

## **GENERAL TERMS AND CONDITIONS**

OF: WENTINK GROENTEN B.V.

### ***SECTION 1 (GENERAL)***

#### **Article 1 Definitions**

Wentink Groenten B.V. : the user of these General Terms and Conditions;  
Other Party : Wentink Groenten B.V.'s counterparty;  
Agreement : the Agreement between Wentink Groenten B.V. and the Other Party.

#### **Article 2 General**

- 2.1 These General Terms and Conditions will apply to every offer and Agreement between Wentink Groenten B.V. and the Other Party, to the extent that these Terms and Conditions have not expressly been deviated from by the parties in writing.
- 2.2 The current General Terms and Conditions will also apply to all Agreements with Wentink Groenten B.V. for the performance of which Wentink Groenten B.V. uses the services of third parties.
- 2.3 Applicability of the Other Party's general conditions will be expressly excluded, unless the parties have agreed otherwise in writing.
- 2.4 In the event that Wentink Groenten B.V. concludes Agreements with the Other Party more than once, the present General Terms and Conditions will apply to all subsequent Agreements, irrespective of whether same have been explicitly declared applicable.
- 2.5 In the event that one or more provisions of these General Terms and Conditions are null and void or are nullified, the remaining provisions of these General Terms and Conditions will continue to apply.

### ***SECTION 2 (TERMS AND CONDITIONS OF SALE)***

#### **Article 3 Offers/quotations/prices**

- 3.1 All offers, in whatever form, will be free of obligation, unless a term for acceptance is stated in the offer.
- 3.2 Agreements to which Wentink Groenten B.V. is a party will only be considered to have been concluded:
  - a) after an Agreement drafted for that purpose has been signed by both parties; or
  - b) following written confirmation by Wentink Groenten B.V. of an order placed by the Other Party; or
  - c) in the absence thereof, pursuant to the actual delivery ex warehouse of the products sold.
- 3.3 In the event of an oral Agreement, the invoice will be considered to contain a correct and complete representation of the Agreement, unless a complaint is lodged within 14 days of the invoice date.
- 3.4 In the event that a natural person concludes an Agreement on behalf or for the account of another natural person and/or legal entity, he/she will be deemed to declare – by signing the Agreement – that he/she is authorised to do so. This person, in addition to the other natural

person or legal entity, will be jointly and severally liable for all obligations ensuing from the Agreement.

- 3.5 In the event that the acceptance deviates from the offer laid down in the quotation, Wentink Groenten B.V. will not be bound by same. In that case, the Agreement will not be concluded in accordance with that deviating acceptance, unless Wentink Groenten B.V. states otherwise.
- 3.6 A composite quotation will not oblige Wentink Groenten B.V. to supply a part of the products included in the offer or quotation for a corresponding part of the price stated.
- 3.7 The prices stated in the Agreements will apply to delivery ex warehouse, in euros, exclusive of loading costs, Dutch VAT, government levies, export charges, shipping costs, freight charges, handling expenses and packaging costs, unless provisions to the contrary have been explicitly agreed.
- 3.8 Because the products are subject to price fluctuations, Wentink Groenten B.V. may pass on price rises exceeding 10 % after seven days in the event that, between the time of acceptance and the time of the delivery, price changes have occurred with respect to, for instance, products, exchange rates, wages or packaging materials.

