

GENERAL SALES CONDITIONS OF  
THE PRIVATE LIMITED LIABILITY COMPANY INCORPORATED UNDER DUTCH LAW WILKO FRUIT B.V.  
REGISTERED UNDER NUMBER 20129430 WITH THE CHAMBER OF COMMERCE FOR WEST-BRABANT (THE  
NETHERLANDS)

ARTICLE 1 GENERAL PROVISIONS AND DEFINITIONS

- 1.1 Wilko Fruit: the private limited liability company incorporated under Dutch Law Wilko Fruit B.V., having its registered office in Breda, the Netherlands, and registered under number 20129430 with the Chamber of Commerce for West-Brabant in the Netherlands, as well as any other company that forms part of the Wilko Fruit Group.
- 1.2 These general conditions apply to all legal relations, offers and quotations in respect of which Wilko Fruit acts as (potential) seller and/or supplier of goods and/or services;
- 1.3 Client: each natural person or legal person with whom Wilko Fruit enters into a contract for the supply of goods and/or services;
- 1.4 Parties: Wilko Fruit and Client together.
- 1.5 Stipulations varying from these general sales conditions will only be valid if they have been expressly excepted by both Parties in writing;
- 1.6 The annulment, whether partial or not, decree of nullity or any other form of declaration of inapplicability of one or more of the provisions included in these condition by a competent judicial authority and/or arbitrator, shall not affect the validity and/or applicability of the remaining provisions of these general conditions.

ARTICLE 2 OFFERS

- 2.1. All offers made by Wilko Fruit - in any form whatsoever - among others: in price lists, stock lists etc. are without obligation, unless they contain an explicit term for acceptance. Furthermore, all offers from Wilko Fruit are made subject to any later changes.
- 2.2. If Client accepts an offer without obligation from Wilko Fruit, Wilko Fruit is entitled at all times to withdraw its offer within five working days following receipt of this acceptance without a contract having been concluded between the Parties and without owing Client any compensation.
- 2.3. Offers from Wilko Fruit are based on the execution of the contract arising from such offer under normal circumstances and during working hours that are normal for Wilko Fruit unless explicitly agreed otherwise.

ARTICLE 3 ACCEPTANCE

- 3.1 A contract will only be concluded between Wilko Fruit and Client if an irrevocable offer from Wilko Fruit has been accepted by the other party, or if an offer without obligation is accepted and not withdrawn by Wilko Fruit.
- 3.2 The acceptance mentioned above by Wilko Fruit can only be deducted from the written confirmation of order from Wilko Fruit or because Wilko Fruit started with the execution of the contract.

#### ARTICLE 4 PRICES

- 4.1 Unless otherwise agreed, all prices are
- I. exclusive of any taxes attached to the contract or other charges imposed by the government, including BTW (Dutch VAT);
  - II. delivery Ex Works (Incoterms 2000) (warehouse);
  - III. exclusive of any packing material.
- 4.2 The prices stated in offers or quotations are based on the cost drivers at that time. Wilko Fruit reserves the right to increase the prices agreed to and based on these drivers if and insofar as after conclusion of the agreement it becomes clear that the circumstances on which the calculated cost price is based have changed, even if this change (these changes) could have been foreseen. If these changes result in a price increase of more than 5% of the total price agreed to, Client is entitled not to accept this price increase and give Wilko Fruit written notice of the dissolution of the contract. Wilko Fruit must have received the notice of dissolution within 24 hours after the change in price, in default whereof the right to dissolve the contract ends.
- 4.3 If Client decides to issue a notice of dissolution as a result of a decision described in the preceding paragraph, Wilko Fruit is entitled to withdraw the announced price increase within 24 hours after receipt of this notice, after which the contract will be executed according to its original form and contents.

#### ARTICLE 5 DELIVERY

- 5.1 Unless explicitly otherwise agreed, delivery takes place Ex Works Incoterms 2000, ex Wilko Fruit's warehouse or a third party's warehouse designated by Wilko Fruit.
- 5.2 If it has been agreed that Wilko Fruit will (cause to) carry out the transport, delivery will take place the moment the goods supplied by or on behalf of Wilko Fruit arrive at the agreed place of delivery.
- 5.3 If Wilko Fruit stores the goods for Client at Wilko Fruit or at a third party, delivery takes place the moment these goods are actually stored. Unless otherwise agreed, transport or storage of the goods to be delivered takes place at Client's expense and risk.
- 5.4 If Client, for any reason whatsoever, refuses to take possession of the goods to be delivered, these goods are deemed to be held at Client's expense and risk from that moment on.
- 5.5 Samples shown or issued are only an indication and the good owed does not have to correspond entirely to them. Minor variations in regard to dimensions, weights, numbers, quality, shelf life, colours and other similar data/properties will not be considered as shortcomings.
- 5.6 Unless otherwise agreed, the normal commercial quality is delivered.
- 5.7 Inspection must be carried out by or on behalf of Client immediately on delivery. Goods of which Client has taken delivery are deemed to have been approved and to fully satisfy the contract, no matter whether an inspection actually took place or not. The provisions laid down in 5.4 to 5.6 apply unimpaired if delivery took place as referred to in paragraphs 2 and 3, provided that the inspection has to be carried out in the presence of the driver in case of transport by or on behalf of Wilko Fruit. In those cases in which the driver referred to above is not present at the inspection, this can never be invoked against Wilko Fruit. Client therefore bears responsibility for making sure that the driver is present at the inspection.
- 5.8 If quantitative variations of 5% or less are found at an inspection, Client will be obliged to accept the delivery in its entirety against a proportional reduction of the purchase price.

