



## General Sales Conditions For Jaguar, the Fresh Company B.V.

---

General terms and conditions of sale and delivery for the private company with limited liability, Jaguar, the fresh company B.V., with its registered office in Breda and principal place of business in Ridderkerk.

### **Article 1 Definitions and application.**

- a. For the purposes of the general terms and conditions of sales and delivery, “user” refers to the private company with limited liability, Jaguar, the fresh company B.V., with its registered office in Breda and principal place of business at Handelsweg 180, 2988 DC in Ridderkerk (postal address: Postbus 4146, 2980 GC Ridderkerk) (Commercial Register of Rotterdam: 20051038), whereas “other party” is defined as that party which has accepted the applicability of these general terms and conditions by signing a document or otherwise.
- b. These general terms and conditions are applicable to all offers provided by the user to the other party and to all of the agreements related to the performance of work, deliveries of goods and/or services, regardless of their title or designation, entered into between the parties.
- c. Any deviation from these terms and conditions is only valid to the extent this is explicitly accepted in writing by the user.
- d. These general terms and conditions shall prevail at all times over any general terms and conditions implemented by the other party, also in the event they have been included in an invitation to provide an offer. The user expressly dismisses the applicability of the other party’s general terms and conditions.



- e. By accepting the user's offer, placing orders and/or providing assignments, the other party renounces its own general - or other - terms and conditions and acknowledges the acceptance of the current general terms and conditions of the user.

#### **Article 2 Offers.**

- a. The offers from the user - in whatever form these are provided - as well as price lists, stock lists and the like are free from obligation, unless these contain a term of acceptance.
- b. In the event the other party accepts an offer free from obligation from the user, the user has the right to revoke the offer within five working days of the receipt of this acceptance, and this does not imply the creation of an agreement between the parties.
- c. The offers from the user are based on the performance of the agreement under normal circumstances and during the user's normal working hours.
- d. The user's offers are based on the information provided by the other party.

#### **Article 3 Acceptance.**

- a. Agreements between the user and the other party are initially created when the other party accepts an irrevocable offer provided by the user within a term determined by the user, when an offer free from obligation is accepted by the other party and not revoked by the user within 5 working days, or when an offer from the other party is explicitly accepted by the user.
- b. The user gives its explicit acceptance of an offer by providing written confirmation of such, or by commencing performance of the agreement.
- c. Only those members of the board of directors of the Chamber of Commerce who have power of attorney on behalf of the user have the authority to enter into binding agreements for the user up to the amount specified in their power of attorney.

#### **Article 4 Prices.**

- a. Unless otherwise agreed upon in writing, all prices:
  - I. exclude taxes owed including VAT
  - II. are for delivery ex-works, unless another location is specified. Prices always exclude any costs of transport.
  - III. exclude packaging material costs.
- b. The prices indicated in the offer are based on the cost-determining factors valid at that time. The user has the right to increase the agreed-upon prices if and to the



extent one or more circumstances which lie at the basis of the cost price calculated by the user have changed demonstrably after the conclusion of the agreement. This type of price increase, provided it has been demonstrated by the user, does not entitle the other party to dissolve the agreement on those grounds.

## **Article 5 Delivery.**

### Paragraph 1

- a. Unless otherwise expressly agreed upon in writing, the supply required for the transfer of movable goods, non-registered property, which are under the user's control, shall be delivered to the other party, or the third party appointed to take possession of the goods.
- b. Delivery of a warrant or other bearer document or order prior to the delivery of the items indicated therein shall qualify as delivery of those items. In addition, the warrant or bearer document or order must contain clear information on the basis of which it may be determined which individually specified goods are involved.
- c. Delivery of goods, non-registered goods, which are described in a bill of lading shall be performed, as long as the transporter has not yet delivered the goods, in the manner legally provided for in the specific type of bill of lading concerned.
- d. In the event it has been agreed that transport shall be arranged by or on behalf of the user, the purchase shall become effective at the time of delivery at the agreed upon location.
- e. If the goods are stored by or on behalf of the user by the other party at the user's premises or those of a third party, the delivery shall be considered to be effected at the time the goods are stored and are kept for the other party.
- f. The risk of the goods which are the subject of agreements as stated under Article 1 under d shall always pass to the other party from the time the goods are delivered, or the time that the other party refuses to cooperate with the delivery.
- g. In terms of quantity and weight, the amount delivered as well as any requirements prescribed by public and/or private law must comply with that which has been agreed upon or prescribed, subject to evidence to the contrary supplied by the other party.
- h. Unless otherwise agreed upon, the goods delivered shall be of the normal trade quality. If a sample is supplied to the other party, this shall only be supplied as an indication, without the goods to be delivered being required to conform to this indication.



