



## **GENERAL SALES AND DELIVERY CONDITIONS OF TOLPOORT VEGETABLES**

### **ARTICLE 1 Definitions and general**

1.1 The following words are defined as follows in these general terms and conditions unless explicitly indicated otherwise:

- Seller: the user of these general terms and conditions, specifically Tolpoort Vegetables, with the object of, inter alia, selling the products cultivated or produced by the members of Tolpoort Vegetables.
- Buyer: the counterparty of the Seller, carrying out a profession or operating a company.
- Agreement: an agreement between the Seller and the Buyer.
- Grower: the owner of the product sold or delivered by the Seller to the Buyer, specifically the member of Tolpoort Vegetables which cultivated or produced this sold or delivered product.
- Products: all goods and/or services and/or other performances that are the subject of an Agreement;

1.2 These conditions govern all quotations, offers, Agreements, and deliveries by the Seller to which the Seller has declared these conditions applicable, insofar as this does not violate the agreements made in writing between the Seller and the Buyer. These conditions also govern all Agreements for which execution third parties are engaged.

1.3 These conditions apply to the exclusion of any (general) terms and conditions used by the Buyer.

1.4 If one or more provisions of these conditions are void or annulled, the other provisions will remain in full force and effect. In this case, the Seller and the Buyer will discuss the situation to agree on new provisions to replace the void or annulled provisions, in which respect the purpose and scope of the original provision will be observed if and insofar as possible.

### **ARTICLE 2 Quotations and representation of the Buyer**

2.1 Quotations and offers of the Seller will always be without obligation and can only be accepted without any deviations. Quotations and offers will always be deemed to have expired if they have not been accepted within one month, or, in case of single-day quotations, within one day. Orders and the acceptance of offers by the Buyer will be irrevocable.

2.2 By signing the Agreement, the person who signs on behalf of the Buyer declares that he is authorised to represent the Buyer and that all formalities necessary in this context have been fulfilled.

### **ARTICLE 3 Prices**

3.1 All prices are in euros and do not include transport costs, packaging costs, and VAT. All levies, surcharges, taxes, additional costs, and the like imposed on the Seller by the (semi-)government in relation to the sold products will be borne by the Buyer.

3.2 The Seller is not required to maintain an Agreement at a fixed price that is clearly based on a printing or typographical error.

3.3 Verbal commitments by and agreements with subordinates of the Seller will only bind the Seller once and insofar as these have been confirmed in writing by the subordinate of the Seller in question.



#### **ARTICLE 4 Place of fulfilment, delivery method, and risk**

4.1 The place of fulfilment will be agreed on for each specific (purchase) Agreement. If no place of fulfilment has been agreed upon, the Seller will determine this location, which will be as close to the place of cultivation, production, or packaging as possible.

4.2 The Products sold by the Seller will be delivered ex works unless the Parties have agreed in writing that the sold Products will be delivered CPT the company premises of the Buyer or CPT another agreed delivery destination. The risk will transfer to the Buyer at the moment on which the Seller makes the Products available to the Buyer or, in case of delivery CPT, at the moment on which the Seller provides the Products to the first carrier. The Seller is never required to insure the sold Products for the duration of the transport unless agreed otherwise in writing with the Buyer. "Ex works" and "CPT" will be interpreted in accordance with the latest version of the Incoterms.

4.3 The Buyer is required to immediately accept the Products at the moment on which the Seller delivers (or has another party deliver) these, or at the moment on which they are made available to it in accordance with the Agreement.

4.4 Goods do not need to be delivered to a location beyond the place accessible by the mode of transport of the Seller and/or the mode of transport of a third party designated by the Seller on a properly usable road, in which respect the Buyer is required to immediately accept the goods and to inspect the goods in accordance with Article 7 of these general terms and conditions.

4.5 If the sold goods are stored for the Buyer by or on behalf of the Seller, the delivery will take place at the moment at which the sold goods are stored. The Seller is not required to insure the Products for the duration of the storage.

4.6 Delays in the delivery, insofar as these fall within reasonable limits, do not give the Buyer the right to dissolve the Agreement.

4.7 The risk of the sold object will transfer to the Buyer from the moment of the delivery of the sold goods, and, if the Buyer does not cooperate with the delivery, from the moment of the refusal of the delivery.