## ARTICLE 6 DELIVERY PERIOD

- 6.1 The delivery periods can never be regarded as deadlines, unless otherwise agreed. If delivery does not take place in time, Client will therefore have to give Wilko Fruit written notice of default, granting it a reasonable period of time to make the delivery. Only after Wilko Fruit has failed to fulfil its obligation to deliver in this second period of time, Client is entitled to dissolve the contract. The restriction of Wilko Fruit's liability inextricably bound up with such dissolution is laid down in article 8.
- 6.2 The delivery period starts following the conclusion of the contract, after the user has received all necessary data from Client, after the necessary formalities have been attended to and after receipt by Wilko Fruit of the agreed price or agreed advance payment. As long as one of these agreed conditions is not fulfilled, the agreed period of delivery will be extended accordingly without giving notice hereof.
- 6.3 The delivery period is based on the working conditions at Wilko Fruit known at the time the contract is concluded or the quotation is made and on a normal delivery by third parties of the necessary goods. If a delay occurs through no fault of Wilko Fruit or as a result of overdue delivery of the agreed goods by third parties, the delivery period will be extended insofar as necessary. Wilko Fruit will inform Client immediately to this end and give an estimate of the delay thus caused in the delivery. The provisions laid down in paragraph 1 of this article will remain in full force in such case.
- 6.4 The agreed goods are deemed to have been delivered if these goods are offered to Client in accordance with the agreement for the first time.
- 6.5 If and insofar as these goods have not been taken into possession by Client within the agreed delivery period, Wilko Fruit will keep these goods at Client's disposal and store them at Client's expense and risk. Wilko Fruit will inform Client hereof and grant it a reasonable period of time to take possession of these goods, increased with the storage costs. In such case, Wilko Fruit may attach the condition that Client first fulfils all its payment obligations. If despite of having been given the opportunity to do this Client does not take possession of the goods stored at its expense and risk, Wilko Fruit is entitled to sell these goods to third parties in order to limit its damages; the proceeds hereof will be deducted from the damages it suffered for which the Client will be fully liable.

## ARTICLE 7 FORCE MAJEURE

- 7.1 If the execution of the agreement, in the opinion of Wilko Fruit, is hindered or becoming extremely difficult as a result of force majeure, Wilko Fruit is entitled to demand Client that the contract is modified according to these circumstances. If a request to this end does not result in an agreement by the Parties, Wilko Fruit is entitled to dissolve the contract or to suspend the execution of the contract for the duration of the impediment, this without having to pay any compensation to Client.
- 7.2 Force majeure, as referred to in the first paragraph of this article, in any case includes any circumstance or event not attributable to Wilko Fruit as a result of which fulfilment of Wilko Fruit's obligation is wholly or partially hindered, or on the basis of which fulfilment cannot be demanded in all fairness.
- 7.3 In these conditions, force majeure in any case includes war, danger of war, riot, civil commotion, fire, water damage, natural disasters, flood, strike, plant occupation, lockout, import and export

barriers, government measures, machinery breakdown, power supply failure, interruption of operations and circumstances beyond Wilko Fruit's control, as well as the case in which Wilko Fruit is not enabled by its own suppliers to fulfil its obligations arising from the contract.

- 7.4 Client can never derive any right to compensation from the dissolution, modifications and/or suspension of the execution of the contract as a result of force majeure as defined in this article. Suspension, modification or dissolution of the contract on the basis of force majeure as defined in this article does not release Client from its obligation to pay all that is already delivered and executed at the moment the situation of force majeure arises. In that case, Wilko Fruit is entitled to (partial) invoicing of all that it has already delivered.

