

GENERAL TERMS AND CONDITIONS

Article 1 Definitions

Seller: EatMeFresh B.V., the user of the general terms and conditions

Buyer: the counterparty to the Seller, the procurer, the customer

Agreement: the agreement between Seller and Buyer.

Article 2 General

2.1) The provisions of these general terms and conditions apply to every offer, order and agreement between Seller and Buyer, insofar as the Parties have not explicitly deviated from these terms and conditions in writing

2.2) These general terms and conditions also apply to all agreements with the Seller, for the execution of which the Seller makes use of third-party services

2.3) The applicability of the Buyer's general terms and conditions is expressly excluded, unless the Parties have agreed otherwise in writing. If the general terms and conditions of the Parties apply in parallel, the provisions in the general terms and conditions of the Seller and Buyer shall prevail in the event that the provisions in the general terms and conditions of the Seller and Buyer are in conflict

2.4) If one or more provisions in these general terms and conditions are null and void or should be annulled, or if the Seller has agreed in writing to the applicability of one or more deviating terms and conditions, the other provisions of these general terms and conditions will continue to apply. The Seller and the Buyer shall agree on new provisions to replace the invalid or annulled provisions, considering the purpose and goal of the original provisions.

2.5) Deviations from these General Terms and Conditions or deviating provisions, conditions and/or agreements are only valid if and insofar as they have been explicitly confirmed in writing by the Seller.

2.6) A counterparty to whom these general terms and conditions have applied is also deemed to have agreed to apply these general terms and conditions to subsequent offers, orders and agreements, as well as to all other subsequent legal relationships between the Seller and the Buyer.

2.7) If, in the opinion of the competent court, any provision of these general terms and conditions does not apply or is contrary to public order or the law, then only that provision will be regarded as not written, the remainder of these general terms and conditions remaining in full force and effect. Instead of a possibly invalid provision, a provision that comes closest to the Parties' intention has to apply.

2.8) The Seller is authorised to make changes to these general terms and conditions.

Article 3 Offers and quotations

3.1) All offers made by the Seller, wherever published or however made, are always without obligation and can always be revoked by the Seller, even if they contain a term for acceptance.

3.2) All information and/or specifications regarding quantities, sizes, weights, contents etc provided with offers are always approximate and are not binding on the Seller. The same are only intended to give a general impression of the quality of the Products offered by the Seller.

3.3) All offers are made by the Seller to the best of its knowledge and with the greatest care. However, the Seller does not guarantee that there will be no deviations in this respect.

3.4) If what is received deviates from the offer included in the order, the Seller is not bound by it. The agreement will then not be concluded due to the deviation in what was received, unless the Seller indicates otherwise.

3.5) A composite quotation does not oblige the Seller to deliver part of the goods included in the offer or quotation for a corresponding part of the quoted price.

3.6) Delivery periods in user offers are indicative and do not entitle the Buyer to dissolve the agreement or to damages if they are exceeded, unless explicitly agreed otherwise.

3.7) Delays in delivery, insofar as they remain within reasonable limits, do not entitle the Buyer to dissolve the agreement.

3.8) The prices in said offers and tenders are exclusive of VAT and other government taxes, but inclusive of any transport and packaging costs, unless explicitly stated otherwise.

3.9) The Seller may pass on price increases of more than 10% if, between the time of acceptance and delivery, there have been price changes with regard to exchange rates, wages, raw materials or packaging material for instance.

3.10) The agreed prices are based on cost-determining factors at the time of the offer. The Seller reserves the right to pass on to the Buyer any changes in those cost-determining factors arising after the date of the offer or order confirmation, over which it cannot reasonably exercise any control (such as price increases by suppliers or other developments).

3.11) The Seller is not obliged to fulfil an agreement at a stated price that is clearly based on a printing or writing error.

3.12) Agreements to which the Seller is a Party will only be deemed to have been concluded: a) after both Parties have signed an agreement drawn up for that purpose, from the date of signing b) after the Seller has confirmed in writing an order placed by the Buyer c) in the absence of such confirmation, by the actual delivery from the warehouse of the products sold.

