

GENERAL PURCHASE CONDITIONS OF ABB GROWERS B.V.

Article 1. Definitions

In these general purchase conditions for fruit and vegetables (hereafter: "purchase conditions"), the following terms will have the following meanings:

ABB Growers B.V.: the private limited company ABB Growers B.V., having its registered office in Horst;

Vendor: the natural person or legal entity with whom or which the agreement to supply the product has been or will be concluded, or with whom or which ABB Growers B.V. is negotiating such an agreement;

Parties: ABB Growers B.V. and the Vendor;

Agreement: any agreement between the Parties, irrespective of whether this is a framework agreement or an individual agreement, which serves to effect that:

1. the Vendor supplies goods to ABB Growers B.V. on payment of a monetary price (purchase agreement); and/or
2. the Vendor makes goods available to ABB Growers B.V. in order for them to be sold by ABB Growers B.V. at the Vendor's expense and risk (consignment agreement); and/or
3. the Vendor provides services to ABB Growers B.V.; and/or
4. the Vendor delivers any other performance for the benefit of ABB Growers B.V.,

and any amendment or addition to this agreement, as well as all factual and legal acts in preparation for and implementation of this agreement, including offers;

Products: all goods and/or services and/or other performances which are the subject of an Agreement;

In writing: in these conditions, "in writing" also includes by telefax and by e-mail.

Article 2. General

1. These conditions apply to all Agreements, to the express exclusion of all other general terms and conditions. If ABB Growers B.V. does not require in a particular case that these conditions be strictly observed, this does not mean that ABB Growers B.V. loses the right to require strict observance of these conditions in future cases, whether similar or otherwise. Any stipulations derogating from these conditions will only be binding if they have been agreed in writing and will only apply to the case concerned.
2. All the stipulations of these conditions have been made not only for the benefit of ABB Growers B.V., but also for the benefit of its directors and shareholders (including indirect directors and shareholders), all persons working for ABB Growers B.V., all persons engaged by ABB Growers B.V. in the performance of an Agreement, and all persons for whose acts or omissions ABB Growers B.V. might be liable.
3. If one or more of the provisions of these conditions and/or an Agreement should turn out to be void or be voided by a court, the remaining provisions of these conditions and the Agreement will retain their legal force. The void or voided provisions will be replaced by valid provisions which resemble the original provisions as closely as possible in view of the tenor and purport of these conditions and the Agreement.
4. ABB Growers B.V. will be entitled at all times to amend these conditions.

Article 3. Purchase and consignment

1. If ABB Growers B.V. procures Products from the Vendor without expressly opting for a purchase agreement or a consignment agreement, the Parties will be deemed to have concluded a consignment agreement.
2. The following provisions apply with regard to a consignment agreement:
 - a. ABB Growers B.V. has no obligation to inspect and complain in respect of the Products;

- b. ABB Growers B.V. will sell and supply the Products in its own name, but always at the Vendor's expense and risk;
- c. without guaranteeing any result, ABB Growers B.V. will endeavour to realise the highest possible sales proceeds in light of all the circumstances;
- d. the sales proceeds will depend on the quality of the Products and the situation on the - often volatile - market; insofar as ABB Growers B.V. provides indicative sales prices, these will be for information purposes only, without the Vendor being able to derive any right from these prices;
- e. ABB Growers B.V. will pay the Vendor the net sales proceeds apparent from its sales records, on the understanding that ABB Growers B.V. will always be entitled to reduce the net sales proceeds by any advance payments it made and to offset positive net sales proceeds against any negative sales proceeds, with ABB Growers B.V. always being deemed to make a reservation for subsequent claims received from its customers and subsequent credit invoices issued to its customers;
- f. the Products will remain the Vendor's property until ABB Growers B.V. has sold and supplied them to third parties; the risk attached to the Products will not pass to ABB Growers B.V. at any time; ABB Growers B.V. will not be required to insure the Products;
- g. ABB Growers B.V. will always be entitled to make the Products available again to the Vendor in its warehouse, without having to state its reasons, in which case the consignment agreement will be deemed to have been terminated without ABB Growers B.V. being obliged to pay any compensation, the Vendor will take back the Products as soon as possible and reimburse the costs incurred by ABB Growers B.V., including but not limited to refrigeration and storage costs.