#### **Article 4 Delivery**

- 4.1 Delivery will be made ex Wentink Groenten B.V.'s address, unless the parties agree otherwise.
- 4.2 The Other Party will be obliged to take delivery of the products at the time that Wentink Groenten B.V. delivers same to it or has same delivered to it by third parties, or at the time that the notification is sent to the Other Party that the products are ready to be taken delivery of, or at the time that the products are made available to it pursuant to the Agreement.
- 4.3 In the event that the Other Party refuses to take delivery of the goods or has neglected to provide information or instructions that are necessary for the delivery, Wentink Groenten B.V. will be entitled to store the products at the Other Party's expense and risk.
- 4.4 In the event that the Other Party does not take delivery of the products within 24 hours, Wentink Groenten B.V. will be entitled to sell the products to another party. If it is unable to do so, Wentink Groenten B.V. will be entitled to destroy the products. The damage incurred by Wentink Groenten B.V. due to such resale or destruction of the goods will be borne by the Other Party.
- 4.5 In the event that Wentink Groenten B.V. has stated a delivery period, same must be deemed to be indicative. A stated delivery time may therefore never be deemed to be a firm deadline. In the event that a term is exceeded, the Other Party must give Wentink Groenten B.V. written notice of default.
- 4.6 In the event that Wentink Groenten B.V. requires information from the Other Party within the context of the Agreement's performance, the delivery period will commence after the Other Party has made such information available to Wentink Groenten B.V.
- 4.7 On-call orders must be taken delivery of within the agreed periods of time, in default of which Wentink Groenten B.V. will be entitled to deliver the undelivered part of the order in one go and charge the Other Party any price increases.
- 4.8 The Other Party will be obliged to provide Wentink Groenten B.V. with the documents required to comply with customs and other formalities necessary for the delivery of the products, and to provide Wentink Groenten B.V. with all necessary information.

- 4.9 Wentink Groenten B.V. will be entitled to deliver the products in parts. Wentink Groenten B.V. will be entitled to invoice partial deliveries separately.

#### **Article 5 Retention of title**

- 5.1 Any goods supplied by Wentink Groenten B.V. will remain Wentink Groenten B.V.'s property until the time of full payment of all claims Wentink Groenten B.V. has against the Other Party pursuant to any Agreements concluded between the parties, including any interest and costs.
- 5.2 Any goods supplied by Wentink Groenten B.V. that are covered by the retention of title pursuant to paragraph 1 may only be resold in the context of the Other Party's normal business operations.
- 5.3 In the event that the Other Party fails to meet its obligations or if there are reasonable grounds to fear that it will fail to do so, Wentink Groenten B.V. will be entitled to recover or have others recover the goods supplied subject to the retention of title referred to in paragraph 1 from the Other Party's premises or those of third parties keeping the goods for the Other Party. The Other Party will be obliged to extend all necessary cooperation for this purpose.
- 5.4 In the event that third parties wish to create or enforce any rights with respect to the goods supplied subject to the retention of title, the Other Party will be obliged to inform Wentink Groenten B.V. thereof as soon as may reasonably be expected.
- 5.5 The Other Party will be obliged, within reasonable limits, to extend its cooperation with respect to all measures which Wentink Groenten B.V. wishes to take to protect its proprietary rights with respect to the goods supplied.

#### **Article 6 Force majeure**

- 6.1 In the event of a situation of *force majeure*, Wentink Groenten B.V.'s obligation to supply and other obligations will be suspended. The obligations will revive as soon as performance of those obligations is once again reasonably possible. Unforeseen circumstances involving persons and/or materials used or normally used by Wentink Groenten B.V. in the performance of the Agreement that are of such a nature as to render the performance of the Agreement impossible or so problematic and/or disproportionately expensive that performance of the Agreement can no longer be required will be considered equivalent to *force majeure*.
- 6.2 In the event that, upon the situation of *force majeure* arising, Wentink Groenten B.V. has already performed part of its obligations, or is only able to perform part of its obligations, it will be entitled to invoice the performed part or the part that can still be performed separately and the Other Party will be obliged to settle this invoice as if it related to a separate Agreement.

#### **Article 7 The Other Party's obligations**

- 7.1 In the event that the goods are delivered by Wentink Groenten B.V., the Other Party must inspect the goods delivered in the driver's presence. In so doing, the Other Party must establish whether the goods delivered correspond with the Agreement, by checking:
- a. whether the correct goods have been delivered;
  - b. whether the goods delivered meet the quality requirements that may be set for purposes of normal use and/or commercial purposes; and
  - c. whether the goods delivered correspond with the agreements made (in terms of number, quantity and weight). In the event of a discrepancy of less than 10% of the total, the Other Party will be obliged to fully accept the goods delivered subject to a corresponding price reduction.