3.13) If the Seller concludes agreements with the Buyer more than once, these general terms and conditions will apply to all subsequent agreements, regardless of whether they have been declared explicitly applicable or not.

Article 4 Delivery

- 4.1) Delivery takes place from the storage address of the Seller, unless the Parties agree otherwise.
- 4.2) The Buyer is obliged to take delivery of the products at the time the Seller delivers them or has them delivered to it, or at the time when the products are made available to it in accordance with the agreement.
- 4.3) If the Seller has a delivery deadline, this is indicative. A stated delivery time is therefore never a strict deadline. If a term is exceeded, the Buyer must give written notice of default to the Seller.
- 4.4) If the products are delivered, the Seller is entitled to charge any delivery costs.
- 4.5) In case of delivery from the warehouse/store to a foreign Buyer, the Buyer is obliged to inform the Seller if the goods are not transported to the country where the Buyer is established. A different delivery address can, in accordance with tax regulations, result in a different VAT tax on the sales invoice. The Buyer undertakes to cooperate with the tax authorities if the Seller deems it necessary to do so.
- 4.6) The Buyer is obliged to make the necessary documents available to the Seller and to provide it with all necessary information to comply with customs and other formalities that have to be fulfilled for the delivery of the products.
- 4.7) If the Buyer refuses to take delivery or fails to provide information or instructions necessary for the delivery, the Seller is entitled to store the products at the expense and risk of the Buyer.
- 4.8) If the Buyer does not procure the purchased products within the set period, the Seller is entitled to sell the products to another. If this does not succeed, the Seller shall be entitled to destroy the products. Damages suffered by the Seller as a result of resale or destruction shall be borne by the Buyer.
- 4.9) The Seller is entitled to deliver the products cash on delivery.
- 4.10) The Seller is entitled to deliver the products in parts. The Seller is entitled to invoice partial deliveries separately.

Article 5 Execution of the Agreement

- 5.1) The Seller will execute the agreement to the best of its knowledge and ability, in accordance with the requirements of good craftsmanship. This is based on the state of the art known at the time.
- 5.2) If and insofar as the proper execution of the agreement so requires, the Seller has the right to have certain work carried out by third parties.
- 5.3) The Buyer will ensure that all information that the Seller indicates is necessary or which the Buyer should reasonably understand to be necessary for the performance of the agreement, is provided to the user in good time. If the information required for the execution of the agreement has not been provided to the Seller in good time, the Seller shall have the right to terminate the agreement.

The Seller is entitled to suspend the execution of the agreement and/or to charge the Buyer for the additional costs resulting from the delay, in accordance with the usual rates.

5.4) The Buyer indemnifies the user against any claims by third parties who suffer damages in connection with the execution of the agreement and which are attributable to the Buyer.

Article 6 Shipments

Shipments addressed to addresses with a central delivery area are delivered to that area. If the recipient refuses to accept the shipment or to pay for the shipment, if the recipient considers the shipment unacceptable, if the shipment is undervalued for customs purposes, or if the recipient cannot reasonably be identified or located, the Seller will deliver or take back the shipment to the Buyer. If it proves impossible to return the goods, due to whatever circumstances, the Seller can freely dispose of the goods, selling them, without incurring any liability of any kind towards the Buyer or any other (legal) person. The proceeds of such a sale will be used to pay for the costs of the services provided and the related administrative acts. In the case of undeliverable goods, the Buyer shall continue to owe the full purchase price of the purchased goods.

Article 7 Cash on delivery

7.1) The carrier will collect the amounts, which are printed on the goods as cash on delivery, from the receiver/Buyer upon delivery of the shipment and, if agreed, then pay such amounts to the Seller. The Seller is entitled to deduct the transport costs from the cash received.

7.2) The recipient/Buyer, who at the time of delivery knows that the goods are burdened by a COD amount, is obliged to pay the carrier the amount owed by the latter to the Seller.

7.3) If a receiver/Buyer refuses to accept the shipment, which is offered cash on delivery, or refuses to pay the amount that is printed on the item, the carrier will take the shipment back and deliver it to the Seller at the expense of the Buyer, unless the Seller decides otherwise.

