

General terms & conditions

This text is a translation of the Dutch version of the General Terms & Conditions. In all cases the Dutch text will be decisive.

Considering, that it is desirable to apply general terms & conditions for all sales, commission and related contracts which it has entered into within the framework of its business,

Agro Fair Benelux B.V.
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Registered under number 24268586

and / or its successors in title and / or affiliated companies, including Agro Fair Europe B.V. hereafter referred to as AgroFair, has determined the following General Terms & Conditions:

Sales

Article 1: Applicability

1. Unless explicitly agreed to otherwise, only the following terms & conditions shall apply to all contracts which AgroFair enters into with third parties, hereafter referred to as “buyer”.
2. Contracts as referred to in paragraph 1.1 shall include sales, commission and related contracts.
3. Any stipulations that differ from these terms and conditions shall only be binding if agreed to in writing.
4. After they have become part of any contract, these general terms & conditions shall also be part of any (continuation) contracts later entered into between parties, even if by the realisation of these no reference is made to these general terms & conditions.
5. The applicability of general terms & conditions (sales and / or purchase) of the buyer is explicitly rejected.
6. If any condition from these general terms & conditions is invalid or nullified, the remaining conditions remain valid. In that case parties will enter into discussion to come to agreement on new conditions as a replacement for the invalid or nullified conditions, by which the objective and intent of the above mentioned conditions will, as far as possible, be complied with.

Article 2: Offer, prices

1. All sales contracts of AgroFair shall be deemed to have been entered into at the location where AgroFair has its registered office, for both execution as well as payment. All prices shall be quoted in Euros (unless otherwise stated).
2. AgroFair shall not be obliged to satisfy an agreement at a price which is obviously based on a typing or writing error.
3. Unless explicitly agreed to otherwise by the parties, prices stated shall be exclusive of sales tax (VAT).
4. The sales contract must be confirmed by AgroFair (fax, e-mail or letter) immediately after the contract is drawn up and before execution of the contract. The conditions of a sales contract confirmation are final, unless an immediate objection is made against the conditions. If, at a later time, unilateral or contradictory conditions are inserted in any document these additions are not applicable between AgroFair and buyer unless AgroFair explicitly agrees to in writing with the insertions. A quotation is without obligation, AgroFair is only bound after entering into a sales contract.
Each proposal made by AgroFair is without obligation, and can therefore be retracted by AgroFair after acceptance by the buyer. AgroFair is only bound after they have confirmed a sales agreement in writing.
5. With contracts on demand or framework contracts the (part) contract comes into being at the moment the order for a (part) performance, within the framework of the contract on demand, respectively the framework contract, is sent by AgroFair.
6. A commission sale is carried out at the risk and at the expense of AgroFair. The buyer/agent guarantees minimum sales (unless agreed to otherwise). The buyer/agent must act in good faith and apply particular care if the goods are perishable. Unless agreed to otherwise the agent must inform the client regularly about sales revenues (fax, e-mail or letter). The level of the commission, the level of the minimum revenue, as well as any extra costs, shall be determined in writing prior to signing the contract. As soon as possible but at the latest 21 calendar days after delivery the agent must deliver the final sales revenues, at the request of the client, with details of the sales results (fax, e-mail or letter).
7. Additional to our general terms and conditions the rights and obligations are determined by the individual contract and in particular the agreed Incoterm. In the event of a contradiction between the AgroFair general terms & conditions and Incoterm the conditions from the AgroFair general terms & conditions are leading.

