

# GENERAL TERMS AND CONDITIONS FOR GROWERS OF KONINKLIJKE COÖPERATIEVE TELERSVERENIGING ZUIDOOST-NEDERLAND U.A.

Koninklijke Coöperatieve Telersvereniging Zuidoost-Nederland U.A. with its registered office at 5928 RH Venlo, Venrayseweg 104, as well as its affiliated companies, hereinafter referred to as 'ZON', has adopted the following General Terms and Conditions for Growers of Koninklijke Coöperatieve Telersvereniging Zuidoost-Nederland U.A., hereinafter referred to as 'General Terms and Conditions for Growers'.

## Article 1 Applicability

1. These General Terms and Conditions for Growers apply to and form an integral part of all agreements and contracts between producers of food horticultural products (hereinafter: 'grower(s)') and all growers who, according to ZON's books, are registered as suppliers of a certain product in any calendar year (hereinafter: 'product groups') on the one hand and ZON on the other hand with regard to the sale of products.
2. Pursuant to article 1, paragraph 1, these General Terms and Conditions for Growers apply to growers who are members of ZON and growers who have concluded an agreement with ZON on the sale of the grower's products (supply contract). The following articles do not apply to and do not form an integral part of all agreements and contracts between ZON and growers who are not members of ZON: article 2 paragraph 8, 11, 12, 13, article 5 paragraph 4, 5, 6 and article 7 paragraph 1e.
3. Where these General Terms and Conditions for Growers conflict with the Articles of Association of Koninklijke Coöperatieve Telersvereniging Zuidoost-Nederland U.A. (hereinafter referred to as: "Articles of Association") and/or the Product Group Representation Regulations of Koninklijke Coöperatieve Telersvereniging Zuidoost-Nederland U.A. (hereinafter referred to as: "Product Group Representation Regulations"), the Articles of Association and/or the Product Group Representation Regulations shall prevail over these General Terms and Conditions for Growers.
4. Deviations from and/or additions to any provision in these General Terms and Conditions for Growers shall only be binding on ZON if these deviations and/or additions have been expressly agreed between ZON and the grower and product groups without reservation and in writing. Any deviations and/or additions agreed upon shall only relate to the agreement in question.
5. These General Terms and Conditions for Growers set aside any general or specific conditions or stipulations of the grower and product groups, unless expressly agreed otherwise in writing in advance.
6. Changes and/or additions to these General Terms and Conditions for Growers shall be made known in writing by ZON.
7. In these General Terms and Conditions for Growers, reference is always made to the guidelines of RVO.nl and/or the GMO regulations applicable at that time.
8. Changes as a result of government measures, guidelines issued by RVO.nl will be fully adopted by ZON. ZON has developed a differentiated sanctions policy for specific sub-areas and activities, which applies to each grower. Changes and/or additions to this sanctions policy will be announced by ZON in writing.

## Article 2 Product sales agreements

1. ZON is at all times authorised to sell the product supplied by a grower from stock.
2. When making agreements with product groups, both ZON and the growers who together form a product group are bound by the Product Group Representation Regulations. Unless expressly agreed otherwise, all agreements thus made with the product groups are binding on all growers of the relevant product group.
3. Individuals acting as representatives of a partnership consisting of persons (partnership, general partnership, limited partnership) or as representatives of a legal entity or as representatives of a product group shall be deemed to be authorised to do so.
4. With the exception of force majeure, the grower is obliged to comply with all agreements made with or on behalf of him with regard to the sale and thus actively contribute to the success of ZON's sales efforts. He is also obligated to comply with reasonable and timely requests from ZON and/or product groups to offer the product other than as usual.
5. If the grower is unable to comply with an agreement made for any reason whatsoever, he must inform ZON without delay. In the event of negligence, or in the event of a defect, at ZON's discretion, the grower shall be liable for all consequences and damages resulting from non-fulfillment of his obligations without any further notification by ZON.
6. In the cases referred to below, ZON shall be entitled to refuse the sale of the product offered by the grower.
  - If the product offered is not allowed to be sold according to legal requirements.
  - If the product on offer does not meet the ZON specifications for the product in question.
  - If the sale of the product in question seriously harms or even threatens ZON's market position.
  - If agreements have been made with the product group about this in advance, which must be carried out during the supply season.