- 7.2 In the event that the goods are supplied in the sales area, the Other Party must inspect the goods immediately in accordance with paragraph 1.
- 7.3 In the event that the goods are delivered to a third party that is to keep same for the Other Party, the Other Party will be obliged to inspect the goods or have others inspect same on the day of delivery in accordance with paragraph 1.
- 7.4 In the event that the Other Party wishes to lodge a complaint, it will be obliged to notify Wentink Groenten B.V. accordingly as soon as possible after its discovery of the shortfall or as soon as possible after it should have reasonably discovered the shortfall, though no later than within eight hours of delivery. If this notification is made verbally, it must be confirmed to Wentink Groenten B.V. in writing (i.e. by telex, fax, letter or bailiff's writ) immediately.
- 7.5 The entire batch of products must then remain where it is and the Other Party must offer Wentink Groenten B.V. the opportunity to inspect the goods.
- 7.6 The Other Party will be obliged at all times to act as prudent debtor in preserving the goods.
- 7.7 In the event that a timely complaint is submitted in accordance with this Article, the Other Party will remain obliged to take delivery of and pay for the purchased products.
- 7.8 In the event that a complaint is well-founded, Wentink Groenten B.V. will replace the delivered goods, unless this has become demonstrably pointless to the Other Party by that time. If this is the case, the Other Party must communicate this to Wentink Groenten B.V. by means of a written notification. Wentink Groenten B.V. will, however, in all events only be liable within the limits of the provisions laid down in the Articles 'Warranty' and 'Liability'.

#### **Article 8 Liability and indemnification**

- 8.1 In the event that products supplied by Wentink Groenten B.V. are defective, Wentink Groenten B.V.'s liability vis-à-vis the Other Party will be limited to the provisions laid down in these Terms and Conditions.
- 8.2 Under no circumstances will Wentink Groenten B.V. be liable for the presence of substances prohibited by law, bacteria or insects on or in the goods supplied, in view of the fact that, following supply, Wentink Groenten B.V. ceases to have any influence on the quality and nature of its products.
- 8.3 In the event that Wentink Groenten B.V. is liable for any direct damage, that liability will be limited to the amount paid out by its insurer, or in any event to the invoice amount, or in any event to that part of the Agreement to which the liability pertains.
- 8.4 Under no circumstances will Wentink Groenten B.V. be liable for any indirect damage, including consequential damage, loss of profits, loss of savings or any damage due to an interruption in business operations.
- 8.5 In the event that Wentink Groenten B.V. is held liable by a third party for damage for which it is not liable pursuant to the Agreement with the Other Party or pursuant to these Terms and Conditions, the Other Party shall fully indemnify it in that respect.
- 8.6 Under no circumstances will Wentink Groenten B.V. be liable for damage ensuing from any advice given. Advice will always be given on the basis of the facts and circumstances known to Wentink Groenten B.V. and of mutual consultations, in which respect Wentink Groenten B.V. will always use the Other Party's intention as a guideline and starting point.
- 8.7 The limitations of liability with respect to direct damage laid down in these Terms and Conditions will not apply in the event that the damage is attributable to an intentional act or omission or gross negligence on the part of Wentink Groenten B.V. or its employees.

## **Article 9 Packaging**

- 9.1 Any packaging materials supplied via Wentink Groenten B.V., including pallets, crates and boxes, for which a deposit has been charged will be taken back at the invoice price that applies at the time of their return, possibly increased by a fixed fee for packaging materials according to the applicable arrangement. Any packaging material returned must be clean and fresh enough to be suitable to hold fresh, consumable market garden produce.
- 9.2 In the event that packaging materials are returned using Wentink Groenten B.V.'s own means of transport, the packing materials must be sorted and ready for transport.
- 9.3 Any packaging materials not supplied via Wentink Groenten B.V. will be taken back only insofar as Wentink Groenten B.V. carries the relevant materials.

