

GENERAL TERMS AND CONDITIONS OF PURCHASE MISS BERRY B.V.

Located in Noordhoek
Chamber of commerce no. 81160119

1. Definitions

- 1.1. For the purpose of these terms and conditions, 'Miss Berry' shall mean the private limited liability company Miss Berry B.V., having its registered office in Noordhoek;
- 1.2. For the purpose of these terms and conditions, 'Parties' shall mean: Miss Berry and The Seller;
- 1.3. For the purpose of these terms and conditions, 'Agreement' shall mean any agreement between the Parties, irrespective of whether it is a framework agreement or an individual agreement, as well as all factual and legal acts in preparation and execution of this agreement, including offers;
- 1.4. For the purpose of these terms and conditions, 'Products' shall mean any goods and/or services and/or other performance that are the subject of an Agreement;
- 1.5. For the purpose of these terms and conditions, 'Person' shall mean: natural or legal person or unincorporated company, such as a general partnership;
- 1.6. For the purpose of these terms and conditions, 'The Seller' shall mean the Person with whom Miss Berry has concluded an Agreement or with whom Miss Berry is negotiating in this regard;
- 1.7. In these terms and conditions, 'in writing' includes email and WhatsApp.

2. General

- 2.1. These terms and conditions - with the explicit exclusion of all other general terms and conditions - apply to all Agreements. If Miss Berry does not require strict compliance with these terms and conditions in an appropriate case, this does not mean that Miss Berry would lose the right to require strict compliance with these terms and conditions in future cases, similar or otherwise. Stipulations which deviate from these terms and conditions are only binding if agreed in writing and only apply to the case in question.
- 2.2. All clauses in these terms and conditions are made not only for the benefit of Miss Berry, but also for the benefit of the following Persons, who may invoke this third-party clause at any time: (i) the directors and shareholders of Miss Berry (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 might be liable.
- 2.3. If one or more provisions of these terms and conditions and/or an Agreement are found to be void or annulled by the court, the remaining provisions of these terms and conditions and the Agreement shall retain their legal force. The void or nullified provisions will be replaced by valid provisions which, in view of the purpose and purport of these terms and conditions and the Agreement, deviate as little as possible from the original provisions.
- 2.4. These terms and conditions are drawn up in different languages. If there is a difference of opinion on the content or scope of these terms and conditions, the Dutch text shall be binding.

3. Offers, Agreements

- 3.1. An Agreement is established at the time that:
- a. Miss Berry accepts an offer from the Seller in writing; or
 - b. Miss Berry confirms the Agreement in writing; or
 - c. Miss Berry commences performance of the Agreement.
- 3.2. Miss Berry is not bound to honour an offer and/or an Agreement at a stated price if such price is based on a printing and/or writing error.
- 3.3. The Seller is not allowed to transfer an Agreement or one or more of its rights and obligations under an Agreement in whole or in part without Miss Berry's prior written consent. This prohibition has effect not only under law of obligations but also under law of property (as referred to in Article 3:83(2) of the Dutch Civil Code).

4. Prices

- 4.1. Unless the Parties have agreed otherwise in writing, prices are shown in euros.
- 4.2. Prices do not include VAT.
- 4.3. All agreed prices are fixed. Any increases in price after the conclusion of the Agreement, for whatever reason, are and shall remain the responsibility of The Seller, regardless of the period elapsed between the date of the conclusion of the Agreement and its execution.

5. Warranty

- 5.1. The Seller guarantees:
- a. that the Products comply in all respects with the Agreement, which in any case means that they:
 - match any sample shown or provided;
 - come from Global-GAP certified growers;
 - have not been treated with plant protection products prohibited by law; and
 - meet the highest food safety requirements;
 - are of optimum quality, freshness and shelf life;
 - are free from diseases (including but not limited to rot), pests, foreign substances, contaminants, (other) substances harmful to health and (other) visible and invisible defects;
 - meet the specifications, handling instructions and requirements formulated by Miss Berry and, to the extent Miss Berry has not formulated them, the specifications and requirements applicable to Class II Products;
 - comply with (i) all requirements arising from the relevant Dutch and European laws and regulations in force at the time of delivery or provision, and (ii) any additional and/or stricter requirements imposed in this respect by Miss Berry's customers and about which Miss Berry has informed the Seller prior to the conclusion of the Agreement (or, in the case of a framework agreement, prior to the placing of the order in question);
 - b. that the Products are packaged adequately and properly and in accordance with any instructions given by Miss Berry, that the packaging and packaging materials do not pose a food safety hazard, that the packaging bears all legally required markings and that all legal labelling requirements have been complied with;

