

GENERAL CONDITIONS BEST FRESH GROUP (BFG)

Section A: Sales (Article 1 - 10)

Section B: Purchase (Article 11 - 19)

Section C: Sales and Purchase (Article 20 - 24)

SECTION A: SALES

Article 1. Applicability

1. The provisions of this section of the General Conditions BFG apply to all legal relationships between all subsidiaries or group companies forming part of Best Fresh Group B.V. (hereafter called: 'we') and its third parties (hereafter called: 'Client'), including: offers, quotes, agreements such as for the delivery of items intended for sale (hereafter called: 'Products'), unless expressly agreed otherwise in writing. If we and the Client conclude subsequent agreements, these General Conditions will apply at all times, also if not expressly declared applicable.
2. Insofar as any provision of these General Conditions is in conflict with a provision of a written agreement – not being general conditions - between us and the Client, the infringing provision will not apply while the other provisions of these General Conditions will remain applicable in full.
3. The applicability of the general conditions of the Client, expressly including any provision regarding the transferability and/or pledging of claims by us on the Client, is explicitly excluded.

Article 2. Offers, quotes, conclusion of agreements and prices

1. All offers and quotes by us are free of obligation, unless expressly stated otherwise.
2. Agreements will be regarded as concluded:
 - a. following the signing by both parties of an agreement;
 - b. in the absence thereof, following the written acceptance and confirmation by us of an order placed by the Client;
 - c. in the absence thereof, by the factual delivery of the sold Products.
3. Further and/or supplementary agreements or changes will only be valid if agreed in writing by the parties.
4. The person granting the assignment on behalf of the Client declares to be authorised to represent the Client and to have fulfilled all necessary formalities in that respect.
5. Verbal commitments by and agreements with employees of ours are binding only if and insofar as confirmed by us in writing.
6. We may charge on price increases of more than 10% if between the time of acceptance and delivery price changes have occurred with respect to, for example, prices of the Product, exchange rates, wages, raw materials and packaging materials.

Article 3. Delivery

1. Delivery will be made from one of our locations (ExW Incoterms version 2010), unless agreed otherwise in writing. The Client will take receipt of the purchased Products at the agreed location(s).
2. The Client assumes the risk of loss or damage with respect to the sold Products from the time of delivery and - if the Client does not cooperate in the delivery - from the time that delivery is refused or no cooperation is granted while the Client was obliged to do so. As soon as the Products have left our company, the Client, also in deviation of the provisions of Article 2 paragraph 1, will assume risk for all damage, directly or indirectly, that may be caused by or to the Products.
3. The Client will accept the Products at the agreed location(s) and times. If the Client fails to take receipt of the Products on the day of delivery, we are entitled to store or destroy the Products, whereby the costs of transport, storage, sale or destruction of the Products are for the account of the Client.
4. If the Products are stored by us or a third party on behalf of the Client, delivery will be deemed to have taken place at the time of storage of the Products. The storage will take place for the risk and account of the Client.
5. Delivery times are indicative only. If several days of delivery are stated in an order confirmation, we will strive to evenly distribute delivery over those days. Any delay in delivery, insofar as within reasonable bounds, will not entitle the Client to rescind the agreement or to claim compensation.

Article 4. Products for delivery

1. The delivered quantity will as regards number and weight comply with requirements made under public and private law, including the agreements between the parties, barring evidence to the contrary by the Client.
2. Minor deviations in terms of size, quality and colour will be tolerated.
3. Products that are delivered from the company of a supplier/grower only give right to delivery of the quantity and quality of products available at the grower on the specified date. The Client will sign a delivery note on receipt of the Products. If the grower has insufficient Products available for delivery on the specified date, we can in consultation with the Client supplement the order with Products of the same type, price and quality that are elsewhere available to us.

4. All agreements regarding the sale of (agricultural) Products are subject to reservations with respect to harvest and processing. If as a result of a disappointing harvest, including the rejection of agricultural products by the competent authorities, the quality and quantity of Products are less than may reasonably have been expected on conclusion of the agreement, we are entitled to reduce the quantity of sold Products accordingly. Delivery of the adjusted quantity will constitute full compliance with our delivery obligations. We are in that case not obliged to deliver replacement Products and accept no liability for any losses whatsoever.