EXW ex works

FCA free delivery to carrier

FAS free alongside ship

FOB free on board

FOT free on truck

CFR cost and freight

CIF cost, insurance and freight

CPT cost prepaid transport

CIP cost, insurance prepaid

DAF delivery at frontier

DES delivery ex ship

DEQ delivery ex quay

DDU delivery duty unpaid

DDP delivery duty paid

FRANCO franco delivery

Article 3: :Location, manner and time of delivery

1. The location and the time of availability of the delivery need to be determined at the time that the sales contract is entered into.
2. If it is agreed that the transport will be carried out by or on behalf of AgroFair, the purchase shall be deemed to take place at the time of delivery at the agreed location.
3. Whenever the goods are stored for the buyer by or on behalf of AgroFair at AgroFair or a third party, the delivery shall be deemed to take place at the time the goods are stored. From the time of delivery the storage costs and risk are at the expense of the buyer.
4. Any delay in the delivery, insofar it remains within reasonable limits, does not give the buyer the right to dissolution of the contract. A delivery for which the goods arrive by ship, can be delayed by various circumstances, such as strikes and weather conditions. AgroFair shall inform the buyer as soon as possible in writing of any occurrence and the changed time of availability (by e-mail / fax).
5. The risk of the transaction is for the buyer from the time of delivery and if the buyer renders no cooperation for the delivery without reasonable foundation, from the time that the purchase is rejected.
6. The principal of the transportation is responsible for loading and shipment. In the case the buyer requests AgroFair to arrange transport on behalf of the buyer, the buyer is the principal. The carrier must make itself known to the stock holding service provider prior to loading. The carrier can receive goods which shall be stated on a shipping order or delivery note from AgroFair, for which he must hand over a copy or identification number. Goods shall be transferred after the carrier hands over the AgroFair shipping order, an AgroFair delivery note, a CMR or other legal transport document complete with the earlier mentioned identification number, undersigned for correct receipt.
7. It is expected of the buyer that they shall collect the goods at the agreed location of delivery, taking into account any holidays, at the latest on the second working day after availability of the goods. Loading shall take place during normal opening hours unless agreed to otherwise. A cost overview for loading outside of normal opening hours is available on request. Refrigeration costs will be charged from the third working day after availability of the goods. An overview of the tariffs and loading and unloading windows at the various service providers is available on request. The date on which the goods are available, can be found on the sales confirmation. Refrigeration costs are costs that AgroFair incur for the storage / refrigeration of a batch of goods.

Article 4: Goods

1. At the time of loading of the contractually agreed goods, the goods must be of the agreed quality. If no abnormal circumstances occur during transportation, the goods shall be delivered to the buyer in a condition acceptable for both parties.
2. (Transport) companies who come to load the goods sold by AgroFair, must inspect the goods for visible damage.
3. The condition, labelling and packaging must satisfy accepted requirements of the country where the goods will be sold. The buyer shall inform AgroFair about the country where the goods will be commercialised and the accepted requirements for the country prior to signing the contract.
4. The buyer shall indicate explicitly the required condition, labelling and packaging of the fruit. If the buyer remains in default on this matter then no claims will be accepted by AgroFair as a result of incorrect condition, labelling or packaging.
5. Contracts with regard to recyclable packaging are specified in the joint sales contract.
6. With regards to number and weight, as well as public and/or private prescribed requirements the delivered quantity is deemed to satisfy that which is agreed to, respectively prescribed to, except by proof to the contrary supplied by the buyer. AgroFair has the right to deliver 3% less weight or number of goods. AgroFair shall inform the buyer of any variance. Export & import licences and other documents
7. Both parties commit themselves to fulfil all required formalities and to correctly provide all required documents, in order to be able to deliver the goods according to the letter of the sales contract. The costs resulting from the non-fulfilment or late fulfilment of the obligations will be recovered by AgroFair from the buyer.
8. The verification of T1 (customs transit) documents by the carrier falls under the responsibility of the buyer of the goods. The costs resulting from the non-verification or late verification of a T1 document will be recovered by AgroFair from the buyer.

Article 5: Retention of title

1. Goods delivered by AgroFair shall remain the property of AgroFair until all claims of AgroFair against the buyer on account of contracts entered into between the parties have been paid in full, including interest, any possible penalties and costs.
2. Goods delivered by AgroFair for which the retention of title is claimed pursuant to paragraph 5.1 may only be sold on within the framework of the buyer's normal conduct of business.
3. If the other party fails to fulfil its obligations or there are good reasons to suspect that it will not fulfil its obligations, AgroFair shall be entitled to remove any goods delivered for which the retention of title is claimed pursuant to paragraph 5.1 from the buyer's premises or from the premises of third parties holding the goods on the buyer's behalf, or to have them removed. The buyer is obliged to render all cooperation in this respect.
4. If third parties wish to encumber the goods delivered subject to retention of title with any right or if they wish to exercise such right, the buyer shall be obliged to inform AgroFair thereof as soon as may reasonably be expected.
5. The buyer undertakes to cooperate, within reasonable limits, in all measures which AgroFair wishes to take to protect its proprietary rights to the goods delivered.