- c. that the Products are transported at the optimal temperature and also under optimal conditions throughout the transport route, without interrupting the cold chain;
 - d. that full traceability of the Products is guaranteed and that the Seller will ensure the provision in digital form of all relevant information relating to the Products, including but not limited to the details of the growers and plots, as well as a complete and up-to-date record of the crop protection products used, within 24 hours of a request to that effect from Miss Berry;
 - e. that The Seller will immediately notify Miss Berry in writing of any contingency and that The Seller will immediately notify Miss Berry in writing if The Seller (otherwise) anticipates or is aware that the Products and/or packaging materials do not or will not comply with the requirements set out in this article.
- 5.2. The receipt, approval, or payment of Products by Miss Berry does not constitute an acknowledgement that the Products comply with the Agreement, does not relieve the Seller of any other warranty obligation or liability and does not affect Miss Berry's rights under the Agreement, these terms and conditions and the law.

6. Delivery period, delivery, ownership

- 6.1. The agreed delivery time is final. By exceeding the delivery time, The Seller shall be in default by operation of law. As soon as The Seller knows or ought to know that performance of the Agreement will not take place, will not take place in time or will not take place properly, he shall immediately inform Miss Berry in writing.
- 6.2. Delivery shall be Delivery Duty Paid (DDP) at the place of delivery specified by Miss Berry. 'DDP' shall be interpreted in accordance with the latest version of the Incoterms.
- 6.3. Partial deliveries and deliveries prior to the agreed time may be refused by Miss Berry if it has not given its prior written consent to do so.
- 6.4. When Miss Berry supplies the packaging materials, The Seller shall strictly follow Miss Berry's instructions for use and handle the packaging materials with care. The Seller shall return the packaging materials to Miss Berry upon Miss Berry's first request.
- 6.5. Miss Berry has the right at any time to return The Seller's packaging materials at The Seller's risk and expense.
- 6.6. Ownership of Products shall pass to Miss Berry at the time of actual delivery. The Seller guarantees that full and unencumbered ownership of the Products is provided and that there are no third party claims on the Products.

7. Inspection and complaints

- 7.1. Prior to the delivery of the Products at its warehouse, Miss Berry shall always be entitled, but never obliged, to inspect them or have them inspected, which in this article is understood to mean random and visual inspection (or having them inspected). Where appropriate, the Seller will cooperate fully with the inspection.
- 7.2. After delivery of the Products, Miss Berry shall inspect them or cause them to be inspected within a reasonable period. If Miss Berry has not rejected the Products within 4 days of said delivery, they will be deemed to have been approved subject to the proviso that they have a normal shelf life and are free from hidden defects.
- 7.3. Miss Berry has a duty to complain only to the extent that it must claim, within 14 days of the discovery of a (hidden) defect or so much later as it has discovered it, that the Products do not comply with the Agreement or that the Seller's performance is otherwise defective.

- 7.4. Miss Berry is also deemed to have made a discovery as referred to in paragraph 3 of this article if it has received a complaint about the Products from one of its customers and an investigation has shown that this complaint is well-founded. In this case, Miss Berry is entitled to still reject the Products.
- 7.5. Any breach of Miss Berry's duty of inspection and complaint can only be given legal effect if the Seller's concrete interests have been harmed as a result.
- 7.6. The breach referred to in paragraph 5 of this article shall not lead to forfeiture of rights on the part of Miss Berry.

