

GENERAL CONDITIONS OF SALE

ZON Holding B.V. established at 5928 RH Venlo, Venrayseweg 104, as well as its legal successors and/or affiliated companies, hereinafter to be referred to as 'ZON', has adopted the following General Conditions of Sale.

Article 1 Applicability

1. These General Conditions of Sale apply to and form an integral part of all offers, quotations, concluded agreements and the execution thereof provided by ZON. These conditions shall also apply to deliveries and services to be performed by ZON, whether or not related to the sale of products, as well as to the sale of (packaging) materials. Thus these General Conditions of Sale apply to all (legal) acts (including omissions) of ZON and its opposing party (hereinafter referred to as "customer") in the matter.
2. These General Conditions of Sale also apply in favour of third parties engaged by ZON in the context of the performance of the agreement.
3. These General Conditions of Sale supersede any general or specific conditions or stipulations of the customer, unless expressly agreed otherwise in writing in advance.
4. Deviations from and/or additions to any provision in these General Conditions of Sale shall only be binding on ZON if these deviations and/or additions have been expressly agreed between ZON and the customer without reservation and in writing. Any deviations and/or additions agreed shall only relate to the agreement in question.
5. These General Conditions of Sale also apply to subsequent and future agreements, even if they do not explicitly refer to these General Conditions of Sale.
6. ZON is authorised to make amendments to these General Conditions of Sale. The amendments will enter into force at the time announced by ZON.

Article 2 Agreement

1. ZON reserves the right to revoke an offer within two working days after receipt of the acceptance.
2. The Customer shall receive a written order confirmation, or a written record of the agreement, from ZON. This written record may consist of the invoice and/or an order form signed by the client. If the parties have agreed on further and/or additional agreements or changes after the agreement has been concluded, these shall only be binding if and insofar as these agreements have been recorded in writing and confirmed by ZON. In this case too, the written record may consist of the invoice and/or an order form signed by the client.

Article 3 Method of sale

Intermediary sales

1. Sales begins with the issue of a quotation by ZON to the Customer. A bid or quotation does not bind ZON and only serves as an invitation to the Customer to place an order. An agreement is only concluded if and insofar as ZON accepts an order. Acceptance can only be made in writing in the form of a weekly or seasonal contract or a confirmation.
2. In the event of intermediary sales in the form of a day order, both the offer and acceptance can be made verbally or in writing.

3. Pre-sale agreements only entitle the holder to delivery insofar as the supply information available to ZON shows that the products are actually available for delivery on the day determined for this purpose and the products are not intended by ZON to be sold and delivered in any other way.

Clock sales

4. In clock sales, a purchase contract is made by displaying the Customer's number and the price on the clock and then entering the Customer's desired quantities by the auctioneer. ZON determines the order in which products are sold.
5. If a Customer claims misunderstanding, this must be reported to the auctioneer immediately, i.e. before the clock for the next sales transaction is stopped. In this case there will be no claim for compensation for any of the parties involved.
6. In the event that this is necessary, due to a defect in the auctioning device or in the equipment connected to it, misunderstanding or the like, the auctioneer has the right to establish that no sale has taken place.
7. ZON is authorised to determine the minimum (purchase minimum) and maximum (purchase maximum) quantity of a product per transaction. A purchase agreement covering fewer products than the purchase minimum is deemed to relate to the purchase minimum. A purchase agreement covering more products than the purchase ceiling shall be deemed to relate to the purchase ceiling.
8. In the event of both lot and block sales, ZON has the right to withhold an offered lot.
9. A purchase agreement is not concluded if the price indicated on the clock is below the withdrawal price or the minimum price.

Article 4 Prices, rates and costs

1. Unless expressly agreed otherwise, the prices stated in the quotations, offers and agreements are exclusive of additional rates and costs. The additional costs include packaging, load carriers, shipping, transport and insurance, as well as all government-imposed levies and taxes (including VAT).
2. The rates stated in the offers, quotations, agreements are based on the cost price valid for ZON at the time of issuing or concluding those offers, quotations, agreements. If this cost price is increased after the conclusion of those agreements but before delivery, on which ZON cannot reasonably exert any influence (e.g. by, but not limited to, government measures), ZON shall be entitled to charge the increase in cost price to the Customer.
3. ZON is responsible for providing proof of delivery at the request of third parties (including credit insurer and tax authorities). Customers are obliged to follow the guidelines provided by ZON in this respect. Costs and/or risks arising from Customer's actions or omissions that result in the delivery not being demonstrable are at the Customer's expense and/or risk.
4. ZON is responsible for being able to demonstrate, at the request of third parties (including credit insurer and tax authorities), the correctness of the delivery address used at the instruction of the Customer. Customers are obliged to follow the guidelines provided by ZON in this respect. Costs and/or risks arising from actions or omissions by the Customer that result in the incorrectness of the delivery address are at the expense and/or risk of the Customer.

