

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

MISS BERRY B.V.

Based in Noordhoek

Chamber of Commerce no. 81160119

1. Definitions

- 1.1. In these terms and conditions, "Miss Berry" will mean: Miss Berry B.V., a private company with limited liability having its registered office in Noordhoek;
- 1.2. In these terms and conditions, "Buyer" will mean: the Person with whom or which Miss Berry has concluded or is negotiating an Agreement;
- 1.3. In these terms and conditions, "Parties" will mean: Miss Berry and the Buyer;
- 1.4. In these terms and conditions, "Agreement" will mean: any agreement between the Parties, regardless of whether this is a framework agreement or an individual agreement, which entails (a) that Miss Berry supplies goods to the Buyer on payment of a price in money (purchase agreement), and/or (b) that Miss Berry makes goods available to the Buyer in order to have these sold by the Buyer on Miss Berry's instructions (commission agreement), and/or (c) that Miss Berry provides services to the Buyer (including refrigeration services), and/or (d) that Miss Berry delivers any other performance for the benefit of the Buyer, any amendment or addition to this agreement, as well as all legal acts and acts without an intended legal effect in preparation for and implementation of this agreement, including proposals from Miss Berry;
- 1.5. In these terms and conditions, "Products" will mean: all goods and/or services and/or other performances which are the subject of an Agreement;
- 1.6. In these terms and conditions, "Person" will mean: a natural person, legal entity or unincorporated company;
- 1.7. In these terms and conditions, "in writing" and "written" will also mean: by email.

2. General

- 2.1. These terms and conditions apply to all Agreements, to the express exclusion of all other general terms and conditions. If Miss Berry does not require strict compliance with these terms and conditions in a particular case, this will not mean that Miss Berry loses the right to require strict compliance with these terms and conditions in future cases, whether similar or otherwise. Any stipulations derogating from these terms and conditions will only be binding if they have been agreed in writing and will only apply to the case concerned.
- 2.2. All the stipulations of these terms and conditions have been made not only for the benefit of Miss Berry but also for the benefit of the following Persons, who can invoke this third-party clause at all times: (i) Miss Berry's directors and shareholders (including its indirect directors and shareholders), (ii) all Persons working for Miss Berry, (iii) all Persons engaged by Miss Berry in the performance of an Agreement, and (iv) all Persons for whose acts or omissions Miss Berry could be liable.
- 2.3. If one or more of the provisions of these terms and conditions and/or an Agreement should turn out to be void or be voided by a court, the remaining provisions of these

terms and conditions and the Agreement will retain their legal force. The void or voided provisions will be replaced by valid provisions which resemble the original provisions as closely as possible in view of the tenor and purport of these terms and conditions and the Agreement.

- 2.4. These terms and conditions have been drawn up in several languages. If there should be a difference of opinion about the content or purport of these terms and conditions, the Dutch text will be binding.
- 2.5. Miss Berry will be entitled at all times to amend these terms and conditions.

3. Purchase and commission agreements

- 3.1. If the Buyer procures Products from Miss Berry without the Parties having concluded an express written commission agreement, the Parties will be deemed to have concluded a purchase agreement.
- 3.2. A commission agreement will be subject to the following provisions:
 - a. after the Products have been made available, the Buyer will have them inspected immediately by an independent expert;
 - b. upon receipt of the quality inspection report, the Buyer will immediately forward this report to Miss Berry;
 - c. the Buyer will store the Products with due care;
 - d. when Miss Berry so requests, the Buyer will grant Miss Berry permission to access the premises where the Products are stored during normal working hours in order to inspect the Products;
 - e. the Buyer will sell and supply the Products to third parties in its own name;
 - f. the Buyer will not (i) sell the Products to any Person affiliated to the Buyer or (ii) have the Products sold by any third party (whether affiliated or not affiliated to the Buyer) without Miss Berry's prior written consent;
 - g. the Buyer will endeavour to realise the highest possible sales proceeds;
 - h. prior to the sale of the Products, the Buyer will hold consultations with Miss Berry in order to determine the sales price; if it turns out to be impossible to sell the Products for this price, the Parties will adjust the sales price in joint consultation;
 - i. the Buyer will inform Miss Berry on a daily basis about the market situation and developments, the quantity of Products sold, the sales prices realised and the remaining stock of Products;
 - j. in addition to the commission to which it is entitled, the Buyer will only pass on those costs to Miss Berry which were agreed in advance between the Parties and are apparent from the sales records;
 - k. the Buyer will enable Miss Berry to check the accuracy of the sales records or arrange for this to be done; when Miss Berry so requests, the Buyer will (i) provide Miss Berry with all the documents underlying the sales records, including but not limited to the relevant batch cards, sales invoices and cost invoices, as well as all relevant receipts and accounts receivable cards, and (ii) enable an auditor to be designated by Miss Berry to audit the relevant part of the Buyer's accounts and the associated books, documents and other data carriers with the right to copy the files concerned;
 - l. the Products will remain the property of Miss Berry until the Buyer has sold and supplied them to third parties; at Miss Berry's expense. the Buyer will take out and maintain insurance in respect of the Products against the risk of fire, theft, loss and damage;
 - m. Miss Berry will always be entitled to terminate the commission agreement with immediate effect, without having to state its reasons, in which event the Buyer will

