

## **GENERAL TERMS AND CONDITIONS OF SALE**

Freshex B.V. ( Register of Commerce no. 89810732 ) with its registered office in the Netherlands, Hofplein 20, 3032 AC Rotterdam, has laid down the following General Terms and Conditions of Sale:

### **Article A Definitions**

1. The other Party: all (legal) persons entering into an agreement with Freshex or to which Freshex makes a special offer and/or gives a quote, as well as their representative(s), authorized agent(s), legal successor(s) and heirs;
2. Agreement: all Agreements realized between Freshex and the other Party and all modifications or additions thereto as well as all (legal) acts performed in preparation and in implementation of such an Agreement;

### **Article B Applicability**

1. These General Terms and Conditions of Sale will apply to all quotes given and special offers made by Freshex and all Agreements concluded and orders accepted by Freshex. The General Terms and Conditions of Sale thus apply to all (legal) acts (including omissions) of Freshex and its relevant other Party.
2. Agreements as referred to in paragraph 1 of this article include sale agreements, commission agreements, consignment agreements, framework agreements and related agreements.
3. For the implementation of that stipulated in the Agreement, the other Party gives Freshex permission to make use of use third parties who are not the employees of Freshex. The General Terms and Conditions of Sale also apply to legal acts carried out by these third parties in connection with the fulfilment of obligations to which Freshex is subject pursuant to the Agreement.
4. Deviations from and/or additions to any provision in these General Terms and Conditions of Sale will only be binding for Freshex if these deviations and/or additions have been agreed on explicitly between Freshex and the other Party, without reservation and in writing. Any deviations and/or additions agreed on will only apply to the Agreement concerned.
5. In the event that and insofar as on accepting a quote or an offer or entering into an agreement the other Party refers to general terms and conditions other than

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the General Terms and Conditions of Sale of Freshex with a view to applying these general terms and conditions to the Agreement, other general terms and conditions than these General Terms and Conditions of Sale will only apply to the Agreement if Freshex has accepted such general terms and conditions without reservation and in writing.

6. In the event that following the intervention of a judicial authority, any provision of these General Terms and Conditions of Sale appears to be null and void, solely the

provision concerned will cease to apply. All other provisions will continue to apply without prejudice.

### **Article C Offers and prices**

1. All agreements concluded by Freshex are deemed to have been realized at the business address of Freshex, namely Freshex, both with regard to the implementation and the payment of the Agreement.
2. All sums mentioned in quotes, special offers, Agreements and orders will be given in EUR's (European Union) unless the parties have agreed otherwise in writing. Moreover, all sums mentioned are inclusive of transport costs and turnover tax, unless the parties have agreed otherwise in writing.
3. All offers made by Freshex are without obligation.
4. Freshex retains the right to refuse orders without giving any reason.
5. Freshex is not obliged to keep to an offer and/or an agreement for a specified price if this price is based on a misprint and/or a writing error.

### **Article D Agreement**

1. In the event that a quote contains an offer without obligation which is accepted by the other Party, Freshex will have the right to revoke the offer within two working days of having received such acceptance.
2. The other Party will receive written confirmation of the order or a written record of the Agreement from Freshex. This written record can consist of the invoice and/or purchase order.
3. If after the Agreement has been realized the parties agree on further and/or additional agreements or modifications, these will only be binding if and insofar as these agreements have been laid down in writing. In this case too, the written record can consist of the invoice and/or purchase order.

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4. All taxes, duties, charges, levies, assessments and other fees or costs of any kind imposed on the import or purchase of the Products by the other Party or the export or sale of the Products by Freshex as a result of or in connection with the withdrawal of the United Kingdom from the European Union shall be borne by and for the account of the other Party.
5. In case the performance of this Agreement is in any way more onerous or more difficult for Freshex as a consequence of or in connection with the withdrawal of the United Kingdom from the European Union, Freshex can give written notice thereof to the other Party, upon which Freshex is entitled to suspend its obligations and the parties shall in good faith renegotiate this Agreement.

### **Article E Cancellation of the Agreement**

1. The other Party can only cancel the Agreement if this takes place in writing prior to the commencement of the implementation of the Agreement. With due observance of that stipulated hereinafter, in the event of a cancellation, all

preparatory expenses incurred by Freshex will be charged to the other Party at all times.

2. In the event that the Agreement is cancelled within 72 hours prior to the time of delivery agreed on, in addition to the preparatory expenses, the other Party will owe compensation set at 50% of the price agreed. If the Agreement is cancelled later than 24 hours prior to the time of delivery, the other Party will owe the full price agreed.
3. In the event that the Agreement is cancelled, regardless of the date on which the cancellation takes place, the other party will be obliged to compensate the costs that Freshex must pay third parties arising from and in connection with the cancelled Agreement.