#### **ARTICLE 5 Conformity**

5.1 All statements by the Seller concerning quantities and/or other indications related to the Products are made with the utmost care. However, neither the Grower nor the Seller can guarantee that the goods do not contain any abnormalities. The Buyer must verify whether the delivery corresponds to the agreed or indicated quantities and/or other indications when receiving the Products.

5.2 Samples, images, descriptions, catalogues, advertising materials, and offers will not be binding to the Seller and the Grower.

5.3 The Buyer must ensure that the Products (to be) ordered by it and the associated packaging, labelling, and other information meet all government requirements stipulated in the country of destination. The Buyer will bear the risk for the use of the Products and their conformity with the government requirements.

5.4 The delivered quantities will be deemed to comply with that what has been agreed on or stipulated in terms of quantity, weight, and stipulated requirements in the field of public law or private law unless the Buyer provides proof to the contrary.



#### **ARTICLE 6 Delivery period**

6.1 Indicated or agreed delivery periods or dates will not be deadlines. A situation of default will exist following a first notice of default in accordance with Article 6:82 DCC. A reasonable period for fulfilment will at least be the reasonable period observed in the industry of the Seller.

6.2 The delivery periods or dates indicated or agreed at the moment of the conclusion of the Agreement are based on the work conditions, production estimates, or the timely delivery of inventories, materials, or components ordered by the Seller.

6.3 The inability to deliver goods or the failure to meet the delivery period, irrespective of the origin of the goods, does not require the Seller to pay any form of compensation.

6.4 The failure to meet the delivery period does not give the Buyer the right to dissolve the purchase agreement or to suspend or refuse to fulfil its payment obligations.

#### **ARTICLE 7 Inspection by the Buyer after the delivery and the complaint period**

7.1 The Buyer is required to meticulously (have another party) inspect the Products immediately following the delivery to determine whether they comply with the Agreement in all aspects, specifically:

- a. whether the correct goods have been delivered;
- b. whether the delivered goods comply with the quality requirements for regular use or trading purposes;

in accordance with Dutch legislation; and

- c. whether the delivered goods correspond to what was agreed on in terms of quantity (number and weight).

In case of deviations in terms of weight or quantity of less than 3%, the Seller will not owe any compensation. In case of deviations in weight or quantity between 4 and 10% of the total, the Buyer will fully accept the delivery with a proportionate price decrease or increase.

7.2 Complaints about shortcomings, including about deviations in quality or quantity, must be reported to the Seller as soon as possible after the moment on which the shortcomings could be reasonably discovered, but no later than 16 hours following the delivery, and be subsequently confirmed in writing with pictures within 8 hours. The Seller will not be liable for recognisable shortcomings in fresh Products unless the Buyer demonstrates that the Seller or its producers were aware of these.

7.3 In case of a shortcoming, the Buyer must fully keep the delivered goods and give the Seller or a third party designated by the Seller the opportunity to inspect the delivered goods unless the Parties agree otherwise.

7.4 The Buyer must always care for the goods like a careful debtor.

7.5 The submission of a complaint does not release the Buyer from its payment obligations in accordance with Article 8 of these conditions unless the complaint and the release from the payment obligation have been accepted by the Seller in writing.

7.6 In case of complaints that have been found valid by the Seller, the Seller can, at its discretion, accept the return of the goods offering a refund of the purchase price or replacing the goods. However, the Buyer will not be entitled to any form of compensation. In case of complaints that have been found valid, specifically those outside of Europe, the costs of accepting the return of the goods and refunding the purchase price and/or replacing the goods will be borne 50% by the Seller and 50% by the Buyer.

7.7 Goods can only be returned by the Buyer once the Seller has accepted this in writing. All return shipments will be for the risk and account of the Buyer.



## **ARTICLE 8 Payment**

8.1 The (to be) delivered Products will be invoiced to the Buyer by the Seller on behalf of the Grower. Unless agreed otherwise in writing, the invoices of the Seller must be paid within 8 days of the invoice date and solely in the manner specified on the invoice.