#### ARTICLE 8 GUARANTEES AND LIABILITY

- 8.1 Wilko Fruit does not accept any further liability for the execution of its obligations and does not give any other guarantee other than those it has committed to in writing on conclusion of the contract or otherwise have been laid down in these general sales conditions.
- 8.2 Except in the case of gross negligence or intention, Wilko Fruit is not liable towards Client and/or third parties for any direct or consequential damage arisen as the result of or connected with the execution of the obligation which exceeds the invoice amount of the contract from which this damage resulted.
- 8.3 The limitations mentioned above of Wilko Fruit's liability apply by analogy to its staff members and third parties called in by Wilko Fruit for the execution of the contract.
- 8.4 Without prejudice to the provisions laid down in the preceding paragraphs, any liability of Wilko Fruit, its personnel and/or third party called in for the execution of the contract will always be limited, at most, to the invoice amount paid with regard to the contract in question from which this liability results.
- 8.5 If Wilko Fruit, its personnel and/or the third party called in by Wilko Fruit for the execution of the contract are held liable by third parties, Client will fully indemnify Wilko Fruit, its personnel and/or this third party respectively and compensate them for everything that they have to pay these third parties.

#### ARTICLE 9 COMPLAINTS

- 9.1 Client is obliged to verify the quantity, dimensions, weight and/or packing of the delivered goods. This verification has to take place immediately on delivery. If no complaint is filed in this matter immediately following delivery and receipt, the particulars mentioned on the waybill, delivery note or similar documents are acknowledged as being correct.
- 9.2 Client must have filed all other complaints to Wilko Fruit in writing as soon as possible, however within 24 hours (twenty-four) hours after receipt of the goods; in default hereof, Client will be deemed to have accepted the delivered goods. The delivery to which a complaint refers must remain available in its entirety as far as possible, so that Wilko Fruit has the opportunity to subject the case to an independent examination, to which Client must always render the necessary assistance. Client furthermore accepts an extensive duty of care in order to guarantee that the goods about which a complaint is filed will be preserved, in default whereof the right to complain ends and Client is deemed to have accepted the delivered goods.

- 9.3 Delivered goods that have been resold or processed by Client will at all times be considered as having been approved, irrespective of any proof of defectiveness of the delivery.
- 9.4 Complaints will never give Client the right to set off or suspend any payment.
- 9.5 If the delivered goods do not correspond to the agreement, Wilko Fruit is only obliged, at its own discretion, to deliver that what is missing or to replace the delivered goods.  
In such case, Client cannot force Wilko Fruit to deliver more than Wilko Fruit is obliged to pursuant to the contract.

#### ARTICLE 10 RETENTION OF TITLE

- 10.1 Wilko Fruit retains the ownership of the goods that it has delivered until the following will have been fully fulfilled or satisfied:
- a. the performance due by Client of all goods delivered or to be delivered pursuant to the agreement as well as all payment obligations resulting herefrom; and/or
  - b. claims due to Client's failures to perform such contracts;
- 10.2 In the cases mentioned above, Client is not allowed to invoke a right of retention concerning custody charges and set off these charges with the performance due.
- 10.3 If any goods belong to Wilko Fruit pursuant to paragraph 1, Client may only dispose of them within the framework of its normal business operations.
- 10.4 Nevertheless, from the moment of delivery Client will bear the risk of loss of or damage to these goods, arisen from any cause whatsoever and/or caused to goods by these goods. Without prejudice to Wilko Fruit's other rights, Client irrevocably authorizes Wilko Fruit to take back the goods delivered by Wilko Fruit without any notice of default or legal intervention if Client fails to fulfil its payment obligations towards Wilko Fruit or fails to do so in time. Client undertakes to render its assistance in this matter.
- 10.5 In case Wilko Fruit takes back these goods as a result of the provision laid down in the previous paragraph, it will credit these goods on the basis of the value that they have on taking them back reduced with the costs incurred by Wilko Fruit in respect of this taking back.

#### ARTICLE 11 PAYMENT

- 11.1 Payment of the delivered goods must take place within the agreed period, however at the latest within 14 days following the invoice date.
- 11.2 Payments made by Client will be used first to pay the balance of all interest and costs due and subsequently all longest outstanding invoices that are due and payable. The latter applies without regard to any indication from Client to which its payment refers.
- 11.3 If Client does not pay within the agreed period of time, Wilko Fruit is entitled to charge, in addition to the amount agreed to and without any notice of default being required, a compound interest of 1.25% per month for each month the term of payment is exceeded, which includes any part of a month. If on 31 December of any year any amount of interest is outstanding, that amount will be added to the principal and also become interest-bearing.
- 11.4 Apart from the amount due, increased with the interest due pursuant to these conditions, Wilko Fruit is entitled to demand Client to pay all costs incurred as a result of the Client's failure to pay or to do so in time, which include both judicial and extrajudicial collection costs.