ZON cannot be held liable in any way for not selling these products.

7. Products of growers that are not sold for the reasons referred to under 6 must be withdrawn from the fresh market by or on behalf of ZON, either by destruction or otherwise. If and in so far as these products are on the grower's premises, the grower shall be obliged to destroy this product at ZON's first request or on behalf of ZON. He must cooperate with any inspections carried out by or on behalf of ZON.
8. If a grower, whose product cannot be sold for the reasons referred to under 6, refuses to destroy this product and he places or threatens to place this product on the market elsewhere, other than via ZON, ZON shall be entitled to destroy the product in question (or have it destroyed) on the grower's farm, at the grower's expense and risk. If the grower refuses to cooperate, the grower will forfeit to and for the benefit of ZON an immediately payable penalty equal to the expected sales proceeds of the products concerned, increased by 25%.
9. ZON shall charge all costs incurred by destroying or otherwise withdrawing product from the fresh market, for whatever reason, to the grower concerned.
10. The grower must handle the commercial and supply information provided with confidentiality.
11. All forms of personal sales by the grower are prohibited, with the exception of exemptions granted by ZON. ZON is in charge of the sale. This means that all agreements about the sale are made by ZON's sellers.

12. If there are already sales support activities by the grower, this can only be done under the direction of ZON (with the exception of exemptions granted by ZON). These sales support activities must be agreed in advance with ZON and may furthermore only relate to 'peripheral matters', whereby the agreements between the grower and ZON may under no circumstances conflict with the direction of the sale, which in any case includes determining sales prices, quantities and conditions.
13. All exemptions must be applied for and granted on a case-by-case basis prior to any sale. ZON may grant exemptions for:
  - Doorstep sales (= direct sales of self-grown products to consumers).
  - Products that only have a marginal share of the turnover or are delivered to buyers who normally do not become customers of ZON (e.g. regional stores or restaurants).

### **Article 3 Delivery and risk transfer**

#### **Production planning**

1. The grower must submit an annual production schedule before a time specified by ZON, so that ZON has the best possible idea of the expected supply in the various months of the year at an early stage.
2. In the event of a change in production planning, e.g. adjustment of the acreage, change in the product to be cultivated and/or quantities to be cultivated and/or supplied, the grower is obliged to report this in advance and to consult with ZON.
3. If ZON wishes a periodic supply forecast for a certain product, the grower is obliged to cooperate.

#### **Method of delivery**

4. Unless expressly agreed otherwise, the grower is obliged to deliver the product in the manner indicated in advance by ZON in the product specification and using packaging, packaging materials and pallets as stated in the packaging specification that is available from ZON on request. The packaging and packaging materials used must meet the quality requirements set by ZON and must be clean and comply with the applicable legal requirements and other reasonable requirements in view of the intended use of the product.
5. Growers are obliged to follow the quality guidelines issued by ZON with regard to the order, delivery and use of this packaging.
6. Contrary to the above, the grower may, at ZON's request or with ZON's express consent, deliver the product sorted and packaged in a manner indicated by the customer (partial market delivery).

#### **Place and time of delivery**

7. The grower is obliged to deliver its products to the place indicated by ZON and before the deadline set by ZON. If specific delivery conditions apply at the location in question, the grower shall be subject to these conditions.

#### **Delivery form**

8. Upon delivery of the product, a delivery document made in advance by the grower must be presented in the form and in the manner determined by ZON. If necessary, the grower shall ensure - in the case of delivery from the garden - that the buyer also signs this document for approval and that ZON receives the delivery document signed for approval within 4 hours, in order to ensure registration of the delivered product.

9. The grower is obliged to keep the delivery form signed by or on behalf of the buyer (also the shipping document) for at least 7 years and to present this document at ZON's request.