fully cooperate in Miss Berry taking back the Products. The Buyer waives any rights of retention in respect of the Products in advance and will not have the Products attached.

- 3.3. The other clauses of these terms and conditions will also apply (whether by analogy or otherwise) to commission agreements, except insofar as such applicability is not possible in view of the nature of a commission agreement. Insofar as Clause 3(2) is inconsistent with any other clause or paragraph of these terms and conditions, the provisions of Clause 3(2) will prevail.

4. Proposals; Agreements

- 4.1. All information and specifications provided in the context of proposals from Miss Berry will be estimates only. Deviations up to 10% are permitted in all cases.
- 4.2. All proposals from Miss Berry are free of obligation. Miss Berry is entitled to revoke its proposal within three working days of receiving the Buyer's acceptance.
- 4.3. An acceptance by the Buyer which differs from Miss Berry's proposal, whether on minor points or otherwise, will always count as a rejection of this proposal and as a new proposal from the Buyer. An Agreement will only be formed in accordance with this new proposal after Miss Berry has accepted this proposal in writing.
- 4.4. An Agreement will be formed at the moment when:
- three working days have elapsed since Miss Berry received the Buyer's acceptance and Miss Berry has not revoked its proposal during this period; or
 - Miss Berry confirms the Agreement in writing; or
 - Miss Berry has started performing the Agreement.
- 4.5. Miss Berry will not be obliged to abide by a proposal and/or an Agreement for a specified price if this price is based on a misprint and/or typographical error.
- 4.6. All Agreements involving the supply of agricultural Products by Miss Berry are subject to a harvest proviso. If fewer Products are available than could reasonably be expected when the Agreement was concluded, due to a disappointing harvest in terms of the quantity and/or quantity of agricultural Products, or due to the rejection of Products by the competent authorities, Miss Berry will be entitled to reduce the quantities it sells accordingly. By supplying the quantities thus reduced, Miss Berry will fully comply with its supply obligation. In that situation, Miss Berry will not be obliged to supply replacement agricultural Products and will not be liable for any loss whatsoever.
- 4.7. The Buyer will not be permitted to transfer an Agreement or one or more of its rights and/or obligations under an Agreement without Miss Berry's prior written consent. This prohibition has effect not only under the law of obligations but also under property law (as referred to in Article 3:83(2) of the Dutch Civil Code (*Burgerlijk Wetboek*, "DCC")).

5. Prices

- 5.1. Unless the Parties have agreed otherwise in writing, the prices are shown in euro.
- 5.2. The prices exclude VAT and other taxes and levies, and exclude transport costs and packaging costs.
- 5.3. The prices are based on the cost-determining factors applicable at the time of the conclusion of the Agreement. If there is a change in these factors after the conclusion of the Agreement but before delivery of the Products which is beyond Miss Berry's reasonable control, Miss Berry will be entitled to pass on the resulting costs to the Buyer.