8.2 Any payment of outstanding invoices will be deemed to have taken place to cover the oldest payments due.

8.3 The Buyer will only have completed the payment once the invoice amount has been credited to the bank account of the Seller, even if it used cheques. If the crediting date exceeds the agreed payment period, the Seller has the right to charge interest for this exceeded payment period by means of an interest invoice.

8.4 All costs related to the collection, including extrajudicial collection costs and pre-procedural costs, will be borne by the Buyer. The extrajudicial collection costs will amount to at least 15% of the amount to be collected with a minimum of 250 euros.

8.5 If payment does not take place in a timely fashion, the Buyer will owe an interest of 1.5% per month on the invoice amount without further notice of default being required, calculated as of the due date up to the date of payment, in which respect a part of a month will be considered a full month.

8.6 The Buyer will never be entitled to a payment discount or to deduct or settle amounts from or with the invoice amount due on any grounds. Only credit invoices of the Seller may be settled.

8.7 Complaints, the creation of credit invoices, or (a) shortcoming(s) in the fulfilment by the Seller can never be a reason for not paying the undisputed part of an invoice in a timely fashion. Article 8(3-6) will remain in full force and effect in relation to this part.

8.8 If any exigible amount is not paid and in case of a suspension of payments, a bankruptcy, the applicability of the Dutch Natural Persons Debt Restructuring Scheme, liquidation of the company of the Buyer, or attachment levied on the goods of the Buyer, the Seller will have the right to dissolve the Agreement or that part thereof that has not yet been executed and to recover any goods for which no payment has been received, without prejudice to the right to claim compensation for any loss of profits and/or (in)direct damage suffered. In these cases, any claim of the Seller on the Buyer will become immediately exigible.

8.9 The Seller has the right to invoice partial deliveries separately.

8.10 The Seller may also demand a bank guarantee or a comparable security from the Buyer for (a part of) the purchase price if the Buyer exceeds its credit limit.

## **ARTICLE 9 Reservation of ownership**

9.1 Goods delivered by the Seller will remain the property of the Seller until the moment of full payment of all claims of the Seller on the Buyer based on any Agreements, including interest and costs.

9.2 Goods delivered by the Seller subject to a reservation of ownership set out in paragraph 1 may only be sold in the course of the regular operations of the Buyer.

9.3 The Buyer will insure the goods delivered subject to a reservation of ownership against theft and fire, explosion, and water damage, in which respect the Buyer is required to transfer the insurance payments to the Seller.

9.4 The Buyer is required to keep the Products delivered subject to a reservation of ownership with the necessary care and as the recognisable property of the Seller.

9.5 If the Buyer fails to fulfil its obligations and there are legitimate concerns that this situation will persist, the Seller has the right to (have another party) retrieve the goods covered by the reservation



of ownership referred to in Article 1 from the Buyer or third parties holding the goods for the Buyer. The Buyer and the holder of the Buyer are required to fully cooperate with this without any delays.

9.6 If third parties attempt to establish or assert any right on the goods delivered subject to a reservation of ownership, the Buyer is required to inform the Seller of this as soon as can reasonably be expected from it.

9.7 The Buyer undertakes to grant its reasonable cooperation to all measures that the Seller wishes to take in relation to its reservation of ownership on the delivered goods.

9.8 The Buyer has no right of retention vis-à-vis the Seller on the Products delivered through the Seller.

### **ARTICLE 10 Force majeure**

10.1 If the Grower is unable to fulfil the Agreement due to force majeure experienced by either itself and/or the Seller, the Grower will have the right to suspend the execution of the Agreement and will no longer be bound to any delivery period as a result. In this case, the Buyer will not be entitled to compensation for damage and/or costs.

10.2 A force majeure situation will include war, the risk of war, unrest, (lightning) strikes, work-to-rule, fire, adverse weather conditions, crop diseases or other cultivation-related issues, accidents or illness of staff, company standstill, stagnation in transport, disrupting statutory provisions, import/export restrictions, other government restrictions, lack of raw materials, issues with the production or transport not foreseen by the Grower, bankruptcy, suspension of payments and/or dissolution of one or more Growers delivering the goods in question, as well as any other circumstance that does not depend exclusively on the will of the Seller or the Grower, such as the late or missing delivery of goods or services by third parties engaged by the Seller and/or the Grower. If the Seller is unable to fulfil its obligations because a Grower no longer delivers goods to it, this will also be considered a situation of force majeure.