Article 5. Complaints

1. The Client will directly on delivery of the Products and packing materials check whether the delivery complies with the agreement, namely:
 - a. whether the correct Products have been delivered;
 - b. whether the delivered Products comply with the agreed quality requirements for normal use and/or tracking purposes;
 - c. whether the quantity (number, amount, weight) of the delivered Products complies with that which was agreed. If the deviation is less than 10% of the total, the Client will accept the delivery against a proportionate reduction of the price.
2. Complaints will be stated by the Client on the delivery note/freight document, failing which the Client cannot appeal to any defects.
3. Any defects that could not be ascertained during the aforementioned check will be reported immediately by the Client to us, by means of an email to the relevant commercial contact. The Client will in any event, in case of soft fruit, report the defect within 8 hours and, in all other cases, within 12 hours of delivery of the Products to the Client. The written complaint will at least include a detailed description of the defect with accompanying photos. In the absence of a timely written report, the Client cannot appeal to any defects.
4. The Products subject to complaint will be stored in their entirety and the Client will give us an opportunity to inspect them. The Client will take care of the Products as befits a good custodian.
5. The Client can only return Products with our written approval. All return shipments are for the risk and account of the Client.
6. If the Products are wrongly rejected by the Client, all related costs, including the costs of (re)inspection (whether or not by third parties), handling and storage, will be for the account of the Client.
7. If we deem the complaint founded, we can at our election retrieve and replace the Products or credit the Client for the relevant part of the delivery. Our liability in case of a justified and correctly submitted complaints is limited within the boundaries of Article 9.

Article 6. Retention of title

1. Ownership of the Products delivered by us will first pass to the Client after the latter has fulfilled all its obligations to us, including the payment of invoices, contractual interest and extrajudicial collection costs. The consequences under property law of the extended and extensive retention of title are governed by the laws of the country of destination.
2. The Client may only within the context of its normal business operations use or resell the Products delivered by us, which pursuant to Paragraph 1 fall under the retention of title.
3. If we wish to exercise the retention of title provided for by this article, the Client now for then gives its unconditional and irrevocable permission to us or third parties designated by us to access the places where our property is located and to retrieve the Products.
4. If third parties wish to attach any right to the Products delivered under retention of title, the Client will inform us thereof as soon as can be reasonably expected.
5. The Client will insure the Products delivered under retention of title and keep such insured against fire, theft, explosion and water damage, and will provide us with a copy of the policy at our first request.

Article 7. Invoicing and payment

1. Payment of the delivered Products will take place within 14 days of the invoice date, unless expressly agreed otherwise in writing.
2. We are entitled to send periodic invoices.
3. Any costs attached to payment in a currency other than invoiced, such as bank costs and exchange rate differences, will be fully for the account of the Client.
4. Complaints and/or objections against the amount of the invoice will not suspend the payment obligation.
5. The Client is not entitled to set off amounts owed to us against claims on a company forming part of our concern.
6. The Client will on expiry of the term of payment be in default without any notice of default being required. The Client will from that moment owe compound interest of 1% per month on the entire outstanding amount. The Client will also owe extrajudicial costs set at 15% of the principal due, subject to a minimum of € 500.
7. Payments made by the Client will always first serve as settlement of interest and costs due, followed by the oldest principal due.
8. We can award a credit limit to the Client. A credit limit is the maximum balance of all outstanding claims and orders at any time.
9. We may require an advance payment or other form of security from the Client if the parties have no transaction history or, in our opinion, the Client's payment behaviour to us and/or the size of the transactions give reason for such.
10. Our claims fall immediately due in case of liquidation, bankruptcy or a moratorium of payment on the part of the Client.

Article 8. Force majeure

1. We are entitled in case of temporary force majeure to suspend the agreement and in case of permanent force majeure (a contiguous period of at least 2 months) to terminate the agreement with immediate effect, without owing any compensation.
2. Force majeure will in any event include – but is not limited to - all circumstances that hinder or seriously impede the performance of the agreement, such as: war, war risk, civil law, civil unrest, water hazard, water damage, fire, transport problems, unforeseen technical complications, business interruptions, industrial action, blockades, import and export bans, full or partial seizure or reclamation of supplies by a civilian or military government, lack of transport capacity, late or non-delivery by our suppliers, as well as scarcity that permanently or temporarily hampers or rules out delivery, both as regards us and any third parties engaged by us in the delivery.