8. Refusal and rejection

- 8.1. Without prejudice to its other rights under the law and/or the Agreement and/or these terms and conditions, in the event of refusal or rejection of the Products, Miss Berry is entitled to:
- a. return the delivered Products at the Seller's expense and risk and still demand performance, whether or not together with compensation;
 - b. dissolve the Agreement and claim damages;
 - c. partly dissolve the Agreement and still claim performance for the part in question, whether or not together with damages;
 - d. partly dissolve the Agreement by reducing the price (including any agreed minimum guarantee price);
 - e. sell the Products at the Seller's expense and risk on a commission basis.
- 8.2. From the moment the Products are rejected or rejected in whole or in part, The Seller shall bear the risk in respect of the Products.

9. Purchase, commission and mgp agreement; harvest insurance

- 9.1. If Miss Berry procures Products from the Seller without the Parties having entered into an express and written purchase agreement, a commission agreement shall be deemed to have been established between the Parties.
- 9.2. In the case of a commission agreement, the following shall apply:
- a. Miss Berry has no obligation to inspect and complain in respect of the Products;
 - b. Miss Berry will sell and deliver the Products to third parties in its own name, but always at the expense and risk of the Seller;
 - c. without guaranteeing any result, Miss Berry will make every effort to realise the highest possible sales proceeds, taking all circumstances into account.;
 - d. the sales proceeds depend on the quality of the Products and the situation on the - often volatile - market; insofar as Miss Berry gives indicative sales prices, this is purely for information purposes and the Seller cannot derive any rights from it;
 - e. Miss Berry shall pay the Seller the net sales proceeds as shown in its sales statements, provided that: (i) Miss Berry shall always be entitled to offset the net sales proceeds against any advances paid by it and to offset positive net sales proceeds against any negative net sales proceeds; and (ii) Miss Berry shall always be deemed to have made a reservation for subsequent claims from its customers or third parties and for subsequent credit notes to its customers. For the purposes of these terms, "net sales proceeds" means the gross sales proceeds less, on the one hand, the commission due to Miss Berry and, on the other hand, the costs incurred by Miss Berry in connection with the sale of the Products, including but not limited to the costs of sea freight, terminal handling charges (THC), documentation, import duties, transport, handling, storage, cooling, quality control, laboratory testing, and, if necessary, sorting and repacking.;

- f. if - taking into account the sales statements, the payments made by Miss Berry, settled claims of Miss Berry's customers or third parties and settled credit invoices to its customers - it is established after the end of the programme or season that the Seller still owes Miss Berry an amount on balance, the Seller will (re)pay this amount to Miss Berry at Miss Berry's first request;
 - g. the Products shall remain the Seller's property until Miss Berry has sold and delivered them to third parties; the risk in respect of the Products shall at no time pass to Miss Berry; Miss Berry need not insure the Products;
 - h. Miss Berry shall at all times have the right to make the Products available again to the Seller at its warehouse without giving reasons, in which case the commission agreement shall be regarded as dissolved without Miss Berry being liable for any compensation, the Seller shall take back the Products as soon as possible and the Seller shall reimburse the costs incurred by Miss Berry, including but not limited to cooling and storage costs. The other articles of these terms and conditions also apply (whether or not correspondingly) to commission agreements, except insofar as such application is not possible given the nature of a commission agreement. Insofar as this article 9 paragraph 2 conflicts with any other article or paragraph of these conditions, the provisions of this article 9 paragraph 2 shall prevail.
- 9.3. In the case of an mgp agreement, the following shall apply:
- a. The Seller is obliged to transfer ownership of the Products to Miss Berry;
 - b. provided that the Products conform in all respects to the Agreement and that the Seller otherwise complies with its obligations, Miss Berry shall in any event owe the agreed minimum guarantee price;
 - c. if the amount of the net sales proceeds exceeds that of the minimum guarantee price, Miss Berry shall also owe the difference between these two amounts;
 - d. article 9 paragraph 2 under c to f of these terms and conditions shall apply mutatis mutandis. The other articles of these terms and conditions also apply (mutatis mutandis or otherwise) to mgp agreements, except insofar as such application is not possible given the nature of an mgp agreement. To the extent that this Article 9(3) conflicts with any other article or paragraph of these Terms and Conditions, the provisions of this Article 9(3) shall prevail.
- 9.4. If Miss Berry commits to paying one or more advances in connection with the delivery or availability of agricultural Products by the Seller under a purchase or commission agreement, the Seller is obliged to obtain and maintain a crop insurance policy with hail coverage to the satisfaction of Miss Berry. This policy must stipulate that Miss Berry is a co-insured party and that any insurance payouts will be made directly to Miss Berry. Upon Miss Berry's first request, the Seller shall provide a copy of the relevant policy and proof of premium payment.