10.3 In case of a situation of force majeure, the Seller has the right to dissolve that part of the Agreement that cannot be executed on behalf of the Grower by means of a written statement. The Buyer will also have the right to dissolve that part of the Agreement that cannot be executed by means of a written statement if the force majeure situation lasts for more than 4 weeks.

10.4 If the Grower has already partially met its obligations at the start of the force majeure situation or will only be able to partially fulfil its obligations, the Seller has the right to invoice the part that has already been delivered or can be delivered separately, and the Buyer will be required to pay this invoice as if it were a separate agreement.

### **ARTICLE 11 Liability of the Seller**

11.1 The Seller will never be liable for damage in case of force majeure. In addition, the Seller will only be liable for direct damage in case of intent or gross failure of itself or its subordinates up to the amount of the invoice value of the delivered products (excluding the packaging) due to which or in which respect damage was caused. If the damage is covered by an insurance of the Seller and/or the Grower, the compensation will never exceed the amount actually paid by the insurer in the specific case. The Seller will never be liable for any other damage, whatever called, including consequential damage and company damage.

11.2 The Buyer indemnifies the Seller unconditionally against any claims by third parties in relation to the delivered products.



#### **ARTICLE 12 Rights of the Seller in case of a failure by the Buyer**

12.1 If the Buyer fails to fulfil its obligation set out in this Agreement (in a timely fashion), the Buyer will be in default and the Seller will have the right to suspend any further deliveries and to dissolve the Agreement without judicial intervention being required by means of a written statement. The Buyer will also be liable for all damage suffered by the Seller, including loss of profits, losses, product damage, costs, interest, transport costs, commission, judicial and extrajudicial costs, and all other damage or costs related directly or indirectly to the sale.

#### **ARTICLE 13 Intellectual property rights**

13.1 The Seller explicitly retains any intellectual property rights (including trademarks) related to the Products delivered by it.

13.2 The Buyer may only resell the delivered Products in the provided packaging and capacity while using any trademark or logos of the Seller.

13.3 The Buyer may never supplement the delivered Products with goods of another origin than the Seller in order to resell these as a single unit using the trademarks or logos of the Seller.

13.4 Deviations from paragraphs 1, 2, and 3 are only permitted with the explicit written permission of the Seller which must always contain a description of the permitted deviation and the period during which this permission applies.

#### **ARTICLE 14 Cancellation and indemnification**

14.1 The Buyer may not cancel a granted order. If the Buyer nevertheless fully or partially cancels a granted order, it will be required to pay all costs reasonably incurred by the Seller and the Grower for the execution of this order as well as a fee for the work by the Seller and the loss of profits of the Grower, to be increased by VAT.

#### **ARTICLE 15 Advice**

15.1 All advice given by the Seller or the Grower and all statements about qualities or properties of the products to be delivered by the Grower given by the Seller or the Grower are entirely without obligation and are provided by the Seller or the Grower as non-binding information. The Seller and the Grower do not offer any guarantees in this respect.

15.2 The Seller and the Grower will not be liable for any direct or indirect damage in any form and on any grounds arising from the provision of information and/or advice referred to in 15.1. The Buyer indemnifies the Seller and the Grower against all claims by third parties in this respect unless a case of intent or gross failure of the Seller or the Grower exists.

15.3 Without the prior written permission of the Seller, the Buyer may not disclose or share the content of advice, opinions, or other (written) statements of the Seller or the Grower with third parties.

#### **ARTICLE 16 Representation**

16.1 If the Buyer acts on behalf of one or more others, it will be jointly and severally liable vis-à-vis the Seller and the Grower as if the Buyer were an independent client, without prejudice to the liability of these others.

#### **ARTICLE 17 Applicable law and choice of court**

17.1 All Agreements are governed exclusively by the laws of the Netherlands. The applicability of the so-called Uniform Law on the Sale of Goods and the Vienna Sales Convention is expressly excluded.



17.2 In case of a difference in interpretation between a translation of these conditions and the Dutch text of these conditions, the Dutch text will be decisive.

17.3 All disputes in relation to quotations or offers or Agreements issued by the Seller will in first instance exclusively be settled by the competent court of Noord-Holland.