### **Risk transfer**

10. The products sold by ZON and delivered by the grower at the agreed place and time shall be at the expense and risk of the buyer:
- If it has been agreed that delivery shall take place from ZON's logistics center: as soon as the product has been loaded by or on behalf of the customers, but in any case from the time agreed for delivery, if and insofar as the products have been made available for delivery at that time.
  - If it has been agreed that delivery will take place from the grower's company: as soon as the products have been loaded into or onto the buyer's means of transport or his transporter, but in any case from the time agreed for delivery, if and insofar as the products have been made available for delivery at that time.
  - If it has been agreed that delivery will take place at the buyer's company or another place designated by the buyer, but not the grower's company: as soon as the products have been delivered at the agreed place.
  - If the buyer does not accept the products on the agreed day and time of delivery, the products will be at the buyer's expense and risk from the time at which the products are available for delivery on that day.

## **Article 4 Quality assurance, food safety assurance, product liability, complaints, controls**

### **Quality assurance**

1. A ZON grower is primarily responsible for the quality and food safety of the products he grows and offers for sale at ZON. For this reason, every grower is obliged to:
- Ensure that products manufactured and offered for sale are in accordance with the relevant laws, regulations and product specifications. Also, these products must comply with the additional regulations issued by or on behalf of ZON mentioned in the food safety policy.
  - Participate in the Qualität und Sicherheit system and comply with any applicable specific regulations drawn up by ZON, such as country regulations.
  - Be certified for GLOBALGAP or QS-GAP, as well as the GRASP module.
  - Participate in digital crop registration to ensure fast, complete and clear registration of the use of crop protection agents, fertilizers and other relevant cultivation and business data for ZON.
  - Report any emergencies that may have consequences for the food safety of their product to ZON.
  - Include the information required by law and requested by ZON on labels and/or tags.
  - Follow instructions given by ZON to protect ZON and/or growers' products against disproportionate effects compared to (repeated) incidents.
2. The grower is obliged to cooperate with and submit to the results of checks commissioned by ZON on the physical product quality and/or food safety. Suppliers engaged for this purpose must comply with the requirements to be set by ZON.

### **Product liability**

3. ZON accepts no liability of any kind for the composition of the products delivered by the grower and/or the presence of foreign substances in, on or around these products. The responsibility for this remains with the grower. The grower shall indemnify ZON against claims by third parties, including employees of ZON, based on the aforementioned grounds, including claims based on product liability.

### **Complaints about delivered product**

4. If complaints are made by customers, ZON shall deal with these complaints on the basis of ZON's General Terms and Conditions of Sale.
5. If the buyer, or a third party to whom the purchaser has reshipped the products delivered by ZON, carries out a recall action or has such action carried out, the grower who has delivered the products shall be liable and shall therefore indemnify ZON for the amount that ZON is obliged to pay to the buyer and/or a third party in this respect (also if such obligation follows from an extrajudicial settlement) increased by the costs to be incurred by ZON as a result of the recall action.

### **Complaints about services provided**

6. In the event of complaints about (sales) services (not or insufficiently) provided, the grower or the product group must contact the relevant manager within ZON in writing.
7. The complaint must be well-founded and contain sufficiently specific information. The complaint must be submitted to the ZON manager concerned in writing.
8. In the event of no or insufficient response to complaints, the grower or the product group may contact the ZON management. The ZON management shall respond to such a complaint as soon as possible, but within four weeks at the latest.

### **Own organisation ZON**

9. ZON ensures that its logistics centre in which growers' products are supplied, sorted and/or packaged complies with all legal requirements. To this end, the relevant ZON companies have various certified food safety systems (BRC, IFS, QS) in place.

