

GENERAL CONDITIONS OF SALE AND DELIVERY OF
FRUIT MANAGEMENT EUROPE B.V., WITH OFFICES IN BORN (NL).

Article 1. Definition of terms

In these general conditions of sale and delivery (hereinafter referred to as: the "General Conditions"), the terms and phrases used hereinafter are defined as follows:

- FME: the private company with limited liability Fruit Management Europe B.V. and its affiliated (subsidiary) companies, with offices in Born (NL).
- Customer: any person who concludes, has concluded or is negotiating the conclusion of an agreement with FME for the sale and/or delivery of Products traded by FME.
- Order: any order of the Customer placed with FME for the delivery of Products or Services.
- Agreement: any agreement formed between FME and the Customer, and any amendment or addition thereto.
- Credit Insurance: any credit insurance possibly taken out by FME for the performance of an Agreement.
- Products: any goods, including packaging, (delivered or) to be delivered to the Customer to carry out an Order.
- Specification: the description of Products, or Services, delivered by FME, listed or referred to in the Order or Agreement.
- Defect: any deviation from the Products in the Specification and any other [] non-compliance of the Products.

Article 2. Applicability

1. These General Conditions apply to any and all requests of the Customer, offers and quotations of FME, Orders placed with and instructions given to FME and Agreements concluded between FME and the Customer, subject to changes agreed by the parties explicitly and in writing.
2. The applicability of any general condition of the Customer is explicitly rejected by FME, unless the applicability thereof is explicitly confirmed in writing by FME.
3. If the General Conditions are translated, the text of the Dutch version is and shall remain decisive, except those provisions added specifically for a particular area and/or language.



Article 3. Quotations and the formation of an Agreement; Credit Insurance

1. All offers of FME are without engagement and non-binding. An Agreement shall not be formed between FME and Customer until FME has issued a written order confirmation.
2. If FME wishes to take out Credit Insurance for an Agreement, the agreement shall not be formed until the Agreement has been accepted by the credit insurance company of FME. If the **acceptance referred to above cannot be obtained**, whether or not because the Customer has exceeded its credit limit, FME will not perform the agreement, unless the Customer fully pays the purchase price prior to the delivery of the Products.
3. Any payment arrears of the Customer during the performance of an Agreement covered by Credit Insurance will always be reported to the credit insurance company by FME.

Article 4. Prices

1. The agreed price always applies in the currency agreed with the Customer and in accordance with the Incoterm conditions of delivery, as defined in the most recent version of the Incoterms, which are agreed upon for each individual transaction.
2. If, after the date on which the Agreement is formed, any change occurs in the prices of raw materials, auxiliary materials, labour costs, freight costs, depreciation of the currency, or if the basis of the calculation of FME changes because of any government action or any other circumstance, this to be determined at the sole discretion of FME, FME will be entitled to increase the price laid down when the Agreement was formed and demand payment thereof.

Article 5. Invoicing and payment

1. Insofar as no other payment terms have been agreed, payment shall take place within 8 days of the invoice date. If the agreed payment term is exceeded, the Customer shall, by operation of law and without any notice of default being required, owe interest on the unpaid amount which will be calculated based on the statutory rate plus 4% per year.
2. If the Customer fails to pay any claim to FME, FME will be entitled to suspend further performance of all ongoing agreements between the Customer and FME, until payment has been made and, even if agreed otherwise, demand cash payment for further delivery. These provisions also apply if the claim is contested. If the Customer subsequently succeeds in his action, FME will not be liable for compensation.
3. The Customer is never entitled to set off the amount of the invoice against any amounts owed by FME to the Customer.



Article 6. Delivery

1. Delivery will always take place in accordance with the delivery conditions defined in the most recent version of the Incoterms, which are agreed for each individual transaction. In the event of delivery carriage paid, the delivery will be deemed to have taken place when the vehicle reaches the specified unloading place.
2. The delivery time will start after FME has accepted the Order by means of a written confirmation. The delivery time specified or agreed by FME is approximate only. Failure to meet the deadline for delivery, for any reason whatsoever, will never entitle the Customer to any compensation, dissolution of the Agreement, or non-fulfilment of any of its obligations arising from the Agreement or any other agreement related to the Agreement, or the performance by the Customer itself or third parties on instructions of the Customer, whether or not pursuant to authorization granted by a court, of activities to implement the Agreement, including the purchasing of Products purchased from FME elsewhere.
3. FME may deliver up to 10% more or less of the quantity stated in the Agreement. Partial deliveries are permitted.

Article 7. Transfer of risk, inspection upon arrival, quality and complaints

1. Immediately after the Products are regarded as delivered in compliance with the agreed conditions of delivery under the Incoterms, the Customer will bear the risk of any direct and indirect damage that may be caused to any of these Products by the Customer itself or third parties.
2. Deliveries will be made in accordance with a sample approved by the Customer or an earlier delivery which serves as a quality reference, or in accordance with the agreed Specification of FME.
3. The Customer is obliged to conduct an inspection immediately upon arrival of the Products to determine whether the correct quantity of Products has been delivered and/or they are of the right weight and whether they can be processed properly and/or are suitable for the Customer's purposes. Not or not adequately conducting the inspection means that the entire risk for any damage related to the further processing and/or delivery of the Products is borne by the Customer and that no recovery by the Customer from FME is possible.
4. Complaints about quantity/weight deviations and/or externally visible defects must be submitted immediately upon arrival of the Products by stating this on the accompanying consignment note or transport document in compliance with CMR. Complaints concerning the inspection by the Customer of the Products shall take place within 48 hours after their arrival. Complaints regarding non-perceptible deviations must be submitted within 48 hours after they have been established and under no circumstances later than 2 weeks after receipt of the Products. The Customer must state the batch code(s) of the Products in all complaints, in order to enable FME to trace the Products back to their origin.
5. FME will not be liable for complaints that are not submitted in a timely manner and such complaints will not produce any effect in respect of the acceptance by the Customer of the delivered Products. Unless a submitted complaint has been repeated in writing, it will be void.