6. Conformity, delivery date, delivery and risk

- 6.1. The conformity of the Products will be assessed on the basis of the laws and regulations in force in the Netherlands at the moment of delivery. Unless the Parties have agreed otherwise in writing, Miss Berry is not obliged to comply with any other laws and regulations.
- 6.2. The delivery dates stated by Miss Berry will always be estimates only and can never be regarded as final deadlines.
- 6.3. The Products sold by Miss Berry will be sold Ex Works, unless the Parties have agreed otherwise in writing. "Ex Works" will be interpreted in accordance with the latest version of the Incoterms.
- 6.4. If the Parties have agreed that Miss Berry will store Products for the Buyer, either on Miss Berry's own premises or on those of a third party, and these Products have not yet been supplied to the Buyer, the Products will be deemed to have been supplied at the moment they are stored. From this moment, the Buyer will have the obligation of inspection and obligation to complain described in Clause 7 of these terms and conditions, while this Clause 7 will apply in full in other respects as well. Miss Berry will not be obliged to insure the Products for the duration of the storage.
- 6.5. Miss Berry will be authorised, but never obliged, to deliver the Products sold in parts and to issue a separate invoice for each partial delivery.
- 6.6. The Buyer is obliged to take delivery of the Products bought. The obligation to take delivery comprises: a) performing all acts which may reasonably be expected of the Buyer in order to enable Miss Berry to make the delivery, and b) taking possession of the Products. If the Buyer fails to take delivery within six hours of the Products being placed at its disposal, the Buyer will be in default without notice of default being required, and Miss Berry will be authorised to terminate the Agreement and claim compensation from the Buyer, without prejudice to its other rights, including the right to store the products at the Buyer's expense and risk.

7. Inspection and complaints

- 7.1. The Buyer is obliged to carry out or arrange an inspection of the Products immediately upon delivery (and therefore prior to transport), which means in this clause that the Buyer must carry out or arrange a thorough and careful examination as to whether the Products comply with the Agreement in all respects, more in particular:
 - a. whether the right Products were delivered;
 - b. whether the Products delivered meet the quality requirements, both externally and internally, which may be made of them in the context of normal use and/or for commercial purposes; and
 - c. whether the Products delivered comply with what the Parties agreed in terms of quantity (number, quantity, weight).
- 7.2. With a view to examining the internal quality of the Products, the Buyer must cut them in half on a random basis and check them for the presence of foreign bodies and other defects, or arrange for this to be done. In the event of underdeliveries up to 10% of the total quantity, the Buyer will be obliged to accept what has been delivered in full against a proportional reduction of the price.
- 7.3. Complaints about the delivered quantity and about visible defects, which also include internal defects that were detected or should reasonably have been detected during the inspection referred to in Paragraph 1 of this clause, must be submitted to Miss Berry immediately after this inspection – and therefore prior to transport – and subsequently be confirmed in writing within 24 hours, with a detailed description of the nature of the failure, at the risk of forfeiting all rights.

- 7.4. Complaints about invisible defects (if any) must be submitted to Miss Berry in writing immediately after these defects were detected or should reasonably have been detected, but no later than 24 hours after delivery and in any case prior to the sale or resale and supply by the Buyer and/or further transport by or on the instructions of the Buyer, with a detailed description of the nature of the defects, at the risk of forfeiting all rights.
- 7.5. Complaints regarding minor and/or usual and/or technically unavoidable deviations in quality, size, weight, colour, quantity and suchlike and complaints about modified or processed Products will be inadmissible.
- 7.6. If Miss Berry does not accept a complaint from the Buyer within eight hours, the Buyer will be obliged, at the risk of forfeiting all rights, to have an independent assessment carried out by a sworn adjuster within 12 hours. Both time periods referred to in this paragraph will start at 7:00 hours (Miss Berry's local time) on the working day following that on which the Buyer submitted the complaint. The Buyer must give Miss Berry the opportunity to be present or represented at the aforesaid assessment. Miss Berry will be entitled to obtain a second opinion.
- 7.7. The Buyer will fully cooperate in the investigation of the complaint. If the Buyer does not cooperate or an investigation is not or no longer possible in other ways, the Buyer's complaint will be inadmissible.
- 7.8. If the Buyer's complaint is well founded, also in view of the provisions of this clause, Miss Berry, after consultation with the Buyer, will see to the delivery of the missing Products, the repair or replacement of the Products delivered or an adjustment of the price. Miss Berry will have no other obligation or liability. A full or partial termination of the Agreement, including a price reduction, will require Miss Berry's written consent.
- 7.9. The Buyer is obliged to ensure the preservation of the Products as a prudent debtor.
- 7.10. The Buyer may not return the Products until Miss Berry has agreed to this in writing. If Miss Berry stores the returned Products or retrieves those Products in another way, this will be done at the Buyer's expense and risk. These measures may never be construed as approval or acceptance of the return.
- 7.11. A breach of the Buyer's obligation of inspection or obligation to complain will always result in forfeiture of all rights, regardless of whether this breach was detrimental to specific interests of Miss Berry.
- 7.12. If the Buyer breaches its obligation of inspection or obligation to complain and Miss Berry nevertheless deals with a complaint, this will be done without prejudice to any rights, and Miss Berry's efforts must be regarded as leniency without acceptance of any obligation or liability.
- 7.13. If a complaint turns out to be unfounded, the internal and external costs incurred by Miss Berry in the context of handling the complaint will be borne by the Buyer.
- 7.14. Any legal claims must be brought no later than one year after the timely submission of a complaint, at risk of forfeiting all rights.