## **Article 10 Payment**

- 10.1 Payment must be made in cash upon supply, or within 14 days following the invoice date in the manner indicated by Wentink Groenten B.V. in the currency in which the agreed prices are stated. Objections to the amounts stated in the invoices will not suspend the payment obligation.
- 10.2 Wentink Groenten B.V. will be entitled to demand advance payment.
- 10.3 In the event that the Other Party fails to effect payment within the period of time agreed upon, the Other Party will be in default by operation of law. In that event, the Other Party will owe 1.5% in interest per month or part of a month, unless the statutory interest rate or the statutory commercial interest rate is higher, in which case the highest interest rate will apply. The interest on the payable amount will be calculated from the time that the Other Party is in default until the time of full payment.
- 10.4 In the event that the Other Party is wound up, is declared bankrupt or its bankruptcy is filed for, is admitted to statutory composition by virtue of the Dutch (Natural Persons) Composition Act [*Wet schuldsanering natuurlijke personen*], attachment is levied against it or it is granted a suspension of payments – provisionally or otherwise – Wentink Groenten B.V.'s claims against the Other Party will become immediately due and payable.
- 10.5 Payments will first be used to cover the costs, then to cover any interest due and finally to cover the principal sum and the accrued interest.

## **Article 11 Collection costs**

- 11.1 In the event that the Other Party is in breach of contract or in default of performing its obligations or performing same in time, all reasonable costs incurred in obtaining extra-judicial payment will be borne by the Other Party. The collection costs will be calculated in accordance with collection rate as advised by the Netherlands Bar Association in collection matters, subject to a minimum of EUR 350.
- 11.2 In the event that Wentink Groenten B.V. has incurred higher costs which were reasonably necessary, such costs will also qualify for reimbursement. Any reasonable judicial and enforcement costs will also be charged to the Other Party.

## **Article 12 Warranty**

Wentink Groenten B.V. will not issue any warranty with respect to its products, unless the parties have explicitly agreed otherwise;

## **Article 13 Suspension and dissolution**

13.1 Wentink Groenten B.V. will be entitled to suspend performance of its obligations or to dissolve the Agreement in the following events:

- in the event that the Other Party fails to perform the obligations arising from the Agreement or fails to perform them in time or in full;
- in the event that circumstances of which Wentink Groenten B.V. has learned following the Agreement's conclusion provide good reason for fearing that the Other Party will not perform its obligations, or will not perform such in good time or in full; in the event that there is good reason to fear that the Other Party will only perform its obligations in part or will not perform such properly, suspension will be permitted only to the extent that such is justified by the relevant failure; or
- in the event that the Other Party was requested upon the Agreement's conclusion to provide security for the performance of its obligations ensuing from same Agreement and such security has not been provided or is insufficient. As soon as security has been provided, the right to suspend performance will lapse, unless the performance has been unreasonably delayed as a result.

13.2 In addition, Wentink Groenten B.V. will be entitled to dissolve the Agreement or have it dissolved if circumstances arise of such a nature that performance of the Agreement is not possible or can no longer be required pursuant to standards of fairness and reasonableness, or if any other circumstances arise of such a nature that continued unamended maintenance of the Agreement can no longer reasonably be expected.

13.3 In the event that the Agreement is dissolved, Wentink Groenten B.V.'s claims vis-à-vis the Other Party will become immediately due and payable. In the event that Wentink Groenten B.V. suspends performance of its obligations, it will retain its claims ensuing from the law and the Agreement.

13.4 Wentink Groenten B.V. will at all times retain the right to claim damages.

## **Article 14 Cancellation**

14.1 In the event that the Other Party wishes to cancel an Agreement after same has been concluded with Wentink Groenten B.V., it will be charged 10% of the order price agreed upon, including Dutch VAT, in cancellation costs, without prejudice to Wentink Groenten B.V.'s right to full damages, including loss of profit.

14.2 In the event that, following cancellation, the Other Party refuses to take delivery of the goods already purchased by Wentink Groenten B.V., the Other Party will be obliged to pay Wentink Groenten B.V. all ensuing costs.

14.3 Cancellation must be effected by registered letter.

## **Article 15 Passing of risk/transport**

15.1 The risk with respect to the loss of or damage to the products that are the subject of the Agreement will pass to the Other Party at the point in time at which those products are legally and/or factually delivered to the Other Party and therefore come under the Other Party's control or under the control of a third party designated by the Other Party.