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## **Article F Delivery**

1. The delivery time agreed is not a strict deadline unless the parties have explicitly agreed otherwise.
2. Insofar as these are within reason, delivery delays will not give the other Party the right to terminate the Agreement or to any compensation.
3. Barring notice to the contrary given by the other Party, that delivered by Freshex must comply with that agreed on by the parties both in terms of number and weight and in terms of requirements prescribed by public and public law. The parties explicitly agree on presumptive evidence with regard hereto.
4. Deliveries will be made to the customer, unless the parties have agreed otherwise in writing with regard hereto. The time of delivery is the time at which the goods are delivered to the customer.
5. In the event that parties have agreed that Freshex will store the goods it is to deliver for the other Party, either in its own storage space or in that of a third party, the goods will be handed over at the time of their storage.
6. Before fulfilling the obligations it is subject to arising from the Agreement, Freshex is entitled to demand sufficient security with regard to the other Party's fulfilment of its payment obligations.
7. In the event that the other Party still has an obligation to pay Freshex any sum, especially if invoices sent by Freshex are still partly or fully due, Freshex will be entitled to suspend the obligation to deliver until the other Party has met all its obligations.

## **Article G Acceptance and complaints**

1. Immediately following the delivery of the goods agreed by Freshex, they must be inspected, verified and confirmed accordingly by signing the legal CMR by the other Party. The inspection and verification must be carried out in the presence of the driver. The other Party must verify whether the goods delivered comply with that stipulated in the Agreement, namely:

- a. whether the correct goods have been delivered;
- b. whether the goods delivered comply with the quality requirements made and

agreed with regard thereto, or in other words, the requirements that may be made in connection with normal use and/or commercial purposes;  
c. whether the goods delivered comply with that agreed on by the parties in terms of quantity (number, amount, weight). If a difference is established by

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the other Party that is less than 10%, the other Party will be obliged to fully accept the goods delivered, such for a pro rata reduction of the price agreed.

2. In the event that the goods are delivered ex warehouse, the other Party must inspect the goods delivered in the sales space of Freshex.
3. Any defects and objections not related to circumstances set out in paragraph 1 of his article under c must be reported to Freshex in writing immediately after having been established but within eight hours of delivery at the latest. If Freshex has not received a complaint immediately following delivery, the goods will be deemed to have been delivered in conformity with that stipulated in the Agreement and without any defects.
4. As soon as possible after having been established, any complaints concerning defects that are not immediately visible must be communicated to Freshex in writing to enable Freshex to investigate the justness of the complaints concerned on the spot. The other Party must enable Freshex to verify that the complaints of the other party are justified. In the event that Freshex has not received a written complaint from the other Party within two hours of the delivery, the defect and/or the fault will not be deemed to have been present at the time of the delivery, but the parties will take it for granted that this defect and/or this fault arose after delivery.
5. That stipulated in this article will apply without prejudice in the event that the goods delivered by Freshex for the other Party are delivered to a third party. The other Party can thus at no time argue against Freshex that it had not inspected the goods delivered in view of the fact that they were stored with a third party elsewhere.
6. The other Party is obliged to keep the goods as a prudent debtor and possessor at all times.

## **Article H Payment**

1. Unless the regulation concerned has been departed from, the other Party must pay the price agreed on after receiving the invoice related to the delivery without a reduction or claiming compensation within 28 days as of the date of invoice, or otherwise agreed in writing.
2. The setting off by the other Party of the sums invoiced by Freshex against a counterclaim put forward by the other party or the suspension of payment by the other Party in connection with a counterclaim is not permitted, unless Freshex has

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explicitly acknowledged the fact that it is obliged to pay the counterclaim without reservation, or the existence of the counterclaim has been irrevocably established at law.

3. In the event that the term of payment is exceeded, the other Party will owe default interest of 1% per month, without prejudicing the other rights of Freshex such as the right to compensation for extrajudicial costs and statutory interest.
4. In the event that the term of payment is exceeded, without prior notice of default, the other Party will owe statutory commercial interest on the outstanding sum. Insofar as it has been established at law that the Buyer does not owe statutory commercial interest, it will owe Freshex the statutory interest concerned.
5. In the event that even after having been put into default by Freshex, the other Party fails to pay the outstanding sums to Freshex, in addition to the total sum due consisting of the outstanding sums increased by the interest payable, it will also be obliged to pay compensation for extrajudicial collection costs. The sum of the extrajudicial collection costs is set at 15% of the principal sum due.
6. Payment made by the other Party will first be applied to settle all interest and costs payable and subsequently for those invoices that have been outstanding for the longest periods. This will also be the case if the other Party states that the payment relates to a later invoice.