8. Retention of title

- 8.1. Miss Berry will retain the title to all Products delivered until the purchase price for these Products has been paid in full. This retention of title will also apply to the other claims referred to in Article 3:92(2) DCC which the Miss Berry has or will obtain against the Buyer.
- 8.2. For as long as the title to the Products has not passed to the Buyer, the Buyer will not be permitted to pledge the Products or grant a third party any other right to the Products without Miss Berry's prior written consent. This prohibition has effect not only under the law of obligations but also under property law (as referred to in Article

3:83(2) DCC in conjunction with Article 3:98 DCC). However, the Buyer will be permitted to sell and supply the Products delivered subject to retention of title to third parties in the context of its normal business operations, on the understanding that in the event of a resale the Buyer will be obliged to stipulate a retention of title in accordance with the provisions of this clause. The Buyer will not be permitted to assign, pledge, transfer by any other title or encumber any claims which it has or may obtain against its customers without Miss Berry's prior written consent. This prohibition has effect not only under the law of obligations but also under property law (as referred to in Article 3:83(2) DCC in conjunction with Article 3:98 DCC). The Buyer undertakes to pledge the claims against its customers to Miss Berry in the manner indicated in Article 3:239 DCC when Miss Berry so requests, as additional security for the fulfilment of its obligations towards Miss Berry on whatever grounds.

- 8.3. If the Buyer fails to fulfil its obligations towards Miss Berry, or if Miss Berry has good reason to fear that the Buyer will fail to do so, Miss Berry will be entitled to take back the Products delivered subject to retention of title. The Buyer will fully cooperate in this. The Buyer waives any rights of retention in respect of the Products in advance and will not have the Products attached. After taking back the Products, Miss Berry will credit the Buyer for the market value, which under no circumstances will exceed the original purchase price, reduced by the costs of taking back the Products and Miss Berry's other losses.
- 8.4. If the law of the country of destination of the Products purchased offers farther-reaching options for the retention of title than described in the previous paragraphs of this clause, the Parties will agree that these farther-reaching options are deemed to have been stipulated for the benefit of Miss Berry, on the understanding that if the farther-reaching options cannot be objectively determined, the provisions of the previous paragraphs of this clause will remain applicable.
- 8.5. If the Buyer is based in Germany and/or the Products are destined for Germany, the following extended and detailed retention of title under German law will apply between the Parties, with Miss Berry being referred to as "wir" and the Buyer as the "Käufer":
"Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Käufer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Käufer stellt die neue Sache unter Ausschluss des 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 Eigentumsvorhalten 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. Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Käufer als Erfüllung. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschliesslich deutsches Recht.“