- i. Inspection of the goods for quality, quantity, size and weight must be performed by or on behalf of the other party at the time of delivery. Goods removed from the delivery location by or on behalf of the other party are deemed to conform to the agreement.
- j. The provisions under h and i shall apply unimpaired in the event delivery has occurred as stipulated under paragraphs d and e, on the understanding that the inspection in the case of transport by or on behalf of the user must take place in the presence of the responsible party at the third party's storage facility or in the presence of the driver. In cases in which the aforementioned driver is not present at the inspection, this may however never be invoked against the user.
- k. In the event a discrepancy in quantity of no more than 100% is determined, the other party shall be bound to fully accept the delivery at a proportional reduction in price.

## **Paragraph 2**

- a. The delivery times indicated shall never be deemed as a deadline, unless expressly agreed upon otherwise. In the event of late delivery, the user must be notified in writing that it is in default and must be provided with a reasonable period of time to comply with its obligation.
- b. The delivery time shall become effective after the conclusion of the agreement, after the user has received all of the necessary details from the other party, after the necessary formalities have been fulfilled, and after the user has received payment of the agreed-upon price or agreed-upon advance payment.
- c. The delivery time is based on the working conditions at the user's premises known at the time the agreement was concluded and on a normal delivery by third parties of the goods required for the delivery. Should a delay arise through no fault of the user as a result of a change in the aforementioned working conditions or as a result of the late delivery of the aforementioned items by third parties, the delivery time will be extended to the extent this is necessary.
- d. The agreed-upon items shall be deemed to have been delivered the first time the goods have been presented to the other party in accordance with the agreement.
- e. If the goods have not been purchased by the other party after the expiry of the agreed-upon delivery time, the user will retain these goods to make them available to the other party and shall store them at the risk and expense of the other party.
- f. Exceeding the delivery time shall not entitle the other party to engage in activities or to arrange to have work performed at the user's expense in performance of the agreement without a judicial authorisation.



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

- a. If, as a result of force majeure, the fulfilment of the agreement is hindered or made extremely difficult, the user has the right to demand that the agreement be adapted to the circumstances or to dissolve the agreement or have this done, or to suspend the fulfilment of the agreement for the duration of the hindrance.
- b. For the purposes of these terms and conditions, force majeure is defined to mean every circumstance or event which may not be blamed on the user by which the fulfilment of an obligation on the part of the user is wholly or partially hindered or, on the grounds of which the fulfilment may not be reasonably required of the user.
- c. For the purposes of these terms and conditions, force majeure is defined to include war, threat of war, riots, acts of war, fire, water damage, natural disasters, floods, strikes, plant occupations, lock-outs, import or export obstacles, government measures, machinery breakdown, failures in the supply of power, interruption of business operations and force majeure situations affecting suppliers as well as the case in which the user is not in a position to fulfil the agreement through the actions of its own suppliers.
- d. The other party may never invoke rights for the compensation for damages from the dissolution, amendment and/or suspension of the fulfilment of the agreement as a result of force majeure.
- e. Suspension, amendment or dissolution of the agreement on the grounds of force majeure shall not release the other party from its obligation to pay for that which has been delivered and/or performed at the time the force majeure situation began.

### **Article 7 Samples.**

- a. In the event samples are supplied by the user, its representatives or intermediaries, these shall never be binding with respect to the quality, weight and dimensions and shall only qualify as a determination of the average description of the goods.
- b. Any discrepancy between samples and shipments shall never entitle a party to claims for compensation for damages or dissolution of the purchase agreement.

### **Article 8 Claims.**

- a. The responsibility for the control of the type, quantity, dimensions, weight and/or the packaging of the good delivered lies with the other party. In the event claims are not submitted in this regard immediately at the time of purchase of the goods, the details stated on the consignment notes, delivery receipts or similar documents shall be



acknowledged as being correct.