#### **Article I Retention of title**

1. Goods delivered by Freshex will remain its property up to the time of full payment of all claims of Freshex vis-à-vis the other Party on the basis of agreements concluded between them, including interests and costs.
2. The other Party will only be authorized to resell goods delivered by Freshex that are subject to retention of title, as set out in paragraph 1 of this article, if reselling is one of the other Party's normal business activities.
3. In the event that the other Party fails to observe its obligations, or if Freshex has a well-founded fear that the other Party is not capable of fulfilling its obligations flowing from the Agreement, or if there is a suspicion that the other Party does not wish to fulfil the obligations to which it is subject, Freshex will be entitled to take back the goods it has delivered, subject to retention of title mentioned in paragraph 1 of this article, from the other Party or from a third party keeping these goods for the other Party or to cause these goods to be taken back. The other Party will be

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obliged to cooperate with such action carried out by Freshex.

4. In the event that third parties wish to establish or assert a right on the goods delivered by Freshex under retention of title, the other Party must notify [business name] hereof by return of post. The other Party must moreover point out to the third party concerned the fact that the goods in question were delivered under retention of title. The other Party must provide the third party

with the Agreement concluded between the parties from which it is apparent that a retention of title was claimed with regard to the goods delivered.

5. The other Party is obliged to cooperate with all measures that Freshex wishes to take to protect its property rights with regard to goods it has delivered.

## **Article J Liability and risk**

1. In the event that the other Party has goods in its possession delivered by Freshex which are the property of Freshex (including packaging) and/or which are subject to retention of title as referred to in Article 9 of these General Terms and Conditions of Sale, as of the time at which the goods are delivered to it up to the time at which they are returned or the time at which the ownership of these goods is transferred, the other Party will be liable for any damage caused by and/or with these goods.
2. In the event that it has goods in its possession that are the property of Freshex (including packaging) and/or which are subject to retention of title as mentioned in Article 9 of these General Terms and Conditions of Sale, the other Party will be liable for any loss suffered by Freshex as a result of the damage to, the loss of or the destruction of these goods, which loss arose in the period between the time at which Freshex delivered the goods and the time at which the goods were returned or the time at which the ownership of the goods was passed.
3. In the event that as a result of circumstances attributable to the other Party Freshex wishes to make use of its retention of title but nevertheless suffers a loss, the other Party will be liable for the loss suffered by Freshex.
4. In the event that in the implementation of the Agreement it has goods in its possession (including packaging) which are the property of Freshex and/or subject to retention of title as referred to in Article 9 of these General Terms and Conditions of Sale and in the event of theft, loss or damage to the goods supplied to it by Freshex, the other Party will be obliged to notify Freshex hereof immediately. The other

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Party must immediately report theft or acts of war to the police of the municipality where the theft and/or the act of war took place. The other Party must provide Freshex with a copy of such a report.

5. In the event that Freshex has delivered goods to the other Party that are the property of a third party, the other Party will indemnify Freshex against all claims of this third party with regard to damage caused by and/or with the goods that Freshex has delivered to the other Party, as well as damage caused to the goods supplied by the other Party by Freshex.
6. In the event that the other Party or a third party to which the other Party has passed on the goods delivered by Freshex makes a recall or causes a recall to be made, Freshex will only be able to be held liable for (a part of) the costs thereby incurred if i) it is established that Freshex is liable for the circumstances that have led to the recall, and ii) Freshex was consulted and had its say before the recall was made and iii) it has been established that the



other Party acted as a reasonable and reasonably competent professional and attempted to limit the costs incurred in connection with the recall as far as possible.

7. In the event that Freshex is liable for any damage, all liability of Freshex will be limited to the sum paid out under the public liability insurance of Freshex, increased by the own risk under this insurance policy. If for any reason whatsoever no sum is paid out pursuant to this insurance, all liability will be limited to the sum of the invoice corresponding to the Agreement on which the other Party's claim is based, on the understanding that all liability will be limited to a sum of EUR 40,000.

## **Article K Force majeure**

1. In the event of force majeure, Freshex will be entitled either to suspend the implementation of the Agreement or to fully or partly terminate the Agreement without the other Party being able to claim any compensation vis-à-vis Freshex.
2. Force majeure of Freshex should be understood to mean:
  - strikes held by the employees of Freshex or third parties called in by Freshex in connection with the implementation of the Agreement;
  - illness of employees of Freshex or third parties called in by Freshex in connection with the implementation of the Agreement;
  - measures taken and/or prohibitions issued by the Dutch government and/or a

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foreign government by which Freshex is bound;

- unforeseen and unpredictable traffic impediments;
- accident(s) with a means of transport employed in connection with the implementation of the Agreement as well as unforeseen technical defects in these means of transport;
- (attributable) failure to perform by the suppliers of Freshex;
- theft of goods required for the implementation of the Agreement;
- as well as all other unforeseen circumstances that prevent Freshex from implementing the Agreement properly and on time and that are not for the account and risk of Freshex.