Article 8 Export

The Buyer guarantees that if an import certificate or permit is required for importing items into the country of destination, such an import certificate or shipment permit has been or will be obtained.

Article 9 Investigations, complaints

9.1) The Buyer is obliged to inspect (or have inspected) the goods delivered at the time of delivery, but in any case, within 1 day. In doing so, the Buyer must examine whether the quality and quantity of the goods delivered are in accordance with what has been agreed.

9.2) If a sample has been shown to the Buyer, it is assumed that it has been shown only as an indication, without the need for the item to meet this requirement, unless it has been expressly agreed that the item will correspond with it.

9.3) Any visible defects must be reported to Seller in writing, stating the reasons, within 1 day after delivery. The objection must contain as detailed a description as possible of the shortcomings, so that the Seller is able to respond adequately.

9.4) If, pursuant to the previous paragraph, a complaint is not submitted on time, the Buyer will continue to be obliged to purchase and pay for the products purchased. If the Buyer wishes to return defective products, this will be done with the Seller's prior written consent at the expense of the Buyer, in the original packaging and in the manner indicated by the Seller.

9.5) The Buyer must enable the Seller to inspect the goods sold for the correctness of the complaint upon the Seller's first request.

9.6) If a complaint is well-founded, the Seller will replace the delivered goods, unless this has become demonstrably pointless for the Buyer in the meantime. The latter must be made known by the Buyer in writing. In all cases, however, the Seller shall only be liable within the limits of the provisions of the "Warranty" and "Liability" Articles.

Article 10 Payment

10.1) Payment must be made in cash upon delivery, or within 30 days of the invoice date, in a manner to be indicated by the Seller and in the currency in which the agreed prices are expressed. Deviating payment agreements shall only apply if they have been agreed in writing. Objections to the amount of the invoices do not suspend the payment obligation.

10.2) If the Buyer is in default of payment within the agreed period, the Buyer is in default by operation of law. In that case, the Buyer will owe an interest of 1% per month or part thereof, unless the statutory interest or the statutory commercial interest is higher, in which case the highest interest will apply. The interest on the amount due and payable will be calculated from the moment that the Buyer is in default until the moment that the full amount has been paid.

10.3) In the event of liquidation, bankruptcy, attachment or suspension of payments of the Buyer, the claims of the user against the Buyer will become immediately due and payable.

10.4) Payments first serve to reduce the costs, then to reduce the interest due and finally to reduce the principal sum and the accrued interest.

Article 11 Collection costs

11.1) If the Buyer is in breach or default of the (prompt) fulfilment of its obligations, all reasonable costs incurred in obtaining an out-of-court settlement will be borne by the Buyer. The collection costs are calculated in accordance with the collection rate as recommended by the Netherlands Bar Association in collection cases.

11.2) If the Seller has incurred higher costs, which were reasonably necessary, these costs will also be eligible for reimbursement. Any reasonable judicial and enforcement costs incurred shall also be borne by the Buyer.

Article 12 Reservation of ownership

12.1) All products delivered by the Seller remain the property of the Seller until the Buyer has fulfilled all obligations under all the agreements concluded with the Seller.

12.2) The Buyer is not authorised to pledge or otherwise encumber the products falling under the reservation of ownership.

12.3) The Buyer is obliged to store the goods that have been delivered under reservation of ownership with due care and as the Seller's recognisable property.

12.4) If third parties seize the products delivered under reservation of ownership, or wish to establish or assert rights to them, the Buyer is obliged to inform the Seller of this as soon as possible.

12.5) The Seller is entitled to take back the goods that have been delivered under reservation of ownership and still present at the Buyer's premises if the Buyer is in breach of the fulfilment of its payment obligations, or if it is in payment difficulties or is in danger of being in difficulty. The Buyer shall grant the Seller free access at all times to its premises and/or to inspect the goods and/or to exercise the Seller's rights.

12.6) Products supplied by the Seller which, pursuant to paragraph 1 of this Article, are under reservation of ownership, may only be resold within the framework of normal business operations and may never be used as a means of payment.