- b. All other claims must be submitted in writing to the user by the other party as quickly as possible, yet no later than 24 (twenty-four) hours after the purchase of the goods; the delivery will be deemed to have been accepted should the other party fail to do this.
- c. The relevant goods must, to the extent it is possible, remain completely available so that the user is given the opportunity to subject the goods to a fully independent investigation. The other party is always bound to grant the necessary cooperation in this regard.
- d. Processed goods shall be deemed to be approved.
- e. Claims shall not entitle the other party to suspend payment, or to set off payment.

#### **Article 9 Guarantees and liability.**

- a. The user shall accept no further liabilities for the fulfilment of its commitment(s), and shall provide no guarantees other than those promised in writing by the user at the time the agreement was concluded.
- b. With the exception of intent or deliberate recklessness towards the other party and/or third parties, the user is not liable for any direct or indirect damages arising from the fulfilment of the obligation which has arisen or are related to the fulfilment of the obligation.
- c. The above exclusion from the user's liability applies equally to the user's staff and third parties which are engaged by the user in the fulfilment of the obligation.
- d. Without prejudice to that provided for in the paragraphs above, all of the user's liabilities, those of its personnel and/or third parties it engages shall always be limited to a maximum of the invoice amount relating to the relevant agreement on the grounds of which the other party or third party submits its claim, to the extent the other party has already paid the user this invoice amount.
- e. In the event the user, its personnel and/or third parties engaged by the user are held liable by third parties in this regard, the other party shall fully indemnify the user or its personnel and any third parties it has engaged and reimburse it and/or all these other parties all that which it has had to pay third parties as well as for the costs of legal representation.



## **Article 10 Retention of title.**

### Paragraph 1

- a. As long as the other party has failed to completely fulfil its obligations towards the user with regard to the goods delivered or to be delivered by the user to the other party, including the work related to these deliveries as well as the claims involved with respect to failures in the fulfilment of agreements to this effect, the goods delivered shall remain the property of the user.
- b. Nonetheless, from the time of delivery, the other party shall bear the risks for loss or damage of these goods, regardless of the cause of the loss or damage and/or nature of the damage caused by these goods.
- c. Without the user's knowledge, the other party, other than in the scope of its normal business operations, is not authorised to pledge the goods to third parties prior to the execution of payment, nor to transfer ownership of these goods, and the user shall remain the owner thereof to the extent these goods have not been processed. In the event of any violation of this provision, the purchase price shall be payable in full immediately.
- d. Without prejudice to the other rights to which it is entitled, the user shall be irrevocably authorised by the other party to, in the event it fails to fulfil its payment obligations to the user or fails to fulfil them in a timely manner, take back the goods delivered without being required to provide notice or initiate judicial intervention. The other party is bound to grant its full cooperation in this regard.
- e. In the event goods are taken back by the user, the user shall credit these retrieved goods on the basis of the proven value of these goods at the time they are retrieved, deducting the costs involved in the repossession of these goods.

### Paragraph 2

In the event that the other party has its registered office in Germany or the goods delivered are situated in Germany, the following is, contrary to the provisions of paragraph 1, applicable:

“Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter



Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns.

Hieraus erwachsen ihm keine Ansprüche gegen uns.

Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.

Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab.

Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.

Scheck-/Wechselzahlungen von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.“

### **Article 11 Payment.**

- a. The payment for the goods delivered must be arranged for by demand deposits at the nominal invoice amount and within the agreed-upon term, yet no later than within fourteen days after the invoice date without authorisation for offset.
- b. Only those payments which are executed in the manner indicated by the user shall be valid. The payment shall be deemed to have been effected at the time the user's account is credited.
- c. Payments executed by the other party shall first serve to settle all of the interest and costs owed, and shall then be applied to amounts due on payable invoices which have been outstanding the longest, even in the event the other party states that the payment relates to an invoice with a later date.





- d. Compensation for damages which is owed due to a delay in the payment of the amount owed to the user consists of the statutory interest due on that amount starting on the day after the day which has been agreed to be the last day of payment up to the day on which the other party has paid the amount due in full.
- e. In the event no payment term has been agreed upon, the other party shall owe the statutory rate of interest required by operation of law pursuant to Section 6:119a paragraph 2 of the Dutch Civil Code valid at the time.
- f. In the event a trade agreement exists between the parties, it applies that the statutory interest rate owed by the other party shall be owed after it has been found to be in default; this is the time that the payment term has lapsed, or if no payment term has been specified, after notice of default has been served.