9. Payment

- 9.1. Miss Berry's invoices must be paid within the term specified on the invoices Payment must be effected unconditionally, without suspension, discount or set-off on whatever grounds. The Buyer will not have an attachment made against Miss Berry in respect of a counterclaim.
- 9.2. The Buyer will be in default by the mere expiry of the payment term, without notice of default being required. If the Buyer defaults on any payment, all Miss Berry's claims against the Buyer will become immediately due and payable in full. While it is in default, the Buyer will owe default interest of 1% per month or part of a month on the outstanding claims.
- 9.3. All internal and external costs incurred by Miss Berry in connection with the assessment of the loss and liability and/or with the collection of loss amounts, including but not limited to the fees of lawyers, bailiffs, experts and translators, will be borne by the Buyer.
- 9.4. The extrajudicial collection costs owed by the Buyer will be at least 15% on the first EUR 5,000 (with a minimum of EUR 250), 10% on the excess up to EUR 10,000, 8% on the excess up to EUR 20,000, 5% on the excess up to EUR 60,000 and 3% on the excess over EUR 60,000.
- 9.5. Payments made by or on behalf of the Buyer will, regardless of the allocation order specified, first be offset against the costs (including but not limited to the extrajudicial collection costs), subsequently against the interest due and finally against the principal sum and the interest being accrued.
- 9.6. Further to a request to this effect from Miss Berry, which may be made either before or during the performance of the Agreement, the Buyer will make a full or partial advance payment or, at its own expense, furnish adequate security for the fulfilment of its payment obligations. "Adequate security" will mean in any case a bank guarantee due and payable when Miss Berry so requests, provided by a first-class Dutch bank, equal to 110% of the amounts owed by the Buyer (100% of these amounts with a 10% interest surcharge).
- 9.7. Miss Berry is entitled at all times to offset the amounts which it owes on any grounds to the Buyer or any Person affiliated to it ("the Buyer *et al.*") against the amounts which Miss Berry or any person affiliated to it ("Miss Berry *et al.*") is owed by the Buyer *et al.* This authority to offset will also exist if the payment of the claims is not yet enforceable and if the performance owed to Miss Berry *et al.* is not commensurate with its debt.

10. Right of retention and right of pledge

- 10.1. Until the moment when the Buyer has fully discharged all its obligations on any grounds towards Miss Berry, Miss Berry will have a right of retention and a right of pledge to all items which Miss Berry holds or will hold, either directly or indirectly, in connection with an Agreement. In this clause, “items” will mean: movable items, bearer rights and rights to order, securities, documents and monies.
- 10.2. These terms and conditions becoming applicable means that the Buyer undertakes to grant Miss Berry the right of pledge referred to in Paragraph 1 of this clause. The right of pledge will be created by bringing the items under the control of Miss Berry or of a third party holding the items for Miss Berry, including but not limited to a carrier or a storage and transshipment company.

11. Packaging

- 11.1. Packaging supplied by Miss Berry on payment of a deposit will be taken back at the price applicable at the moment of return, possibly reduced by a fixed packaging fee.
- 11.2. The packaging to be returned by the Buyer must be completely empty, not damaged in any way (including by staples or stickers) and so clean and fresh as to be suitable for containing fresh fruit and vegetables. If the packaging does not meet these requirements, Miss Berry will be authorised not to take back the packaging or to see to it, at the Buyer’s expense, that the packaging is emptied, replaced, repaired and/or cleaned.
- 11.3. If Miss Berry takes back packaging using its own means of transport, the packaging must be ready for transport sorted by type.
- 11.4. Packaging not supplied by Miss Berry will not be taken back, unless the Parties have agreed otherwise in writing.

12. Refrigeration activities

- 12.1. If the Agreement relates to the performance by Miss Berry of refrigeration activities in a refrigerated and/or storage area (in this clause: “a cold store”) for the benefit of the Buyer (in this clause: “the depositor”), the terms and conditions of this Clause 12 will apply in addition to the other clauses of these terms and conditions.
- 12.2. In this Clause 12, “safekeeping” will mean one or more of the following acts, provided and to the extent that the entry is carried out by Miss Berry: (i) entering goods in a cold store; (ii) keeping goods in storage in a cold store; (iii) holding, refrigerating or freezing goods in a cold store; (iv) treating and/or modifying goods in other ways in a cold store; (iv) removing goods from a cold store.
- 12.3. The depositary will ensure that the goods brought in are delivered to the cold store free of charges. Unless agreed otherwise, the goods will be delivered to Miss Berry in good condition and – if packaged – appropriately packaged and clearly marked. Miss Berry will not be liable for any losses generally due to poor or inappropriate packaging, and Miss Berry will be entitled to pass on the resulting costs to the depositor.
- 12.4. Upon the arrival of the goods, Miss Berry will provide the depositor with a receipt. Except where there is other convincing documentary evidence, this receipt will be proof that Miss Berry received the goods described therein from the specified depositor for safekeeping and/or modification.
- 12.5. Miss Berry will store the goods with due care and diligence, whereby Miss Berry will determine the safekeeping conditions to the best of its knowledge. All applications, orders, instructions, proposals, requests and notifications intended for Miss Berry, in particular with regard to the temperature at which the goods are to be kept, must

always be communicated to Miss Berry in writing, whereupon Miss Berry will follow those instructions as closely as is reasonably possible. Failure by the depositor to act in accordance with this clause will be at the depositor's expense and risk.