10. Rights of third parties

- 10.1. The Seller guarantees that the Products and associated packaging and packaging materials, all in the broadest sense, do not infringe any intellectual property right or any other right of a third party and that Miss Berry has the unconditional and irrevocable right to import, store, stock, offer for sale, sell or otherwise market, export and otherwise use the Products and associated packaging and packaging materials, all in the broadest sense.
- 10.2. The Seller must indemnify Miss Berry against claims by third parties in connection with an infringement or alleged infringement of one or more of the rights referred to in paragraph 1 of this article. All damages arising for Miss Berry from such infringement or alleged infringement, including the actual costs of defence against the claims of third parties, shall be compensated to Miss Berry by the Seller.

10.3. The Seller also indemnifies Miss Berry against claims by third parties in connection with an infringement of any other right of that third party, such as, for example, property of that third party if the Seller has delivered packaging material provided by Miss Berry to another party contrary to the agreements made. In that case, the Seller shall reimburse all costs to be incurred by Miss Berry, including in any case the costs of replacement packaging material and any damages or loss of income suffered by Miss Berry or the relevant third party.

11. Payment

- 11.1. All invoices from the Seller shall be addressed to Miss Berry for the attention of the accounts payable department, refer to the relevant order number, be properly itemised and comply with the legal invoice requirements applicable in the Netherlands. Miss Berry reserves the right not to process invoices that do not meet all the above requirements and to return them to the Seller.
- 11.2. Unless the Parties have agreed otherwise in writing, payment shall be made within 30 days of receipt of the relevant correct and complete invoice, or, if receipt and approval of the Products is later, within 30 days of receipt and approval of the relevant Products.
- 11.3. Payment by Miss Berry shall first be applied to reduce the principal sum, then to reduce any interest due and finally to reduce any costs due, unless another order is specified by Miss Berry at the time of payment.
- 11.4. Any compensation payable by Miss Berry for delay in payment of a sum of money will not consist of the statutory commercial interest as referred to in Article 6:119a of the Dutch Civil Code, but of the statutory interest as referred to in Article 6:119 of the Dutch Civil Code.
- 11.5. Any compensation payable by Miss Berry for costs as referred to in Article 6:96(2)(c) of the Dutch Civil Code will not be determined according to the graduated scale of Article 2(1) of the Decree on the Compensation for Extrajudicial Collection Costs, but will consist of the minimum amount mentioned in Article 2(2) of the said Decree.
- 11.6. In the event of full or partial prepayment or payment of one or more advances, Miss Berry is entitled to require the Seller to provide adequate security for the fulfilment of its obligations, whether or not in the form of a bank guarantee payable on demand by Miss Berry, provided by a first class Dutch bank.
- 11.7. Miss Berry shall at all times be entitled to set off the amounts it owes on whatever account to the Seller or any Person associated with him ('The Seller *et al.*') against the amounts that Miss Berry or any Person associated with it ('Miss Berry *et al.* ') may claim from the Seller *et al.* for whatever reason. The right of set-off referred to herein shall also exist if the payment of the claims is not yet enforceable and if the performance due from Miss Berry *et al.* does not meet its debt.

12. Right of retention

- 12.1. Until such time as the Seller has fully complied with all its obligations towards Miss Berry on whatever account, Miss Berry has a right of retention on all goods that Miss Berry has or will have in its possession directly or indirectly in connection with an Agreement. In this article, 'goods' means: Products, moveable goods, bearer or order rights, securities, documents and funds.
- 12.2.