Article 13 Warranty

The Seller does not provide a warranty on its products, unless the Parties have explicitly agreed otherwise.

Article 14 Suspension and dissolution

14.1) The Seller is entitled to suspend the fulfilment of its obligations or to dissolve the agreement, if:

a) the Buyer does not fulfil its obligations under the agreement, or does not fulfil them on time or in full

b) circumstances that have come to the Seller's knowledge after the conclusion of the agreement give the Seller good reason to fear that the Buyer will not fulfil its obligations, or will not do so on time or in full. If there is good reason to fear that the Buyer will only partially or improperly fulfil its obligations, suspension is only permitted to the extent that the shortcoming justifies this

c) When the agreement was concluded, the Buyer was requested to provide a security for the fulfilment of its his obligations under the agreement and this security was not provided or was insufficient. As soon as the security has been provided, the authority to suspend payment expires, unless such payment has been unreasonably delayed as a result.

14.2) The Seller is also authorised to dissolve the agreement (or have it dissolved) if circumstances arise of such a nature that fulfilment of the agreement is impossible or can no longer be demanded according to standards of reasonableness and fairness, or if other circumstances arise of such a nature that unaltered maintenance of the agreement can no longer be demanded in all reasonableness.

14.3) If the agreement is dissolved, the Seller's claims against the Buyer are immediately due and payable. If the Seller suspends performance of its obligations, it shall retain its rights under the law and the agreement.

14.4) The Seller reserves the right to claim damages at any time.

Article 15 Cancellation

15.1) If Buyer, after an agreement with Seller has been concluded, wishes to cancel the same, 20% of the agreed order price including VAT will be charged to the Buyer as cancellation costs, without prejudice to the right to full compensation, including loss of profit.

15.2) If, in the event of cancellation, the Buyer refuses to take delivery of the products already purchased by the Seller, the Buyer is obliged to pay the Seller all costs arising from this.

15.3) Cancellation must be made by registered letter.

Article 16 Liability

16.1) If products supplied by the Seller are defective, the Seller's liability towards the Buyer is limited to the provisions of these terms and conditions.

16.2) The Seller is not liable for damages as a result of legally prohibited substances, bacteria, insects on or in the delivered goods, nor because the delivered goods do not comply with statutory or other governmental requirements, or to be set for the use of these products.

16.3) If the Seller is liable for direct damages, that liability is limited to a maximum of the payment amount to be made by the Seller's insurer, or at any rate to a maximum of the invoice amount, or at least the part of the agreement to which the liability relates.

16.4) Direct damages exclusively mean:

a) the reasonable costs for determining the cause and extent of the damage, to the extent that the summons relates to damages within the meaning of these terms and conditions

b) any reasonable costs incurred to bring the Seller's defective performance into conformity with the contract, unless the Seller cannot be held responsible for this defect

c) The Buyer must demonstrate that these costs have led to the limitation of direct damages as referred to in these general terms and conditions.

16.5) The Seller will never be liable for indirect damages, including consequential damage, loss of profit, lost savings and damages due to business interruption.

16.6) The limitations of liability for direct damages contained in these terms and conditions do not apply if the damage is due to intent or gross negligence on the part of Seller or its subordinates.

16.7) The Seller will never be liable for damage resulting from advice given. Advice shall always be given based on the facts and circumstances known to the Seller and in mutual consultation, whereby the Seller shall always take the Buyer's intention as a guideline and starting point.

16.8) The Buyer is obliged to indemnify and hold the Seller harmless against all claims by third parties engaged by the Buyer for damages against the Seller. Furthermore, the Buyer is obliged to indemnify and hold the Seller harmless against all claims from third parties engaged by the Buyer that are related to or arise from the Buyer's use of the products delivered, or services provided by the Seller.

Article 17 Transfer of risk/transport

17.1) The risk of loss of or damage to the products under the agreement is transferred to the Buyer at the time that the products are legally and/or actually delivered to the Buyer, and are thus placed under the control of the Buyer or a third party to be appointed by the Buyer.