15.2 In the event that Wentink Groenten B.V. is to provide for the transport or storage of the products that are the subject of the Agreement, this will be entirely at the Other Party's expense and risk.

15.3 In the event and to the extent that Wentink Groenten B.V. assumes responsibility for the transport, storage, dispatch, packaging, etc., and if no further instructions have been issued for this purpose to Wentink Groenten B.V. by the Other Party, the manner in which the above is arranged will be determined by the Wentink Groenten B.V. Unless provisions to the contrary have been agreed, the Other Party shall accept the full risk in this respect, including the risk relating to any negligence or omission on the carrier's part.

15.4 Any specific wishes of the Other Party regarding transport/shipment/storage will only be complied with if the Other Party has declared that it will bear the additional costs thereof.

### **SECTION 3 (TERMS AND CONDITIONS OF PURCHASE)**

#### **Article 16 Applicability**

The provisions contained in this Section pertain exclusively to any purchase agreements under which Wentink Groenten B.V. is the buyer, as well as to any applications made and orders placed by Wentink Groenten B.V.

#### **Article 17 Offers and Agreements**

17.1 All applications filed, orders placed and offers made by Wentink Groenten B.V. or its employees, whatever their form, will be without obligation, unless the contrary is stated.

17.2 An assignment will only be binding on Wentink Groenten B.V. if such has been confirmed in writing by Wentink Groenten B.V. or by a person authorised for that purpose. In the event that a written assignment deviates from the quotation issued by the Other Party, the Agreement will be concluded in accordance with the assignment. In the event that an order has not been signed and returned within 48 hours of Wentink Groenten B.V.'s dispatch of same, Wentink Groenten B.V. will be entitled to withdraw its assignment, irrespective of whether it has sent a warning.

17.3 After the Agreement has been concluded, the Other Party will be obliged to make all non-essential changes to same desired by Wentink Groenten B.V.

#### **Article 18 Prices**

The price or prices agreed will be fixed and will include all costs and charges, such as the costs of transport, storage and insurance, turnover tax, import duties and the costs of auxiliary materials, to the extent that no provisions to the contrary have been explicitly agreed.

#### **Article 19 Delivery**

19.1 The delivery dates stated by the Other Party must be considered firm deadlines, unless the parties have agreed otherwise. In the event of non-timely delivery, the Other Party will be in default forthwith and Wentink Groenten B.V. will be entitled to dissolve the Agreement and/or to claim damages.

19.2 In the event that the Other Party suspects that the delivery date undertaken by it cannot be met, it will be obliged to notify Wentink Groenten B.V. of this fact immediately, informing it of the relevant circumstances. In the event that the Other Party has remained in default of doing so, any subsequent invocation of its exceeding of the deadline will not be accepted, also not in the event of *force majeure*.

19.3 In the event of cancellation due to late delivery, Wentink Groenten B.V. will be entitled to return the goods already supplied at the Other Party's expense and risk.

- 19.4 Without prejudice to its right to statutory damages, Wentink Groenten B.V. will be entitled, in the event of late supply and cancellation, to demand compensation of any additional expenses reasonably incurred by it to replace the goods not received by it.
- 19.5 Unless provisions to the contrary have been agreed, the Other Party shall deliver the goods to Wentink Groenten B.V. free domicile.

### **Article 20 Transfer of title**

- 20.1 The title to the goods, as well as the risk attaching to the goods, will not pass until the goods have been supplied.
- 20.2 If the goods are rejected, refused or rejected again, the risk will pass back to the Other Party effective from the date on which it is sent the relevant notification.
- 20.3 In the event that other rights than the Other Party's proprietary rights are established on the goods, the Other Party shall notify Wentink Groenten B.V. of this fact forthwith.