Article 5 Delivery

Place of delivery and transfer of risk

1. Unless the parties have explicitly agreed another delivery method, deliveries are "ex works", i.e. from one of ZON's business premises or the grower's business premises.
2. The Customer is obliged to accept the products purchased by him at the agreed place(s) and time(s).
3. If the Customer does not take receipt of the products on the agreed day of delivery, the Customer will bear the costs and risk of the products from the agreed time at which the products were made available.
4. If the products have not been received by the Customer at the agreed time of delivery, ZON will be entitled to store, sell or destroy the products or have them destroyed at the Customer's expense and risk. The costs of transport, storage, sale or destruction will be at the expense of the Customer.
5. In the event of clock sales, ZON will endeavour to deliver the products within 2 (two) hours after the end of the clock sales of the day in question.
6. In case an order confirmation covers more than one delivery day, a proportional distribution of the products to be delivered over the various delivery days will be sought.
7. The agreed delivery time is not a deadline, unless the parties have explicitly agreed otherwise.
8. Delay in delivery - to the extent that it is within reasonable limits - does not entitle the Customer to dissolve the agreement or any compensation.

Product to be delivered

9. In terms of amount and weight, as well as requirements prescribed by public and/or private law, the quantity delivered by ZON shall be deemed to comply with what the parties have agreed in this respect, subject to proof to the contrary to be provided by the Customer.
10. In the event of minor deviations in properties such as size, quality and colour, the product delivered is deemed to comply with the agreement.
11. If a sample has been shown or provided by ZON, this shall only be deemed to have been shown or provided by way of indication. The properties of products to be delivered may deviate from the sample, unless ZON has explicitly stated that delivery would take place in accordance with the sample shown or provided. In the event of delivery in accordance with the sample, the properties of the product inspected by way of sampling at the time of delivery shall be equal to the properties of the sample, but with due observance of the provisions under paragraph 10. In the event of delivery in accordance with the sample, the Customer shall be deemed to have inspected the sample if he has not expressly rejected it in writing beforehand. For the assessment of the quality of the product, the quality definition applied by ZON beforehand shall be decisive.
12. ZON determines the quantity and quality and grading class of the products purchased by the Customer. The quality definition previously announced by ZON is decisive for the assessment of the quality of the product. This information is stated on the invoice. Subject to proof to the contrary, the determination by ZON is binding between the parties. The Customer is provided with a copy of the invoice or a printout of the relevant data from the computerised system.

13. If the quantity of products intended for delivery under presale agreements on any day is insufficient to meet all presale agreements, ZON may allocate these to the Customer on the basis of an allocation key which it deems reasonable, taking all circumstances into account, whereby seasonal contracts take precedence over weekly contracts and weekly contracts take precedence over daily orders in the allocation.
14. Orders which involve delivery from a grower's premises only entitle the holder to delivery of the quantities and quality of products available at the grower's premises on the day and at the time stipulated for that purpose. The customer is required to sign for receipt on the spot. If the grower does not have enough products available on the day of delivery to fulfil the presale agreement, ZON may, in consultation with the Customer, supplement the order with available products of the same type and quality available to ZON. ZON is not obliged to do so.

Delivery in barrels and/or on load carriers

15. The products will be delivered to the Customer in the type of barrel to be determined by ZON and used by ZON as standard, unless agreed otherwise. The Customer will owe ZON a fee for delivery in barrels. If a certain type of packaging is not available for whatever reason, ZON is entitled to deliver the products in another type of packaging. In that case the additional or reduced costs will be determined and settled by ZON.
16. The customer must return the reusable packaging, insofar as it is the property of ZON or is the property of a third party from whom ZON has obtained the packaging, to ZON or to a third party from whom ZON has obtained the packaging, immediately after use and in a proper condition. The Customer is not authorised to use ZON's packaging more than once for purposes other than the storage and transport of products delivered to him by ZON. The packaging remains the property of ZON or of the third party from whom ZON has made the packaging available. The costs of loss of or damage to the barrel shall be borne by the Customer.
17. With regard to the barrel made available to ZON by third parties pursuant to the terms and conditions of those third parties, those terms and conditions for Customers shall be deemed to form part of these General Terms and Conditions.
18. The provisions of paragraphs 5.15 up to and including 5.17 regarding barrel also apply to the pallets on which the delivered product is stacked.