### **Article 5 Recording and financial settlement of sales transactions**

1. ZON takes care of the administrative and financial settlement of the sales transactions realised by ZON.
2. With respect to the proceeds of the sale of products, the grower shall only claim against ZON, not against the buyer of ZON's products.
3. ZON will annually set the rates for work performed on behalf of or for the benefit of the growers and/or product groups.
4. ZON shall be responsible for providing proof of delivery at the request of third parties (including credit insurer and tax authorities). Growers are obliged to follow the guidelines provided by ZON in this respect. Costs and/or risks arising from the grower's actions or omissions that lead to the delivery not being demonstrable are at the grower's expense and/or risk.



5. 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 by order of the buyer. Growers are obliged to follow the guidelines provided by ZON in this respect. Costs and/or risks arising from the grower's acts or omissions that result in the correctness of the delivery address not being demonstrable are at the grower's expense and/or risk.

## **Article 6 Liability**

1. The grower shall be liable for all damage, of whatever nature, caused by him, his personnel, auxiliaries engaged by him and/or products delivered by him to persons and/or goods of ZON, service providers engaged by ZON and/or the buyer. ZON excludes all liability towards the grower, his personnel, auxiliaries engaged by him for damage on any account whatsoever, 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.
2. Without prejudice to the provisions of paragraph 2 of this article, in all cases in which ZON is obliged to pay compensation, such compensation shall never exceed the invoice value of the products delivered (excluding VAT and the value of the packaging) as a result of which or in connection with which damage is caused. 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.
3. The grower shall indemnify ZON, its employees and the persons, services and/or suppliers engaged by ZON against all third-party claims arising from or in any way connected with the sale or delivery of products and services by ZON to the grower, including claims based on (an infringement of) intellectual property rights such as plant breeders' rights, and liability arising from any defect in any product delivered.
4. The grower is obliged not to share commercially sensitive information with third parties and to refrain from accepting competition-sensitive information. The grower shall at all times operate within the limits of competition law and other legal requirements. The grower is obliged to report instructions and/or information relating to (possible) infringements to the Board of ZON. The grower indemnifies ZON against all damage, including fines imposed by the ACM or other national or European government bodies, that ZON suffers as a result of the grower acting in contravention of this article.
5. All claims against ZON, except those acknowledged by ZON, lapse by the mere expiry of 90 days after the claim has arisen.

## **Article 7 Termination**

1. ZON shall be authorised to terminate one or more agreements between ZON and the grower with immediate effect if:
  - a) The grower provides incorrect or incomplete information.
  - b) The grower fails to fulfil his obligations under the agreement(s) despite repeated requests.
  - c) The grower is declared bankrupt or has been granted a moratorium or an application for this has been submitted.
  - d) The grower decides to discontinue or transfer all or part of his business.

- e) Membership ends (in accordance with the articles of association) as a result of:
  1. As far as a natural person is concerned, by death.
  2. As far as a legal person is concerned, because it ceases to exist.
  3. By cancellation by the member.
  4. Termination of membership with immediate effect by the board of ZON.
  5. By expulsion from membership.
2. If an event as referred to under c) or d) occurs, the grower must notify the other party thereof without delay. A termination based on one or more of the grounds referred to in the previous paragraph shall not entitle the terminated party to compensation.
3. The damage resulting from the termination, as described in paragraph 2 above, shall be recovered from the grower. To this end, both the damage as a result of the termination as well as any financial consequences resulting from the premature termination of membership shall apply.

## **Article 8 Final provisions**

### **Transfer of rights and obligations**

1. The grower shall not be entitled to transfer his rights or obligations under any agreement with ZON to a third party in whole or in part without ZON's written consent.

### **Choice of forum**

2. All disputes between ZON and a grower 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 grower's place of domicile if required.

### **Amendments to these General Terms and Conditions**

3. Amendments to these General Terms and Conditions for Growers shall be prepared by ZON's management. These amendments shall require the approval of the Board of Directors of Koninklijke Coöperatieve Telersvereniging Zuidoost-Nederland U.A. Such approval shall also determine the date from which the amended general terms and conditions shall take effect.
4. ZON shall then ensure that all growers are informed sufficiently and in good time of these amendments.

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*In case of deviations between the Dutch and the English version of these General Terms and Conditions for Growers ZON, the Dutch version prevails.*