### **Article 21 Termination of the purchase agreement**

- 21.1 Wentink Groenten B.V. will be entitled to terminate and dissolve the Agreement without giving any further notice of default in the following events:
- a. in the event of non-performance, non-timely performance or improper performance by the Other Party of its obligations ensuing from or related to the Agreement; and
  - b. in the event that the Other Party is declared bankrupt or applies for a suspension of payments or if its business is discontinued or wound up.
- 21.2 If a circumstance as described in paragraph 1 occurs, the Other Party will be in default automatically and Wentink Groenten B.V. will be entitled to claim statutory damages.
- 21.3 Any claims Wentink Groenten B.V. may have against the Other Party will become immediately due and payable as a result.
- 21.4 In the event of circumstances as described above, Wentink Groenten B.V. may choose to have third parties produce or complete all or part of the ordered goods at the Other Party's expense and risk, after so notifying the Other Party in writing.

### **Article 22 Payment**

- 22.1 Payment will be made based on the relevant invoice within 30 days of receipt and full approval of the goods. Such payment will not release the Other Party from any warranty and/or obligation to pay damages to which it is bound pursuant to the Agreement or by law.
- 22.2 Wentink Groenten B.V. will be entitled at all times to set off any outstanding invoices against its claims vis-à-vis the Other Party.

### **Article 23 Inspection**

- 23.1 The goods supplied must comply with the agreed requirements and specifications and with all terms and conditions Wentink Groenten B.V. may set with respect to the goods, in terms of both their quality and quantity, and must furthermore comply with the statutory requirements and other government regulations.
- 23.2 After the goods have been delivered, Wentink Groenten B.V. will be entitled to have the goods inspected for its own account before approving same.
- 23.3 In the event that the Other Party has not received any notification further to such inspections within 48 hours of delivery, it may assume that the goods have been approved.



- 23.4 In the event that Wentink Groenten B.V. rejects the goods, it must so inform the Other Party in writing within four days of their supply, stating its choice from among the following options available to it:
- c. return of the supplied goods at the Other Party's expense, claiming proper performance as yet, possibly in combination with a claim for damages;
  - d. dissolution in accordance with Article 16 of these Terms and Conditions;
  - e. partial dissolution/partial performance, possibly in combination with a claim for damages;
  - f. a price reduction to be proposed by Wentink Groenten B.V.; or
  - g. having the goods completed or produced by third parties in accordance with Article 19(4).

#### **Article 24 Liability**

- 24.1 Without prejudice to the other provisions of these Terms and Conditions in that context, Wentink Groenten B.V. will always be able to claim damages in the event of non-delivery, non-timely delivery or improper delivery by the Other Party.
- 24.2 In the event that Wentink Groenten B.V. incurs any damage as a result of non-delivery, non-timely delivery or improper delivery by the Other Party because of claims instituted by third parties/clients, the Other Party will be liable for such damage.
- 24.3 In the event that Wentink Groenten B.V. incurs any damage as a result of the presence of unwanted residues or an exceeding of the norms applicable to substances (such as chemicals and minerals) in the product because of penalties imposed by government authorities or claims instituted by third parties/clients, the Other Party will be liable for such damage.
- 24.4 Under no circumstances can the supplier be obliged to pay more damages than prescribed by law.

#### **SECTION 4 (GENERAL)**

#### **Article 25 Industrial and intellectual property rights**

- 25.1 Wentink Groenten B.V. explicitly reserves any intellectual or industrial property (trademark) rights that may be vested in it with respect to the products supplied by it.
- 25.2 Goods supplied to Wentink Groenten B.V. may not infringe any patent, licence, copyright, registered drawing or design, trademark or trade name. The supplier shall indemnify Wentink Groenten B.V. and its client against any claims of such a nature and shall compensate them for any ensuing damage.

#### **Article 26 Applicable law**

- 26.1 All Agreements, including any purchase or other Agreements, concluded with Wentink Groenten B.V. will be governed exclusively by Dutch law.
- 26.2 The Dutch text will be decisive. Any applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) to cross-border transactions is hereby explicitly excluded.

#### **Article 27 Disputes**

The competent court in the city or town where Wentink Groenten B.V. has its registered office will have exclusive jurisdiction over any disputes. Nevertheless, Wentink Groenten B.V. will be entitled to submit any disputes to the competent court according to the law.

**Article 28 Filing of these Terms and Conditions**

These Terms and Conditions have been filed at the offices of the Chamber of Commerce and Industry for ..... under number .....