Article 9. Liability

1. We accept no liability for loss of any nature whatsoever, direct or indirect, including business interruption and consequential loss, except in case of intent or gross negligence on our part. This exclusion also extends to auxiliary persons and subordinates engaged by us in this agreement or the performance thereof.
2. If it is established by a court of law that we are liable for loss, our liability will not exceed the invoice amount, excluding VAT, or at least that part thereof that can be attributed to the loss event, or the amount paid out by our insurer with respect to the loss event.
3. We accept no liability for indirect loss, including consequential loss, loss of profit, missed savings,, loss resulting from stagnation in operations and all other loss not falling under direct loss in the sense of these General Conditions.
4. Any legal claim for compensation of loss by us will lapse if the Client does not report such to us in writing within 10 calendar days of the occurrence of the loss event and subsequently has not issued a summons against us within at least 3 months after the Client could have known of both the loss and our liability.
5. The Client will indemnify us, our employees and our engaged auxiliary persons for all claims (for compensation) by third parties ensuing from, or in any way related to, the sale or delivery of Products by us or the Client, including claims based on (an infringement of) intellectual property rights, such as breeder's rights, and liability ensuing from any defect in the delivered Products.

Article 10. Suspension and rescission

1. We are entitled, by means of a written statement and without prior notice of default or notification, to fully or partially suspend or rescind any agreement with immediate effect:
 - a. If the Client attributable defaults on one or more of its obligations and/or fulfilment is impossible.
 - b. If we consider it probable that the Client is unable or unwilling to fulfil its obligations, including if attachment is opposed on the property of the Client due to significant debts and said attachment is maintained for longer than two months.
 - c. If the Client applies for a moratorium of payment, is granted a moratorium of payment, applies for bankruptcy, is declared bankrupt, requests the application of a debt rescheduling scheme or if the Client is placed under guardianship or administration, proceeds to liquidate its company or ceases its activities or in any way appears to be insolvent.
 - d. If significant changes occur in the ownership or control structure of the Client or ourselves, including mergers and takeovers.
 - e. In case of permanent force majeure as described in Article 8.
2. We are never obliged to pay any form of compensation in case of suspension or rescission.
3. If we suspend fulfilment of the obligations, we reserve our rights under the agreement and the law. All our claims on the Client immediately fall due on rescission of the agreement.
4. The Client will in case of rescission of the agreement compensate all costs incurred by us, without prejudice to our right to demand compensation in full.

SECTION B: PURCHASE

Article 11. Applicability

1. The provisions of this section of the General Conditions BFG apply to all legal relationships between all subsidiaries or group companies forming part of Best Fresh Group (hereafter called: 'we') and its supplier/clients (hereafter called: 'Supplier'), regarding the purchase of goods or services (hereafter called: 'Delivery') - as well as to all requests and orders - unless expressly agreed otherwise in writing. If we and the Supplier conclude agreements more than once, these General Conditions will apply at all times, also if not expressly declared applicable.
2. Insofar as any provision of these General Conditions is in conflict with a provision of a written agreement – not being general conditions - between us and the Supplier, the infringing provision will not apply while the other provisions of these General Conditions will remain applicable in full.
3. The applicability of the general conditions of the Supplier is expressly excluded.

Article 12. Offers, quotes, conclusion of agreements and prices

1. All requests, orders and offers by us, in any form whatsoever, are always free of obligation, unless expressly stated otherwise.
2. An agreement is concluded when confirmed by us within 48 hours after the Supplier has sent its acceptance or, in case an offer is made by the Supplier, by accepting the Supplier's offer.
3. The Supplier is not entitled to raise the agreed price, which will include the costs of packaging, transport, insurance and unloading, unless expressly agreed otherwise in writing.