- 11.5 Wilko Fruit is obliged to demand payment from Client in writing. A term of payment of 10 days will be taken into account.
- 11.6 If Client remains to default in payment after expiry of this term, Wilko Fruit is entitled:
- a. to charge the Client for the extrajudicial collection costs. These extrajudicial collection costs will be calculated on the basis of the percentages and amounts as used for the collection rates of the Nederlandse Orde van Advocaten (Netherlands Bar Association) with a minimum of €70.00 per outstanding invoice;
  - b. to claim the amount due at law without any further demand for payment;
- 11.7 As a result of the non-payment or overdue payment, the entire debt will be forthwith due and payable, even the part that has not yet fallen due.
- 11.8 Client must always fully fulfil its payment obligations and is never entitled to any setoff, compensation or suspension of any payment.

#### ARTICLE 12 PROVISION OF SECURITY AND DISSOLUTION

- 12.1 Wilko Fruit is entitled at all times to demand cash payment on the delivery of goods and will inform Client hereof in due time.
- 12.2 If Wilko Fruit requires this, Client is obliged at all times to pay the purchase price wholly or partially in advance or to provide security that is adequate in the opinion of the user.
- 12.3 If Wilko Fruit receives clear indications prior to or during the execution of the contract concerning Client's diminished creditworthiness, Wilko Fruit will be entitled to suspend its obligations resulting from that contract and the (purchase) price of the part already delivered or executed will become forthwith due and payable, unless Client has provided security in time to the satisfaction of Wilko Fruit for proper payment of the purchase price. If during the suspension Client is not capable to remove the doubts arisen about Client's creditworthiness, Wilko Fruit is entitled to dissolve the contract with immediate effect without having to pay any compensation to Client.
- 12.4 If Client has failed to fulfil its obligations arising from the contract, or has failed to do so in time or properly, as well as in case of bankruptcy or suspension of payment from Client, the closing down or winding-up of its company or in case of the application of the debt rescheduling arrangement, Client is deemed to be automatically in default, and in addition, Wilko Fruit is entitled, at its discretion, without any further notice of default or legal intervention:
- to dissolve the contract wholly or in part or declare it to be dissolved, without Wilko Fruit being liable to pay any compensation, guarantee or other obligations and/or
  - to suspend the execution of its obligations towards Client.
- 12.5 All rights mentioned above apply without prejudice to Wilko Fruit's right to compensation for all damages suffered and costs incurred as a result of the event(s) described above, plus interest.

#### ARTICLE 13 INDUSTRIAL AND INTELLECTUAL PROPERTY

- 13.1 Client guarantees Wilko Fruit not to violate Wilko Fruit's intellectual property rights which include in any case, among others, Wilko Fruit's trade name and brand names. Client is only allowed to use Wilko Fruit's brand and trade names if and insofar this is necessary for the execution of the contract or results from the nature of the contract.
- 13.2 If Wilko Fruit establishes that Client, taking into account the above, has made unauthorized use of Wilko Fruit's trade names or brand names, Wilko Fruit is entitled to dissolve all contracts with

Client in force at that time without being liable to pay any compensation to Client. Client will be liable for this unauthorized use and will pay Wilko Fruit all damages directly or indirectly arising from such use. In addition, Parties agree to a penalty not open to judicial moderation of €20,000.- per violation of this article regardless of Wilko Fruit's right to claim full compensation from Client. The damage suffered by Wilko Fruit in such case also includes the unlawfully generated profits by Client by means of the violation.

#### ARTICLE 14 PACKING

- 14.1 Packing delivered through Wilko Fruit, among which pallets, crates and boxes, in respect of which a deposit is charged, will be accepted in return by Wilko Fruit against the invoice price valid at the time of this return, possibly increased with a fixed packing compensation according to the applicable regulation. The packing to be returned must be clean and fresh in such a way that it is suitable for most fresh horticultural products fit for consumption.
- 14.2 On returning packing with Client's own means of transport, the packing must be sorted and ready for transport.
- 14.3 Packing not supplied through Wilko Fruit will not be taken back by Wilko Fruit, unless otherwise agreed.

#### ARTICLE 15 MISCELLANEOUS

- 15.1 If a stipulation or a part of the stipulations of these general conditions are wholly or partially null and void and/or contrary to the law, Wilko Fruit is entitled to formulate a new stipulation which will be deemed to form part of the contract and which will have the same nature and purport, as far as possible, as the stipulation that is null and void.
- 15.2 Wilko Fruit may change the contents of these conditions from time to time. Before a changed version will become effective, the contents of the changed version will be made known to Client, indicating as from what moment these changed conditions will come into force.
- 15.3 If Client has been provided with a translation of these conditions, the provisions laid down in the general conditions written in Dutch will be binding in case of a discrepancy between these general conditions and the translation in question.

#### ARTICLE 16 DISPUTES

- 16.1 Dutch law is applicable to all contracts between Wilko Fruit and Client, with the exclusion of the Vienna Sales Convention. All contracts are deemed to have been concluded and to be executed at Wilko Fruit's registered office.
- 16.2 All disputes between the Parties arising from the contract or these conditions will be settled by the competent court within the district of Breda.