Article 6 Acceptance and complaints

1. Immediately after delivery of the agreed products by ZON, the Customer must inspect and check these products. The Customer must check whether the products delivered comply with the provisions of the agreement, i.e.:
 - a) Whether the right products have been delivered.
 - b) Whether the products delivered correspond in terms of quantity (number, quantity, weight) to what the parties have agreed in this respect. If the deviation observed by the Customer is less than 10%, the Customer is obliged to accept the delivered products in full, this at a proportional reduction of the agreed price.

- c) Whether the delivered products meet the quality requirements to be set and agreed upon, namely the requirements that may be set for normal use and/or for commercial purposes.
2.
 - a) If delivery of the products takes place ex Works, the Customer must inspect the products delivered at the points as stated in paragraph 1 of this article sub-sections a) and b) at the business premises of ZON or the grower.
 - b) In those cases where the products are delivered by ZON in a business premises elsewhere (DLA deliveries), ZON agrees that the inspection of the points referred to in paragraph 1 of this article subsection (a) and subsection (b) will take place in the business premises concerned elsewhere.
 - c) Complaints about the quantity of goods delivered must be submitted as soon as possible, but no later than 5 p.m. on the day on which the product was delivered or made available to the Customer (klantenservice@royalzoon.com).
3. Any shortcomings and complaints as referred to in paragraph 1 of this article sub (c) must be reported to ZON in writing and substantiated immediately after they have been established. Depending on the quality purchased, the following terms of complaint apply:
 - a) For class I products: at the latest 24 hours after delivery or provision.
 - b) For class II products: at the latest 5 p.m. on the day of delivery or availability of the product.
4. Complaints relating to defects that are not immediately visible must be reported to ZON in writing as soon as possible after discovery, so that ZON is able to investigate the correctness of the complaints concerned on the spot. The Customer must enable ZON to check the correctness of the Customer's complaint. If ZON has not received a written complaint from the Customer within 24 hours after delivery, the shortcoming and/or defect is not considered to be present at the time of delivery; it is instead assumed between the parties that this shortcoming and/or this defect has arisen after delivery.
5. The provisions of this article apply in full if the products delivered by ZON on behalf of the Customer are delivered to a third party. Accordingly, the Customer can never and under no circumstances object to ZON that the products delivered have not been inspected and checked because they were stored elsewhere with a third party.
6. The Customer is obliged to take care of the preservation of the products at all times as a prudent debtor and / or owner.

Article 7 Payments

1. The Customer must pay the agreed price after receipt of the invoice relating to the delivery - without any discount or recourse to compensation or set-off - within 14 days of the invoice date, unless otherwise agreed in writing.
2. ZON is entitled to fix a shorter payment term to the Customer than mentioned above, to cancel a so-called "credit limit" or to demand immediate payment or security for payment. The Customer is obliged to comply with these rules and to provide requested payments or securities without delay.
3. All costs of the payment transactions are for the account of the Customer, also in so far as a bank charges these to ZON and also if they concern international payment transactions.

4. After expiry of the payment term the Customer will be in default by operation of law, without any further notice of default being required. The Customer will then owe interest of 1% per calendar month or part thereof on the outstanding principal sum. If ZON takes (extra)judicial collection measures, the Customer will be obliged to pay all costs resulting therefrom, but at least 15% of the principal sum due.
5. Set-off by the Customer of the amounts invoiced by ZON against a counterclaim lodged by it (Customer), or suspension of payment by the Customer in connection with a counterclaim lodged by it, shall not be permitted.
6. Payments made by the Customer will first serve to pay all interest and costs owed and then to pay the due and payable invoices that have been outstanding the longest. This is also the case if the Customer states that the payment relates to a later invoice.
7. The entire invoice amount is immediately due and payable in full in the event of late payment of an agreed term on the due date, as well as if Customer becomes bankrupt, applies for (provisional) suspension of payments, is declared subject to the statutory debt rescheduling scheme (WSNP) or has been placed under guardianship, if any attachment is levied on the Customer's goods and/or claims, if the Customer is deceased, goes into liquidation or is dissolved. If one of the aforementioned situations occurs, the Customer is obliged to inform ZON immediately.