Article 13. Quality

1. The Supplier guarantees:
 - a. That the Delivery complies with the quality requirements and specifications stated in the agreement and that the Delivery is free of defects.
 - b. That the composition and quality of the Delivery comply in full with all applicable requirements made by law and/or other government regulations, which are in force at the time of conclusion of the agreement.
 - c. That the Delivery complies at least with the standards of the BFG Supplier's Statement, which is separately completed by the Supplier and is accepted by the Supplier. The Supplier is deemed to be familiar with said Supplier Statement, unless forthwith informing us otherwise in writing. We will then inform the Supplier of this statement.

Article 14. Delivery and transfer of ownership

1. Delivery will take place within the stated delivery times, unless the parties agree otherwise in writing. The Supplier will in case of late delivery be in default, without requiring further notice.
2. The Supplier will immediately notify us in writing as soon as it knows or expects that timely delivery of the Products is not possible, stating the circumstances that caused the delay, the measures (to be) taken and the expected duration of the delay. The Supplier will remain obliged to effect delivery. If the Supplier fails to provide adequate notification, a later appeal to late delivery will not be accepted, also not in case of force majeure.
3. The Supplier is liable for all losses incurred by us and our clients as a result of late or non-delivery by the Supplier.
4. Delivery will be made to one of our locations (DDP Incoterms version 2010), unless agreed otherwise in writing.
5. Ownership and risk of the Delivery will first pass at the time of delivery as referred to in this article.

Article 15. Inspection

1. We are entitled to inspect the Products before acceptance. Inspection and acceptance of the Products will take place at one of our locations, or at another location designated by us in case of deviation from Article 14.4.
2. Inspection and/or testing by us and/or a third party designated by us can take place before, during and after delivery. The Supplier will provide its cooperation, including by granting access to the storage site of the Products and by giving insight into the documents required for the inspection.
3. We will inform the Supplier if the delivered Products do not comply with the agreement during an inspection before, during or after delivery, and are therefore rejected. The Supplier will in that case take all necessary measures to fulfil the agreement.
4. We will inform the Supplier as soon as possible if the delivered Products are rejected after delivery. The Supplier is liable for all costs incurred by us as a result of the rejection of the delivered Products, including the costs of inspection and transport and disposal costs.
5. We can in case of rejection of the delivered Products choose between:
 - a. A price reduction, subject to agreement between the parties.
 - b. Returning the delivered Products at the expense of the Supplier and fulfilment, whether or not in combination with compensation.
 - c. Full or partial rescission of the agreement in accordance with Article 18, whether or not in combination with compensation.

Article 16. Payment

1. Payment will take place within 30 days of receipt of the invoice and after the Products have been received in full and approved.
2. We are at all times entitled to set off any claims by us and/or companies directly or indirectly affiliated to BFG on the Supplier against outstanding invoices from the Supplier to us and/or companies directly or indirectly affiliated to BFG.
3. Payment by us does not entail acknowledgement that the Supplier has (adequately and/or fully) fulfilled all its obligations to us.

Article 17. Liability

1. The Supplier is liable for and indemnifies us against all losses, of any nature whatsoever, that we and/or third parties may incur as a result of the delivery by the Supplier.
2. The Supplier indemnifies us against third-party claims for compensation as referred to in the previous paragraph.
3. The Supplier will take out adequate insurance against liability referred to in this article, with the exclusion of recourse against us or our clients. The Supplier will allow us to inspect the policy sheet at our request.

Article 18. Suspension and rescission

1. The Supplier will be in default, without requiring any notice, if it does fails to adequately fulfil any obligation under an agreement and/or in case the Supplier is subject to bankruptcy, moratorium of payment, attachment, suspension of business, withdrawal of the environmental permit, liquidation or any other comparable circumstance regarding the business of the Supplier.
2. We are in case of the circumstances referred to above entitled to rescind the agreement in full or part and/or to suspend our payment obligations and/or assign performance of the agreement in full or part to third parties, without being obliged to pay any compensation and without prejudice to all our other rights, including the right to full compensation and refund of the purchase price.
3. In case of the circumstances referred to in paragraph 1 of this article, all the claims that we have or may acquire on the Supplier will fall due immediately in full.