3. In the event that on the commencement of the force majeure, Freshex has already partly met its obligations or can only partly meet its obligations, it will be entitled to send out separate invoices for that supplied and/or the part supplied. The other Party will then be obliged to pay the invoice concerned as if a separate Agreement was concerned.
4. All agreements related to the sale of agrarian products are subject to a good harvest. If as a result of a disappointing harvest in terms of the quantity and/or quality of the agrarian products concerned there are fewer products available than could have been expected within reason on concluding the Agreement, also as a result of products having been declared unfit by the authorized bodies, Freshex will have the right to reduce the quantity it sells correspondingly. On reducing the quantity supplied, Freshex will fully comply

with its obligations to deliver. Freshex will not then be obliged to supply substitute agrarian products, neither will it be liable for any loss suffered whatsoever.

## **Article L Default and termination**

1. In the event that the other Party fails to comply, fails to comply properly or fails to comply on time with any obligation arising for the other party from the Agreement concluded with Freshex and/or the law, including the obligation to pay on time as included in Article 8 of these General Terms and Conditions of Sale, the other Party will be in default *de jure* and Freshex will be entitled to suspend the implementation of the Agreement and/or to fully or partly terminate the Agreement and any directly related Agreements without Freshex being obliged to pay any compensation and without prejudicing the further rights of Freshex.

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2. In the event that the other Party is in default, it will owe Freshex the statutory (commercial) interest as well as all costs both in and out of court incurred by Freshex within reason in establishing the liability of the other Party and/or in acquiring payment of its claims which are covered by Article 6:96 paragraph 2 of the Dutch Civil Code.
3. In the event of the (provisional) suspension of payment or the bankruptcy of the other Party or the closing down or the winding-up of the business of the other Party, all Agreements with the other Party will be terminated by operation of law, unless Freshex notifies the other Party within a reasonable term that it requires the observance of (part of) the Agreement(s), in which case without giving notice of default, Freshex will be entitled to suspend the implementation of the Agreement(s) concerned until sufficient security has been given with regard to payment, without prejudicing the further rights of Freshex.
4. Freshex will have the right to terminate the Agreement in the event of permanent force majeure of the other Party. Freshex
5. In each of the cases mentioned in paragraphs 1, 2, 3 and 4 of this article, all claims of Freshex vis-à-vis the other Party will be immediately due and payable and the other Party will be obliged to immediately return leased goods or goods for which payment has not yet been received.
6. The other Party must notify Freshex without delay in the event of the attachment of movable or immovable goods owned by Freshex and in possession of the other Party in connection with the implementation of the Agreement.
7. In the event of bankruptcy or suspension of payment, the other Party must notify Freshex hereof immediately and show the bailiff, curator or administrator the Agreement without delay, indicating the property rights of Freshex.

## **Article M Packaging**

1. In connection with the delivery of its goods, Freshex uses packaging. Among other things, packaging includes pallets and crates. In the event that Freshex charges a deposit with regard hereto, the packaging will be taken back for the price of the



invoice applicable at that time (in the event that business is done in a foreign currency the packaging will be taken back at the exchange rate applicable at the time of delivery). In taking delivery of returned packaging, a fixed sum in

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compensation may be charged in conformity with the applicable regulations.

These regulations will be provided to the other Party at its request.

2. The packaging that the other Party wishes to return must be clean and fresh enough to be used for freshly edible horticultural products without further action  
  
needing to be taken by Freshex.
3. In the event that packaging is to be returned by means of the own transport of  
  
Freshex, the other Party must ensure that the packaging is sorted and ready for  
  
transport.
4. Packaging not supplied by Freshex will only be taken back if and insofar as Freshex has  
  
the products concerned in its own assortment and the packaging is in good condition.

#### **Article N Industrial and intellectual property rights**

1. Freshex explicitly reserves any intellectual and/or industrial property rights (trademarks) with regard to the products it supplies.
2. The other Party is not permitted to infringe on the intellectual and/or industrial property rights of a third party using the products supplied by Freshex. The other Party indemnifies Freshex against any claims of third parties on the basis of an infringement of intellectual and/or industrial property rights by means of goods delivered by Freshex that take place after Freshex has delivered the goods to the other Party.

#### **Article O Applicable law**

1. The legal relationship between Freshex and the other Party is governed by Dutch law.

#### **Article P Disputes**

1. Any disputes flowing from an order, a quote, an offer or an Agreement to which these General Terms and Conditions of Sale apply, including conflicts related to these General Terms and Conditions of Sale, will be exclusively by

the competent court in the district where Freshex has its registered office, on the understanding that this choice of forum will not affect the right of Freshex to settle a dispute by means of arbitration or a binding opinion.

2. In derogation of that stipulated in paragraph 1 of this article, the parties can agree in writing that they will allow the settlement of the dispute to be settled by the

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competent court in another district.