless market disruptions compel a decrease in volume/amount. The Seller will be obliged to inform the Purchaser of such circumstance immediately and, in such event, will be entitled to deliver a smaller volume/amount.
3. The delivery terms stipulated will apply by approximation and will not be binding. Exceeding any delivery term for whatever reason will not grant the Purchaser the right of non-performance with respect to any obligation assumed by it vis-à-vis the Seller.
4. In the event that the Purchaser has not taken delivery of the products ordered at the time and place agreed upon, the Seller will be entitled to sell such products on. In such event, the defaulting Purchaser will be obliged to compensate the Seller for any and all damage arisen from such sale on the part of the Seller, including the difference in price.

### **5. Retention of title/risk**

1. The ownership of the products delivered will pass to the Purchaser after the amount payable by it in connection with the products delivered including any interest and costs has been paid to the Seller.
2. In the event that the destination of the products to be delivered is in the Federal Republic of Germany, contrary to the provisions laid down in Article 14.2, the law of the Federal Republic of Germany will apply to the provisions laid down in

Article 5.1. In such event, the Seller will also retain the "comprehensive and extended retention of title" applicable in the Federal Republic of Germany.

3. As soon as the products have left the company of the Seller, the Purchaser will bear the risk for any and all damage, direct or indirect, which may occur with respect to or due to these products, irrespective of the manner of delivery agreed upon.

#### **6. Packaging**

1. The products will be packaged in the manner customary in the vegetable and fruit trade, which manner will be determined by the Seller in accordance with sound business practice, unless provisions to the contrary have been agreed upon.
2. The Seller will be entitled to charge a user fee with respect to multi-trip packaging and durable materials (containers, plastic crates, stacking crates, etc.), which will be listed on the invoice.
3. In the event that a returnable deposit is charged, such will be set off after return of the material carriage paid, provided that the material is undamaged.

#### **7. Transport**

1. Unless provisions to the contrary have been agreed upon, the manner of transport/shipment will be determined by the Seller.
2. Unless provisions to the contrary have been agreed upon, the loading and the transport/shipment of the products will be effected at the expense and risk of the Purchaser.

#### **8. Quality and health**

1. The products to be delivered will be in compliance with the quality standards and phyto-sanitary governmental requirements applicable in the Netherlands.
2. In the event that it emerges upon export that the products to be delivered are not in compliance with the quality standards and phyto-sanitary governmental requirements applicable in the country of import, this will exclusively entitle the Purchaser to damages or to cancel the agreement if these standards and requirements are matters of common knowledge - which must be proved by the Purchaser in the event that the parties disagree on the matter - or if the Purchaser has informed the Seller of these standards and requirements in advance, upon placing the order.

#### **9. Payment**

1. Payment must be effected, at the discretion of the Seller:
  - a. by cash payment of the net amount upon delivery, or
  - b. by means of a deposit in or transfer to one of the bank or giro accounts indicated by the Seller within fourteen days after the invoice date unless provisions to the contrary have been agreed upon.
2. All payments to the Seller must be effected without any deductions or setoff.
3. In the event that the Purchaser does not comply with its payment obligation in good time, it will be in default without any notice of default being required and it will be obliged to pay monthly interest of 1.0%, as well as any judicial and extra-judicial collection costs, the latter of which is hereby fixed at 15% of the total payable amount.

#### **10. Complaints**

1. Any complaints pertaining to visible defects in the products delivered must be reported to the Seller immediately after their discovery or in any event within 24 hours after receipt by fax or telephone or telegraph. The Purchaser must immediately confirm any report issued by telephone in writing. In addition, the Purchaser/the receiver of the products must make a note of the complaint on the relevant transport papers, in order to confirm that the complaint existed at the time of delivery of the products.
2. Complaints pertaining to non-visible defects in the products delivered must be reported to the Seller in the manner described in paragraph 1 immediately after their discovery or in any event within 24 hours after receipt.
3. A complaint must at least contain:
  - a. an extensive and accurate description of the defect; and
  - b. a statement describing any other facts from which it may be deduced that the products delivered [by the Seller] and the products rejected by the Purchaser are the same.
4. The products to which the complaints pertain must be made available for inspection by the Seller in the state in which they were at the time that the defects were discovered and may not be sold on unless the Seller has granted its explicit consent in that connection.
5. Complaints pertaining to a part of the products delivered will not constitute a reason to reject the entire shipment.
6. After the expiry of the terms mentioned in paragraphs 1 and 2, the Purchaser will be deemed to have approved the products delivered or the invoice, respectively. As from that date, complaints will no longer be accepted by the Seller.
7. Products delivered may only be returned after prior written consent from the Seller on conditions to be determined by the Seller.

#### **11. Liability and limitation of liability**

1. The Seller will only be liable if the Purchaser has filed a complaint in accordance with the provisions laid down in Article 10.
2. Liability of the Seller pertaining to damage suffered by the Purchaser will be limited to defects in the products delivered and will run up to a maximum of half of the invoice amount pertaining to those faulty products. Any further liability, be it with respect to direct or indirect damage, costs and/or interests, is hereby explicitly excluded. The Seller will furthermore only be liable in the event that the Purchaser proves that the defects in the products delivered did not occur during loading or transport.

#### **12. Force majeure**

1. The Seller will not be liable for any delay or non-delivery as a consequence of force majeure. The term "force majeure" will be deemed to include: every circumstance outside of the direct sphere of influence of the Seller, such as, *inter alia*, strikes, transport problems, fire, extreme weather circumstances, government measures, extreme cases of sick leave among personnel and business interruptions at the Seller and/or its supplier.
2. In the event of force majeure, the Seller will be entitled with respect to the part of the agreement that has not been performed yet, at its own discretion, to suspend delivery or to dissolve the agreement immediately or at a later date without being obliged in any manner to pay damages.

#### **13. Dissolution**

In the event that the Purchaser fails to fulfil one of its obligations vis-à-vis the Seller pursuant to the agreement or in the event of serious doubt regarding the Purchaser's ability to fulfil its obligations pursuant to the agreement, the Seller will be entitled to dissolve all agreements concluded with the Purchaser in whole or in part without notice of default or judicial intervention, without prejudice to the Seller's right to damages.

**14. Disputes/applicable law**

1. Any and all disputes arising from agreements concluded by the Seller and/or further agreements that are part of such former agreements will be settled exclusively by the competent Court in Utrecht, the Netherlands, or, if so preferred by the Seller, by another court competent to take cognisance of the dispute.
2. Any and all agreements to which these Terms and Conditions apply in whole or in part will be governed by Dutch law.