Article 6: Force majeure

1. In the event of force majeure the obligation to deliver and other obligations of AgroFair shall be suspended. The obligations shall revive when fulfilment of the obligations is reasonably possible again. Force majeure shall be understood to mean unforeseen circumstances with respect to persons and / or materials employed or usually employed by AgroFair when carrying out the agreement, which are of such a nature that as a result thereof implementation of the contract becomes impossible or problematic and / or disproportionately expensive to such a degree that it cannot reasonably be expected any longer that the contract shall be carried out.
2. If AgroFair has already partially fulfilled its obligations when the situation of force majeure arises or can only partially fulfil its obligations, it shall be entitled to send a separate invoice for the goods already delivered and/or the part which can be delivered, and the buyer shall be obliged to pay this invoice as if it concerned a separate contract.

Article 7: Obligations of the buyer

1. The buyer shall inspect and accept the goods immediately after arrival / delivery of these goods at the agreed location of delivery.
2. Free groupage deliveries, i.e. goods which are shipped to various addresses, shall be checked and accepted by the buyer at each separate delivery address.
3. The buyer or his representative must inspect the goods for any transport damage and/or any shortages to the delivered goods. They must report any problems / shortages on the transportation document (waybill / CMR). The buyer of these goods shall inform AgroFair of these problems within 24 hours after unloading.
4. Damages / faults which cannot be observed during specific inspections and checks before or during unloading of a shipment, shall be considered as hidden damages and do not fall under article 7.3. Hidden damages shall be reported immediately after assessment of this damage. All technical possibilities, which remain economically acceptable, need to be taken to detect this type of damage as quickly as possible.

Economically acceptable is defined for AgroFair as follows:

- a. Invoice / order value of goods is less than or equal to 2000 (in words: two thousand) Euros – costs may amount to a maximum of 20% (twenty percent) of the shipped value of the goods.
 - b. Invoice / order value of goods greater than 2000 (in words: two thousand) Euros – costs may amount to a maximum of 400 (in words: four hundred) Euros. In all other cases consultation with the AgroFair claims department is necessary.
5. A claim must be reported as follows:
 - a. Immediately, but in any case not later than 8 hours after loading of the goods, by the carrier, customer or agent; verbally and/or by telephone,
 - b. Immediately, but in any case not later than 8 hours after delivery and / or unloading of the goods; by telephone, fax or e-mail,
The claim shall be sent to AGROFAIR (claims@agrofair.nl) or to a fax number which is available on request.
 6. All reports of damage made verbally and / or by telephone, shall be confirmed in writing within 24 hours by the customer. The customer shall use the AgroFair damage report (AFFF QA-030) for this purpose. The damage report can be requested by email (claims@agrofair.nl).

7. When selling FLO Fairtrade certified products the buyer shall keep to the requirements stated by FLO and to those of the national representative of FLO, the so called "Labelling Initiative".

More information via www.fairtrade.net

8. The buyer will only sell products as FLO Fairtrade if they have received these invoiced as such from the seller.

Article 8: Claim procedure

1. If a claim is drawn up by the buyer and the parties are not able to immediately arrive at an agreement regarding an arrangement for this damage, then by joint agreement an independent expert shall be contracted so that the nature / magnitude of the damage can be described in a report. At the request of one of the contractual parties, samples can be taken which can be sent to a specialised / certified laboratory for analysis. The results of the analysis, together with the report from the expert shall be delivered to both parties. The laboratory will keep a sample in storage to carry out subsequent analyses on these goods if necessary.
2. The following conditions apply with regard to the expertise and the report.
 - a. The expertise report shall include a detailed description of the goods, circumstances, nature and magnitude of the damage.
 - b. AgroFair or its agent shall be informed immediately of the time and the location where the expertise and the taking of any samples will take place. Both parties have the right to be present during the expertise and / or taking of samples. Involved parties may not try to influence the expert in any way whatsoever.
 - c. The buyer may not sell the goods concerned before the result of the findings of the expert are made known to all parties. The buyer may also not sell the goods concerned without permission of AgroFair.
 - d. The costs for the expertise shall be paid by the buyer if it is shown that the buyer or the carrier engaged by the buyer is in default.
3. If a claim is in agreement with the expertise report, the buyer of the goods can have the right to a reduction of the price, or refusal of acceptance of the goods.
 - a. A reduction in price is only possible if the damage claim is higher than 3% of the shipped value of the complete delivery. In this case the claim is equal to the difference of the shipped value of the goods minus the current value of the delivered goods.
 - b. A refusal of the shipment is only possible if the claim is higher than 60% of the shipped value of the goods. In the event of a difference of opinion this shall be assessed by an independent expert. If the buyer assumes the right to refuse the shipment, he is obliged to inform AgroFair about this immediately but in any case within 24 hours in writing. Furthermore the buyer can request AgroFair to apply other conditions for the rejected shipment.
 - c. The buyer / receiver is obliged to save / store the goods at his expense for a period of 24 hours. It is also possible that AgroFair enters into an agreement with the buyer to bring the goods to the market at the best possible price (in commission).
 - d. The claim that the buyer draws up for compensation of the suffered damage shall be in agreement with the findings of the expert. A detailed calculation of the claim must be submitted to AgroFair at the latest 21 calendar days after receipt of the goods by the buyer.
 - e. A replacement shipment shall be arranged by joint consent. The transport costs for the return shipment need to be determined in advance. Buyer and AgroFair shall determine in advance who will carry these costs.