- 12.6. The safekeeping will be deemed to have ended as soon as staff members of Miss Berry have transferred the goods to the depositor's vehicle or to a different removal location. If the depositor and Miss Berry have agreed a particular time of delivery and/or collection of goods, the depositor will be liable for the consequences which non-delivery or non-collection of the goods at the aforesaid time may have.
- 12.7. Miss Berry is entitled to refuse, relocate or terminate the safekeeping of goods which, in its opinion, are unsuitable for safekeeping due to their nature or condition, or may pose a hazard or cause damage to other goods and/or to the cold store and/or the refrigeration system and/or the staff members, even if the safekeeping of this goods was agreed.
- 12.8. All safekeeping will take place at the expense and risk of the owner of the goods. The depositor must take out adequate insurance against this risk, subject to the provisions.
- 12.9. Miss Berry will never be liable for any damage to or loss of the goods given in safekeeping, unless the depositor demonstrates that this damage or loss was caused by wilful misconduct or gross negligence on Miss Berry's part. In any case, Miss Berry's liability will be limited as set out in Clause 16. The depositor is free to take out (supplementary) insurance in this context.

13. Intellectual and industrial property

- 13.1. All intellectual and industrial property rights in respect of the Products and the associated packaging and packaging materials, all this in the broadest sense, are vested exclusively in Miss Berry and its licensors.
- 13.2. For each infringement of a right as referred to in Paragraph 1 of this clause, the Buyer will be liable to pay an immediately due and payable penalty of EUR 5,000 increased by an immediately due and payable penalty of EUR 1,000 for each day, including a part of a day, that the infringement continues. This penalty clause does not affect Miss Berry's other rights, including but not limited to its entitlement to compensation under the law.

14. Suspension, termination

- 14.1. Without prejudice to its other rights pursuant to the law and/or the Agreement and/or these terms and conditions, Miss Berry will be authorised to suspend its obligations or to terminate all or part of the Agreement by means of a written notification to the Buyer, without any notice of default or judicial intervention being required, if:
 - a. the Buyer fails to fulfil one of its obligations, or fails to do so properly or in time;
 - b. Miss Berry has good reason to fear that the Buyer will fail to fulfil one or more of its obligations;
 - c. the Buyer has been declared bankrupt, or a petition has been filed for the Buyer's bankruptcy;
 - d. the Buyer has been granted a provisional or final moratorium, or an application has been made for a moratorium;
 - e. a statutory debt restructuring scheme has been declared applicable to the Buyer, or an application has been made for such a scheme;
 - f. the Buyer's business is wound up; or
 - g. assets of the Buyer have been the subject of an executory attachment or a pre-judgment attachment which has not been lifted within one month of the date on which the assets were attached.

- 14.2. If the Buyer's failure pursuant to the law, the Agreement or these terms and conditions only commences after notice of default, Miss Berry will, in the situation referred to in Paragraph 1(a) of this clause, not proceed to terminate all or part of the Agreement before it has sent the Buyer a written reminder providing a reasonable period in which to comply, and the Buyer has failed to comply within this period.
- 14.3. In the event that Miss Berry terminates all or part of the Agreement, Miss Berry will not be obliged to pay any compensation and all its claims against the Buyer will become immediately due and payable in full.