13. Ban on assignment and pledging

The Seller is not allowed to assign, pledge or transfer or encumber its claims against Miss Berry under any other title without Miss Berry's prior written consent. This prohibition has effect not only under the law of obligations but also under the law of property. The Seller's claims on Miss Berry are not transferable (as referred to in Article 3:83(2) of the Dutch Civil Code) and not pledgeable (as referred to in Article 3:83(2) of the Dutch Civil Code in conjunction with Article 3:98 of the Dutch Civil Code).

14. Force majeure

14.1. The Seller can only invoke force majeure if:

- a. the (impending) failure of the Seller is neither due to its fault nor for its account under the law, the Agreement, these conditions or generally accepted practice; and
- b. the circumstance causing the force majeure occurred prior to the time at which the Seller is obliged to fulfil its obligation(s); and
- c. the Seller notifies Miss Berry immediately, but in any case within 24 hours after the force majeure situation has arisen, in writing and with reasons, of the circumstance causing the force majeure.

14.2. In the event of temporary force majeure on the part of the Seller, Miss Berry is entitled to:

- a. grant the Seller a reasonable period of grace of up to 2 months to fulfil its obligations under the Agreement. If, after this period has expired, the Seller is still unable to fulfil its obligations under the Agreement, Miss Berry is entitled to dissolve the Agreement;

or, at Miss Berry's discretion:

- b. rescind the Agreement.

14.3. In the event of permanent force majeure on the part of the Seller, Miss Berry is entitled to dissolve the Agreement.

14.4. Force majeure on the part of The Seller shall in any case not include: lack of personnel, illness of personnel, strikes, and force majeure and/or default ('imputable non-performance') and/or wrongful acts on the part of suppliers or carriers of The Seller or on the part of other third parties involved in the performance of the Agreement.

14.5. In the event of force majeure on the part of Miss Berry, it shall be entitled to suspend fulfilment of its obligation(s) or part thereof. If the period of force majeure on its side lasts longer than one month or if it is certain that this period will last longer than one month, Miss Berry is entitled to dissolve the Agreement in whole or in part. Force majeure on the part of Miss Berry is understood to mean: any circumstance not attributable to Miss Berry's fault in a subjective sense, which makes it impossible or practically too difficult for Miss Berry to fulfil or continue to fulfil its obligation(s) or part thereof, including - but expressly not limited to - force majeure on the part of Miss Berry's customers, as well as government measures which impede or financially disadvantageous the import, export or transit of Products.

14.6. Dissolution of the Agreement as referred to in this article shall take place by means of a written notice to The Seller, without any notice of default or judicial intervention being required and without Miss Berry being liable for any damages.

15. Suspension, dissolution

- 15.1. Without prejudice to its other rights under the law and/or the Agreement and/or these terms and conditions, Miss Berry is entitled to suspend the fulfilment of its obligation(s) or, without any notice of default or judicial intervention being required, to dissolve all or part of the Agreement by means of a written notification to the Seller if:
- a. the Seller does not, does not timely or does not properly fulfil any obligation(s) incumbent upon it;
 - b. the Seller gives Miss Berry good reason to fear that the Seller will fail to fulfil one or more of its obligation(s);
 - c. the Seller is declared bankrupt or the Seller itself has filed for bankruptcy;
 - d. the Seller is granted a suspension of payments, provisional or otherwise, or the Seller itself has applied for such a suspension of payments
 - e. a statutory debt rescheduling arrangement is declared applicable in respect of the Seller or a request thereto has been made by the Seller himself, or the Seller has reached an extrajudicial settlement;
 - f. the Seller's business is wound up; or
 - g. goods of the Seller are attached under execution or precautionary seizure which are not lifted within three months after the date of the attachment.
- 15.2. If the Seller's default, under both the law and the Agreement and these terms and conditions, only occurs after notice of default, Miss Berry shall, in the case referred to in paragraph 1 under (a) of this Article, not proceed to rescind the Agreement in whole or in part until after it has sent the Seller a written reminder setting a reasonable period for performance and performance has not been achieved within that period.
- 15.3. In the event of dissolution of all or part of the Agreement by Miss Berry, it shall not be liable for any damages and all its claims against the Seller shall become immediately due and payable in full.