Article 9: Payment

1. The goods delivered must be paid within 21 calendar days following the date of the invoice, unless otherwise agreed to in writing.
2. Each payment for outstanding invoices shall be deemed to have been made in settlement of the oldest unpaid items.
3. A set-off against any claim which the buyer has, or thinks to have on AgroFair, is not permitted.
4. If the period mentioned in paragraph 4.1 is exceeded the buyer shall owe a default interest of 1% per month of the outstanding amount(s), without prejudice to AgroFair's right to claim legal and / or additional compensation.

Article 10: Applicable Law

1. All contracts, entered into with AgroFair, are governed exclusively by Dutch law.
2. The Dutch text of the General Terms & Conditions shall prevail. In the event of transactions with foreign parties, the applicability of the Uniform Sales Acts and the Vienna Sales Convention is expressly excluded.

Article 11: Disputes

1. Any disputes arising from sales and/or commission contracts entered into with AgroFair, including claims relating to overdue payments, shall be settled by a competent court appointed by AgroFair, to the exclusion of any other body.
2. Contrary to the provisions of paragraph 11.1, the parties may agree in writing that any disputes can be settled by another body.

Article 12: Dissolution and liability of the buyer

1. If the buyer fails to fulfil his obligations set out above (or fails to fulfil them on time), AgroFair shall have the right to suspend further delivery. In that case the buyer shall be in default. AgroFair shall then be entitled to dissolve the contract without any court intervention by means of a written declaration, and the buyer shall be liable for any loss or damage sustained by AgroFair including loss of profits, other financial losses, product damage, costs and interest, transport costs, commission, legal and non-legal expenses, as well as all other costs relating directly or indirectly to the purchase.
2. All non-legal expenses incurred by AgroFair in the case of late or inadequate fulfilment by the buyer shall be entirely at the expense of the buyer. The non-legal expenses incurred by the supplier shall amount to 15% of the total sum the buyer owes the supplier, to an amount not exceeding the amount owed to the supplier, to an amount not exceeding 3500 Euros for collection measures in the Netherlands and 7000 Euros for collection measures outside the Netherlands, with a minimum of 125 Euros.

Article 13: Confidentiality

1. Information and documentation supplied to buyer by AgroFair within the scope of the contract may only be used by buyer insofar that this is necessary within the scope of the execution of the contract. In all cases the information and documentation remains the property of AgroFair.
2. The buyer is obliged to handle all information and data obtained directly or indirectly from AgroFair confidentially, also after expiration of the contract. The buyer will not make this information and data available to third parties other than with prior written permission from AgroFair.
3. The buyer will not use the relationship with AgroFair for promotional or other activities, be they commercial or not, other than with prior written permission from AgroFair.
4. In the event of a breach of that which is determined in the previous paragraphs, buyer forfeits to AgroFair an immediately claimable penalty as stated in the contract entered into between buyers and AgroFair. In the event that the contract states no penalty for such situations, the buyer is due a penalty equal to twenty five percent (25%) of the assignment sum, per breach, without any proof of default being required and undiminished any other future AgroFair rights, including the right to full compensation.

Article 14: Transfer of rights and/or liabilities

1. The rights and liabilities of AgroFair on the basis of the contract are transferable.
2. The rights and liabilities of buyer on the basis of the contract are neither wholly or partly transferable except with prior written permission from AgroFair.