15. Force majeure

- 15.1. In these terms and conditions, "force majeure" ("non-imputable non-performance") will mean: any circumstance not due to Miss Berry's fault in a subjective sense which makes it impossible or too impractical for Miss Berry to fulfil or continue fulfilling its obligation or a part thereof, including – but expressly not limited to – full or partial crop failure, crop diseases, plagues of pests, force majeure and/or breach of contract ("imputable non-performance") and/or unlawful acts on the part of suppliers or carriers of Miss Berry or on the part of other third parties involved in the performance of the Agreement, abnormal weather conditions, frost, storm damage and other damage due to natural disasters, industrial action, transport problems, epidemics, fire, theft, war and threat of war, terror attacks and terrorist threats, as well as government measures, such as import, export and transit bans, levies, import duties and quota restrictions.
- 15.2. In the event of force majeure, Miss Berry will be entitled to suspend the fulfilment of all or part of its obligation and the Buyer will be unable to claim performance or compensation. If the period of force majeure lasts longer than two months, either Party will be authorised to terminate all or part of the Agreement without being obliged to pay compensation, on the understanding that if Miss Berry fulfilled a part of its obligation before or after the commencement of the force majeure, it will always be entitled to a proportional part of the price. Miss Berry will also be entitled to invoke force majeure if this force majeure commences after it should have fulfilled its obligation.

16. Liability and indemnification

- 16.1. Without prejudice to the provisions of the previous clauses, the following arrangement applies in respect of Miss Berry's liability for losses sustained by the Buyer and/or third parties and in respect of Miss Berry's indemnification by the Buyer.
- 16.2. Miss Berry's total liability on any grounds will be limited to the amount that can be claimed in the case concerned under the liability insurance it has taken out, increased by the amount of the excess not payable by the insurers according to the policy conditions. If, for whatever reason, there should be no payout under the aforesaid insurance, Miss Berry's total liability on any grounds will be limited to the amount of the net invoice value of the Products in question, that is, the price excluding VAT and other taxes and levies and excluding transport costs, with a maximum of EUR 5,000.
- 16.3. Miss Berry will only be obliged to pay compensation for damage to persons and goods as described in the policy conditions of its liability insurance. Therefore, Miss Berry will not be liable for – and the Buyer must take out insurance against – indirect losses, consequential losses, trading losses, business interruption losses, lost profits, missed savings, losses due to claims from customers of the Buyer, loss of customers, reduced goodwill and reputational damage.

- 16.4. Miss Berry will not be liable for failures by third parties which it engaged in the performance of an Agreement.
- 16.5. Insofar as performance by Miss Berry is not permanently impossible, liability on Miss Berry's part as a result of an imputable failure to fulfil an obligation will only arise if the Buyer immediately gave Miss Berry written notice of default, describing the nature of the failure in detail and providing a reasonable term for the rectification of the failure, and Miss Berry persists in the imputable failure to fulfil its obligation after that period has expired.
- 16.6. Any entitlement to compensation will always be subject to the condition that the Buyer notified Miss Berry of the loss in writing immediately, but no later than 14 days after the Buyer became aware or should reasonably have become aware of the loss.
- 16.7. Any legal claims must be brought no later than one year after the timely notification of the loss, at risk of forfeiting all rights.
- 16.8. The Buyer must indemnify Miss Berry against any form of liability towards third parties that might apply to Miss Berry in respect of Products supplied or to be supplied by Miss Berry. The Buyer must reimburse Miss Berry for the reasonable costs of putting up a defence against third-party claims.
- 16.9. Miss Berry will not invoke a limitation of its liability, and the Buyer will not be obliged to indemnify Miss Berry, insofar as the losses are a direct result of wilful misconduct or deliberate recklessness on the part of Miss Berry or managing employees holding managerial positions in its business.
- 16.10. The above arrangement will not apply insofar as provisions of mandatory law oppose this.

17. Applicable law, disputes and costs

- 17.1. The legal relationship between the Parties is governed by Dutch law, including the Vienna Sales Convention.
- 17.2. Any and all disputes arising between the Parties as a result of or in connection with an Agreement and/or these terms and conditions will initially be resolved exclusively by the District Court of Rotterdam (proceedings on the merits) or by the Interim Relief Judge of the District Court of Rotterdam (interim relief proceedings and other interim measures), without prejudice to Miss Berry's authority to submit disputes as referred to in this clause to any other competent court.
- 17.3. The costs associated with legal proceedings, including but not limited to the fees of lawyers, bailiffs, experts and translators actually incurred by Miss Berry, will be borne in full by the Buyer if the latter is fully or predominantly found against.