Article 8 Retention of title

1. Products delivered by ZON and/or individual growers shall remain the property of ZON or of the growers concerned until all ZON's claims against the Customer arising from agreements concluded between them, including interest and costs, have been paid in full.
2. If the Customer fails to fulfil its obligations, or if ZON has a well-founded fear that the Customer is unable to fulfil its obligations under the agreement, or if there is a suspicion that the Customer does not wish to fulfil its obligations, ZON is entitled to take back the products delivered by it - to which the retention of title referred to in paragraph 1 of this article applies - from the Customer or the third party holding the products for the Customer, or to have them taken back at the expense of the Customer. The Customer is obliged to cooperate in such an action on the part of ZON.
3. If third parties wish to establish or assert any right to the products delivered by ZON and/or individual growers subject to retention of title, the Customer must immediately inform ZON of this. Furthermore, the Customer must point out to this third party that the products have been delivered under retention of title. The Customer must provide the third party with the agreement concluded between the parties, showing that a retention of title has been made with regard to the delivered products.
4. The Customer is obliged to cooperate with all measures that ZON wishes to take to protect its right of ownership with respect to the products delivered by it and/or individual growers.

Article 9 Liability

1. The Customer is liable for all damage, of whatever nature, inflicted by him, his employees or auxiliary persons engaged by him on persons and/or property of ZON and/or service providers engaged by it.

2. ZON excludes all liability to the Customer, its employees or auxiliary persons engaged by it for damage, on whatever account, including direct and indirect damage, such as consequential damage or trading loss, except liability for damage caused by intent or gross negligence on the part of ZON.
3. Without prejudice to the provisions of paragraph 2 of this article, in all cases in which ZON, all persons working there and/or auxiliary persons engaged by ZON are obliged to pay compensation, such compensation shall never exceed the invoice value of the products delivered (excluding VAT and the value of the packaging) and/or services as a result of which or in connection with which damage is caused. Moreover, if the damage is covered by ZON's insurance, the compensation shall never exceed the amount actually paid out by the insurer in the relevant case.
4. The Customer indemnifies ZON, its employees and auxiliary persons engaged by ZON against all claims of third parties arising from or in any way connected with the sale or delivery of products and services by ZON to Customer, including claims based on (an infringement of) intellectual property rights such as plant variety rights, and liability arising from any defect in any product delivered.
5. ZON shall not be liable for damage, including trading losses on the part of the Customer and/or third parties as a result of the unavailability or late availability of products, a certain type of barrel or (small) packaging, except in the event of intent or gross negligence. The Customer shall take this into account in its dealings with third parties and indemnify ZON against claims of third parties in respect of the aforementioned damage (causes).
6. If the Customer, or a third party to whom the Customer has re-delivered the products delivered by ZON, carries out a recall action or has such action carried out, ZON can only be held liable for (part of) the associated costs if:
 - i. It is established that ZON is liable for the circumstance that led to the recall, and
 - ii. ZON was notified and consulted before the recall was carried out, and
 - iii. It is established that the Customer has acted reasonably and competently and has tried to minimise the costs associated with the recall.
7. Any claim against ZON, except those recognised by ZON, shall lapse by the mere expiry of 12 months after the claim has arisen.

Article 10 Force majeure

1. In the event of force majeure ZON shall be entitled either to suspend performance of the agreement or to dissolve the agreement in whole or in part, without the Customer being entitled to make any claim for damages against ZON.
2. Force majeure on the part of ZON shall - among other things - be deemed to include:
 - Strikes on the part of ZON's employees or third parties engaged by ZON for the performance of the agreement.
 - Sickness of employees of ZON or third parties engaged by ZON for the performance of the agreement.
 - Measures and/or prohibitions by the Dutch and/or foreign government to which ZON is bound.
 - Unforeseeable and unpredictable traffic obstructions.

- Accident(s) with a means of transport used for the performance of the agreement as well as unforeseen technical defects to these means of transport.
 - (Imputable) failure of ZON's suppliers to fulfil their obligations.
 - Theft of goods required for the performance of the agreement.
 - As well as all other unforeseen circumstances preventing ZON from executing the agreement properly and promptly.
3. If ZON has already partially fulfilled its obligations when the force majeure occurs, or can only partially fulfil its obligations, it shall be entitled to invoice the part already delivered or delivered separately. The Customer shall then be obliged to pay the invoice as if it were a separate agreement.
 4. All agreements relating to the sale of agricultural products are subject to harvest reservation. If as a result of a disappointing harvest with regard to the quantity and/or quality of agricultural products so many products are less available, including rejection by the competent authorities, than could reasonably be expected at the time the agreement was concluded, ZON shall be entitled to reduce the quantities it sells accordingly. By delivering this reduced quantity, ZON shall fully fulfil its delivery obligations. In that case ZON shall not be obliged to supply replacement agricultural products and shall also not be liable for any damage whatsoever.