17.2) If and to the extent that the Seller assumes responsibility for the transport, storage, dispatch, packaging or similar of the products under the agreement, the manner in which this is done will be determined by the Seller in the absence of any further instructions given by the Buyer to the Seller.

17.3) Any specific wishes of the Buyer with regard to the transport/shipping/storage will only be carried out if the Buyer has declared that it will bear the additional costs thereof.

Article 18 Force majeure

18.1) The Seller is not bound to fulfil any of its obligations if it is hindered to do so as a result of a circumstance that cannot be attributed to any fault or intention on the part of the Seller, and for which it is not responsible by virtue of the law, any legal act or generally accepted practice.

18.2) In these general terms and conditions, force majeure is understood to mean, in addition to what is understood in this respect by law and jurisprudence, all external causes, foreseen or unforeseen, on which the Seller has no influence, such as traffic jams, power/computer malfunctions, import and export obstructions, continental drifts, plant diseases, natural disasters, illness of personnel and stagnation in delivery by the Seller, but as a result of which the Seller is not able to fulfil its obligations. This includes strikes at the user's company.

18.3) The Seller is also entitled to invoke force majeure if the circumstance that prevents (further) fulfilment occurs after the user should have fulfilled its obligation.

18.4) The Seller may suspend its obligations under the agreement during the period of force majeure. The obligations revive if fulfilment of the obligations is reasonably possible again.

18.5) If the Seller has already partially fulfilled its obligations at the start of the force majeure, or can only partially fulfil its obligations, it is entitled to invoice the part already delivered or the part that can be delivered separately, and the Buyer is obliged to pay this invoice as if it were a separate contract.

Article 19 Packaging

19.1) If the Seller provides durable packaging, this will be charged separately on the invoice at the same time as the delivered goods.

19.2) Packaging delivered via the Seller, including pallets, crates, boxes and barrels, on which a deposit has been charged, will be taken back at the invoice price applicable at the time of return, possibly increased by a fixed packaging fee in accordance with the applicable regulations. The Seller shall send the Buyer a credit invoice in this respect. The Buyer is not permitted to offset the deposit against outstanding invoices.

19.3) The Buyer must return the packaging empty, cleaned and undamaged within 21 days of delivery.

19.4) The container to be returned should be sufficiently clean to be suitable for fresh, edible fruit and vegetable produce. If the container does not meet this requirement, or if it is in an otherwise poor condition, the Seller shall not owe any compensation.

Article 20 Intellectual and industrial property

20.1) Without prejudice to the provisions of these general terms and conditions, the Seller reserves the rights and powers to which the Seller is entitled by virtue of intellectual or industrial property rights.

20.2) The Buyer forfeits a penalty of €1,000 for each infringement of any intellectual and industrial property right or each day, including part of a day, that the infringement continues without prejudice to the other rights that the Seller may enforce in this respect.

Article 21 Translation of these terms and conditions

Only the Dutch version of these terms and conditions is authentic. If a translation deviates in any way, the Dutch text will prevail.

Article 22 Disputes

22.1) All disputes arising from purchases and sales concluded with the Seller, including claims for payment of overdue amounts, shall be settled to the exclusion of any other body by the competent court in the place where the Seller has its registered office.

22.2) Notwithstanding the provisions of paragraph 1, the Parties may agree in writing to have the dispute resolved by another body.

Article 23 Applicable law, competent court

23.1) All agreements, both purchase and other agreements, concluded with the Seller, are exclusively governed by Dutch law.

23.2) Insofar as the law does not imperatively prescribe otherwise, in the first instance only the District Court of Amsterdam will have jurisdiction to hear any disputes that may arise as a result of any agreement between the Seller and the Buyer, as well as disputes relating to these terms and conditions, also for the purpose of obtaining temporary provisions.

Article 24 Amendment and location of the terms and conditions

These terms and conditions have been filed at the office of the Chamber of Commerce in Amsterdam.

The most recently filed version or the version in force at the time of the conclusion of the agreement shall always apply.

As drawn up on 24 July 2019 in Amsterdam and filed with the Chamber of Commerce in Amsterdam under number 74967169.