Article 19. Transfer

1. The Supplier will not assign the obligations under the agreement in full or part to a third party without our prior written permission.

SECTION C: SALES AND PURCHASE

Article 20. Intellectual property

1. We reserve all intellectual property rights to items that we use or that may rest upon items that we deliver to a Client/Supplier.
2. We have and retain ownership of all intellectual property rights to all graphic designs, tools, packaging, etc., produced on our instruction and these may not be used by third parties without our written permission.
3. The Client/Supplier guarantees that the use of the Products/Delivery or the tools purchased or produced by the Client/Supplier on our behalf does not infringe upon any patent rights, brand rights, model rights, copyrights or other intellectual property rights held by third parties.
4. The Client/Supplier indemnifies us against all claims ensuring from any infringement of the rights referred to in the previous paragraph and will compensate us for any losses resulting from any infringement.

Article 21. Delivery in Pooling Fust/other packaging

1. We make use of various Pooling Partners. If the parties agree that delivery will take place via a Pooling system, the provisions of paragraphs 2 up to and including 6 of this article will apply. The Client/Supplier acknowledges that the general conditions of the relevant Pooling Partner may apply to the use of the provided Pooling Fust and will observe these conditions.
2. We grant no guarantee with respect to delivery of the ordered Pooling Fust.
3. The Pooling Fust will remain the inalienable property of the relevant Pooling Partner. The Client/Supplier may not give third parties the use of an empty Pooling Fust provided by us, unless a contract for (re)use has been concluded with the Pooling Partner. The Client/Supplier will exclusively use the Pooling Fust for the performance of the agreement.
4. A deposit will be charged for the Pooling Fust provided by us to the Client/Supplier. We will bindingly determine and separately communicate the amount of the deposit. The deposit is claimable and payable on acceptance of the Pooling Fust. The deposit will be refunded to the Client/Supplier on return of the Pooling Fust in a good condition, as described in the paragraph below.
5. The Client/Supplier will properly maintain and transport the Pooling Fust. The Client/Supplier will return the Pooling Fust in an empty, clean and undamaged condition (damage includes staples or irremovable stickers), sorted according to type and placed on permitted pallets, to the depot of the Pooling Partner. A foldable Pooling Fust will be returned in a folded condition.
6. We are in case of non-compliance entitled to deduct the costs of emptying, discharge, repair, removal of stickers and staples and suchlike from the deposit.
7. All other packing materials are subject to the Fust Protocol as applied by us.

Article 22. Confidentiality

1. The Client/Supplier will respect the confidentiality of all company information that it acquires within the context of the agreement from BFG or any other source, such as information about products and know-how in the broadest sense of the word, except in case of a statutory or professional duty of disclosure or if BFG has waived the duty of confidentiality in writing.
2. The Client/Supplier will impose the obligations stated in this article on its personnel and/or on third parties engaged by the Client/Supplier in the performance of the agreement.

Article 23. Final provisions

1. Changes to the agreement and deviations from these General Conditions will apply only if agreed in writing (including email).
2. The invalidity or annulment of any provision of these General Conditions in no way affects the validity of the remaining provisions of these conditions.
3. We reserve the right to adopt new general conditions. These new general conditions will come into force when the Client/Supplier has had a reasonable opportunity to take note thereof.
4. Obligations of the Client/Supplier that by their very nature are intended to continue after termination of the agreement will subsequently remain in force. Termination of the agreement expressly does not dismiss the Client/Supplier from the provisions regarding, inter alia: intellectual property rights, confidentiality, applicable law and competent court.
5. In case of any deviation between the various translations of this agreement and the original Dutch text, the latter will prevail.

Article 24. Applicable law and disputes

1. All agreements and issuing agreements between us and the Client/Supplier are governed exclusively by Dutch law with the exclusion - insofar as possible - of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention).
2. Any disputes arising from this agreement and consume agreements between the parties will exclusively be submitted to the competent court of the district in which we have our registered office, unless we choose to subject the dispute in question to the opinion of the Netherlands Arbitration Institute (N.A.I.) in accordance with their Arbitration Regulations. Arbitration will in that case take place in Rotterdam.