#### **Article 12 Furnishing security.**

- a. The user is entitled at all times to demand cash payment on the delivery of goods.
- b. If the user requires this, the other party is required at all times to pay the purchase price and a whole or partial advance payment or to furnish sufficient security as determined by the user.
- c. If the user receives clear indications prior to or during the performance of an agreement regarding the reduced creditworthiness of the other party, then the user has the right to suspend its obligations arising from this agreement and the (purchase) price for that which has already been delivered or work that has been performed shall be payable immediately, unless the other party has furnished security to the user's satisfaction in a timely manner in accurate payment of the purchase price.

#### **Article 13 Extrajudicial and judicial collection costs.**

- a. Apart from the amount due, increased by the interest owed pursuant to these terms and conditions, the user is entitled to demand the payment of all of the costs which it has incurred as a result of the other party's failure to pay or to pay on time, including the judicial as well as the extrajudicial collection costs.
- b. The user is required to demand payment from the other party in writing. This demand is subject to a payment term of ten days.
- c. Should the other party remain in default of payment after the expiry of this term, the user is entitled to:
  - 1. charge the other party a fixed amount in extrajudicial costs that is determined on the basis of two points for the applicable winding-up rate in the first



instance with a maximum of 15% of the principal, increased by the interest which has become due, or

2. the actual costs it has incurred as a result of the claim against the other party, provided the user can prove that the actual costs it has incurred exceed the fixed amount as described above and these costs actually incurred are reasonable.

- d. The extrajudicial costs as specified under paragraph c shall be increased by the statutory interest due on these costs, calculated starting on the day on which these costs were actually paid by the user, yet in any case starting on the day the summons was served. In the event the user files a petition for the bankruptcy of the other party, the latter shall also owe the costs for the bankruptcy petition in addition to the amount owed and the judicial and/or extrajudicial costs chargeable on this amount.
- e. The entire amount of the debt, including that portion which has not yet come due, shall be immediately payable as a result of late payment.

#### **Article 14 Insufficient performance on the part of the other party.**

In the event the other party fails to satisfy its obligations arising from this agreement, fails to satisfy them on time or improperly, as well as in the event of its bankruptcy or suspension of payments on the part of the other party or in the event of a halt in trading or winding up of its company, the other party shall be considered to be in default ipso jure and without it being required to provide any further notice of default nor judicial intervention, the user shall be entitled to the following, at its own discretion:

- dissolve the agreement in whole or in part, or to declare it dissolved without the user being obligated to pay any compensation for damages, or to be bound by a guarantee or otherwise, and/or
  - suspend the fulfilment of its obligations towards the other party,
- all of this notwithstanding the user's right to compensation by the other party for damage, costs and interest according to the law.

#### **Article 15 Industrial and intellectual property rights.**

The user expressly reserves any rights of intellectual and/or industrial property (trademarks) in connection with the products it delivers.

#### **Article 16 Packaging.**

- a. Any packaging delivered via the user, including pallets, crates and boxes, for which a returnable deposit is calculated, shall be taken back at the invoice price valid at the



time of the return, increased by any applicable packaging fee in accordance with the applicable regulations. The cask must be returned undamaged, clean and hygienic enough so that it is suitable for the repackaging of fresh, edible horticultural products.

- b. The other party is bound to the user to compensate any damages and/or costs for the replacement or cleaning of returned packaging, to the extent this packaging is not found to be undamaged or clean as specified in the previous paragraph.
- c. For returns of packaging via the user's own means of transport, the packaging must be sorted and ready prior to transport.
- d. Any packaging not supplied by the user will not be returned, unless otherwise agreed upon.

#### **Article 17 Disputes.**

- a. The laws of the Netherlands apply to all agreements between the user and the other party. All agreements shall be deemed to be concluded at the city where the user's premises are located.
- b. Any and all disputes which may arise between the parties shall be brought before the regular court in the city where the user has its registered office, unless mandatory rules of law prescribe another court.
- c. The laws of the Netherlands shall apply unimpaired to transactions of an international nature. The applicability of International conventions, including the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods from 1980), shall be explicitly excluded, with the exception of international provisions of a mandatory nature. The Dutch text shall be indicative with regard to the latter provisions.

**VERSION JUNE 2020**