Article 8. Retention of title

1. All the Products delivered to the Customer shall remain the property of FME until all claims of FME, for whatever reason, including interest and costs have been paid in full. Any and all risks in respect of the Products are for the Customer. Any advance payments made by the Customer will remain available to FME to cover possible losses in the event of resale.
2. Prior to full payment, the Customer is not entitled to pledge the goods to third parties or transfer the ownership thereof as security, for instance to a factoring company. If this provision is violated, the remainder of the purchase price will be immediately and fully payable, regardless of the payment terms.
3. The Customer is entitled to further process the Products in the context of its normal business operations. FME will acquire co-ownership of the resulting Products as security for all its claims, which transfer will be performed by the Customer to FME without any further costs.
4. Until revocation by FME, the Customer is permitted to resell the delivered Products within the normal course of business of the Customer. In the event of resale, the Customer will transfer the ensuing rights to FME as security, stating the details of the buyer until the invoices of FME have been paid. If the Customer fails to pay its invoices, FME will be entitled to collect the claim directly from the Customer's buyer.
5. FME is at all times entitled to demand the issuance of the delivered Products from the Customer if it remains in arrears with its payments or if its financial position is clearly deteriorating.

Article 9. Liability and indemnification

1. The liability of FME for whatever reason is always limited to the invoice value of the Products delivered to the Customer or the amount of the payment made under the liability insurance of FME if a claim is found valid.
2. Any liability of FME is furthermore limited to the shelf life of the delivered Products.
3. Under no circumstances may FME be held liable for any consequential damage in connection with the use and/or further delivery of the Products delivered by FME.
4. The Customer fully indemnifies FME against any and all claims asserted against FME by third parties in connection with the Products delivered to the Customer by FME.
5. The Customer indemnifies FME against any and all costs and damage that may arise for FME from the fact that: (a) the Customer is not properly registered for VAT in the relevant EC Member State, and/or (b) that the Customer provides inaccurate or untimely information to FME and/or the authorities in regard to turnover tax in a relevant EC Member State.

Article 10. Loss and damage, force majeure

1. If the Products are lost, damaged or cannot be delivered by the supplier of FME for whatever reason prior to their transfer to the Customer, FME will not be obliged to perform the delivery to the Customer and FME will have the right to regard the Agreement with the Customer as legally dissolved as a consequence of the non-delivery without being liable to pay any compensation.
2. If FME is prevented from performing the Agreement due to force majeure, FME will, at its own discretion, be entitled to regard the Agreement or part thereof as dissolved without judicial intervention, and/or to suspend the (further) performance of the Agreement without any obligation to pay damages, penalties and suchlike.
3. FME is at all times entitled to invoke force majeure in regard to Products whose availability depends heavily on the harvest and which are not supplied to FME by its supplier(s).

Article 11. Non-performance, dissolution and costs

1. In the event of non-payment on the due date or non-compliance with a written warning sent to the Customer, FME will be entitled to immediately demand the purchase price and to regard the agreement as dissolved without judicial intervention or notice, without prejudice to its right to compensation.
2. In the event of (provisional) suspension of payment, bankruptcy, shutdown or liquidation of the business of the Customer, revocation of permits or in the event of a legal merger of the Customer, or if a substantial portion of the control of the Customer changes hands, the Agreement and any directly related Agreements will be dissolved by operation of law, unless FME notifies the Customer that it wishes to maintain the Agreement(s) or part thereof. FME is also entitled (without any notice being required) to suspend any obligations to the Customer arising from any other Agreements or for any other reason.
3. Any and all costs incurred by FME both in and out of court arising from the non-fulfilment of its payment obligation by the Customer or its failure to fulfil its payment obligation in a timely manner shall be borne by the Customer.

Article 12. Choice of law and disputes

1. These General Conditions and any and all Orders and Agreements and any disputes which may arise therefrom shall exclusively be governed by Dutch law. However, with regard to agreements referred to in Article 6:247(2) of the Dutch Civil Code, it is explicitly determined that Section 3, Title 5 of Book 6 of the Dutch Civil Code will not be applicable.
2. The applicability of the Vienna Sales Convention 1980 is explicitly excluded.
3. To the extent that applicable national or international legal rules do not prescribe otherwise, any and all disputes between the parties, including those to which a foreign customer is a party, which include disputes that are only regarded as such by one party, arising from an Agreement governed by these General Conditions or from which they arise shall be settled by arbitration, which shall take place in accordance with the regulations of the Netherlands Arbitration Institute, unless FME prefers to subject the dispute to the judgment of a different, Dutch or non-Dutch competent court.