16. Liability

- 16.1. The Seller is liable for all direct and indirect damage suffered by Miss Berry and/or third parties as a result of an attributable shortcoming in the fulfilment of an obligation(s) by The Seller or as a result of attributable unlawful acts or omissions by The Seller itself or by a subordinate, non-subordinate or representative of The Seller.
- 16.2. The damages referred to in paragraph 1 of this article include, but are not limited to, all penalties imposed on Miss Berry (including contractual penalties), all damages and costs related to a product recall initiated by the competent authorities and/or the Seller and/or Miss Berry, and all internal and external costs incurred by Miss Berry in connection with determining damages and liability and recovering damages. This includes, but is not limited to, the actual costs incurred by Miss Berry for lawyers, bailiffs, experts, and translators.
- 16.3. The Seller shall indemnify Miss Berry against claims by third parties for compensation for damage as referred to in paragraph 1 of this article. The Seller shall reimburse Miss Berry for the reasonable costs of defending against said claims. The Seller will not be obliged to indemnify Miss Berry insofar as the damage is the direct result of intent or deliberate recklessness on the part of Miss Berry or its management subordinates.
- 16.4. For the purposes of this article, staff, employees and customers of Miss Berry, among others, shall be deemed to be third parties.
- 16.5. The Seller will adequately insure and keep insured its liability for damages as referred to in paragraph 1 of this article. The Seller will provide Miss Berry with a copy of the relevant policy or policies and proof of premium payment in respect thereof on first request.

- 16.6. Miss Berry shall only be liable for damage which is a direct consequence of a breach of its obligations under the Agreement attributable to it.
- 16.7. Miss Berry's total liability is limited to the amount paid out by the liability insurance taken out by Miss Berry in the case in question, increased by the amount of the excess which according to the policy conditions is not borne by the insurers. If it is not possible for Miss Berry to take out liability insurance against reasonable conditions, or if, for whatever reason, no payment should be made under the aforementioned insurance, Miss Berry's total liability for whatever reason will be limited to the amount of the net invoice value of the Products in question, i.e. the price exclusive of turnover tax and other taxes and levies and exclusive of transport costs, subject to a maximum of €5,000 per event and a maximum of €25,000 per year. If the Agreement consists of several parts, Miss Berry's liability is further limited to the part of the Agreement where the damage occurred, subject to the aforementioned maximum amounts.
- 16.8. Miss Berry shall only be obliged to compensate direct damage. Direct damage means:
- the reasonable costs to determine the cause and extent of the direct damage;
 - any reasonable costs incurred to make Miss Berry's defective performance conform to the agreement, unless they cannot be attributed to Miss Berry;
 - the reasonable costs incurred to prevent or limit damage, to the extent that the Seller demonstrates that these costs have actually led to a limitation of direct damage.
- 16.9. Under no circumstances shall Miss Berry be liable for indirect damage, consequential damage, trading loss, stagnation damage, loss of profit, missed savings, damage resulting from claims by the Buyer's customers, loss of customers, reduced goodwill and reputational damage.
- 16.10. Miss Berry will not invoke a limitation of its liability insofar as the damage is the direct result of intent or deliberate recklessness on the part of Miss Berry or managerial subordinates belonging to its management.

17. Applicable law, disputes and costs

- 17.1. The legal relationship between the Parties shall be governed exclusively by Dutch law. The applicability of the Vienna Sales Convention (CISG) is excluded.
- 17.2. All disputes which may arise between the Parties as a result of or in connection with an Agreement and/or these terms and conditions shall be settled in the first instance exclusively by the District Court of Rotterdam (proceedings on the merits) or the Preliminary Relief Judge of the District Court of Rotterdam (summary proceedings and other interim measures), without prejudice to Miss Berry's entitlement to submit disputes as referred to herein to any other competent court.