Article 11 Default and dissolution

1. If the Customer fails to fulfil any obligation arising for him from the agreement concluded with ZON or the law, including the obligation to pay on time as included in article 7 of these General Conditions of Sale, the Customer shall be in default without notice of default and ZON shall be entitled to suspend performance of the agreement and/or to dissolve that agreement and directly related agreements in whole or in part without being obliged to pay any compensation and without prejudice to ZON's further rights.
2. In the event of (provisional) suspension of payments, bankruptcy, cessation or liquidation of the Customer's business, all agreements with the Customer shall be terminated by operation of law, unless ZON notifies the Customer within a reasonable period of time that it requires performance of (part of) the agreement(s) concerned, in which case ZON shall be entitled, without notice of default being required, to suspend performance of the agreement(s) concerned until payment has been sufficiently secured, without prejudice to ZON's further rights.
3. ZON shall be entitled to terminate the agreement in the event of permanent force majeure on the part of the Customer. In that case the Customer shall reimburse ZON for all costs incurred and further to be incurred by ZON.
4. In each of the cases referred to in paragraphs 1, 2 and 3 of this article, all claims of ZON on the Customer shall be immediately due and payable and the Customer shall be obliged to immediately return to ZON all products delivered by ZON to the Customer and remaining unpaid and/or items leased or loaned or otherwise made available by ZON to the Customer.

5. If an agreement is dissolved on the grounds of paragraph 2 of this article, ZON is entitled to charge any transport and administration costs associated with retrieving all products delivered by ZON to the Customer and remained unpaid and/or items rented out by ZON to the Customer or given on loan or otherwise made available. ZON is entitled to set off these transport and administration costs against any amounts owed by ZON to Customer.

Article 12 Intellectual property rights

1. ZON expressly reserves any intellectual property rights (including word and pictorial marks) with respect to products delivered by it.
2. The Customer is not permitted to infringe the intellectual property rights of a third party using products and packaging materials delivered by ZON in the broadest sense of the word. The Customer indemnifies ZON against any claims of third parties on account of an infringement of intellectual property rights that are made by means of the products delivered by ZON, and that take place after ZON has delivered the products to Customer.
3. The Customer will not label products that do not originate from ZON with any word or pictorial mark, packaging material, etc. belonging to or originating from ZON. Nor shall Customer offer, sell or deliver for sale products not originating from ZON, provided with any word or pictorial mark, packaging material etc. belonging to or originating from ZON to third parties.

Article 13 Final provisions

1. The Customer shall not be entitled to transfer its rights or obligations under any agreement with ZON, in whole or in part, to a third party without ZON's written permission.
2. All disputes between ZON and the Customer arising from or in connection with an agreement concluded between them, including those requiring urgent settlement, shall be submitted exclusively to the competent court in the place where ZON has its registered office, without prejudice to ZON's right to submit the dispute to the court in the Customer's place of residence if so desired.
3. These terms and conditions of sale and all other agreements between the parties shall be governed exclusively by Dutch law. The application of the Vienna Sales Convention or any other international convention on the sale of movable property is excluded - to the extent that this is possible pursuant to those conventions.

PROVISION OF SERVICES

Article 14 General

1. In addition to the general provisions - articles 1 up to and including 13 - articles 15 up to and including 16 apply insofar as the relationship between ZON and the Customer relates to services to be provided by ZON to the Customer. In the event of conflict with other articles of the General Conditions of Sale, articles 15 up to and including 16 take precedence.

Article 15 Risks and insurance

1. All delivery of services, such as but not limited to storage, handling and/or processing of products takes place at the expense and risk of the Customer.
2. ZON shall never be obliged to take out insurance for the products entrusted to ZON. The Customer must take out adequate insurance against all risks that may affect the products during the term of delivery of the services.

Article 16 Repossession products

1. The Customer is obliged to repossess the products entrusted to ZON for the provision of the services at the agreed place(s) and time(s).
2. If the products have not been repossessed by the Customer on the date of repossession, ZON is entitled to store the products (or have them stored) or to destroy them (or have them destroyed) at the expense and risk of the Customer. The costs of transport, storage or destruction will be at the expense of Customer.

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In case of deviations between the Dutch and the English version of these General Conditions of Sale, the Dutch version prevails.