The other articles of these conditions will also apply (whether *mutatis mutandis* or otherwise) to consignment agreements, except insofar as such applicability is not possible in view of the nature of a consignment agreement. Insofar as this Article 3(2) is inconsistent with any other article or paragraph of these conditions, the provisions of Article 3(2) will prevail.

Article 4. Quotations and Agreements

- 1. A quotation is understood to mean an offer from the Vendor.
- 2. An order is understood to mean a written document, issued by ABB Growers B.V., which contains an expression of will that the Vendor should make a supply. This order may imply the acceptance of a quotation from the Vendor, but will count as an offer from ABB Growers B.V. if this order differs from the quotation, or if ABB Growers B.V. places an order without a preceding quotation from the Vendor.
- 3. All offers from ABB Growers B.V. will be free of obligation. ABB Growers B.V. is entitled to revoke its offer within three working days of receiving the Vendor's acceptance.
- 4. An order confirmation is an acceptance by the Vendor of the order placed by ABB Growers B.V. A deviating order confirmation from the Vendor will count as an offer from the Vendor.
- 5. ABB Growers B.V. will not be obliged to abide by an offer and/or an Agreement for a specified price if this price is based on a misprint and/or typographical error.

Article 5. Prices

- 1. The agreed prices are fixed, are denominated in euros and exclude VAT, but include costs of packaging, insurance and unloading.
- 2. Price increases occurring after the formation of the Agreement, for whatever reason, are and will remain at the Vendor's expense, irrespective of the period that has elapsed between the dates of the conclusion and the performance of the Agreement.

Article 6. Guarantees

- 1. The Vendor guarantees:
 - a. that the Products comply with the Agreement in all respects, which will mean in any case that they:
 - correspond to any sample shown or provided;
 - originate from GlobalGap-certified growers;
 - were not treated with crop protection agents that are prohibited by law;
 - meet the highest food safety standards;
 - are of optimum quality, freshness and durability;

- are free from diseases (including but not limited to rot), vermin, foreign bodies, pollutants, (other) substances harmful to health and (other) visible and invisible defects;
 - comply with the specifications and requirements formulated by ABB Growers B.V. or, insofar as ABB Growers B.V. has not formulated any specifications and requirements, with the specifications and requirements applicable to Products of Class I;
 - comply with all the requirements ensuing from the relevant Dutch and European laws and regulations in force at the moment of supply or making available, including but not limited to the laws and regulations in the area of Maximum Residue Limits (MRL) and any supplementary and/or stricter requirements imposed in this respect on ABB Growers B.V. by its customers, and about which ABB Growers B.V. informed the Vendor prior to the supply or making available;
- b. that the Products are packaged adequately and properly and in conformity with the instructions of ABB Growers B.V., that the packaging and packaging material do not pose a risk to food safety, that the packaging bears all the indications prescribed by law and that all statutory labelling requirements were complied with;
 - c. that throughout the transport journey, the Products are transported at optimum temperature and under optimum conditions in other respects as well, without interruption of the refrigeration chain;
 - d. that complete traceability of the Products is guaranteed and that the Vendor, following a request to this effect from ABB Growers B.V., will provide all relevant information in digital format regarding the Products immediately, but in any case within three hours, which information includes but is not limited to the details of the growers and plots, as well as a complete and up-to-date registration of the crop protection agents used;
 - e. that the Vendor will immediately notify ABB Growers B.V. in writing of an emergency, and will immediately inform ABB Growers B.V. in writing if it (otherwise) foresees or is aware that the Products and/or the packaging materials do not or will not meet the requirements referred to in this article;
 - f. that the Vendor has organised its business operations in such a way as to make them compliant with all applicable laws and regulations and with these conditions and the Agreement, and that the Vendor will fulfil its statutory and contractual obligations at all times.
2. The taking delivery of, approval of or payment for Products by ABB Growers B.V. will not imply recognition that the Products comply with the Agreement, will not release the Vendor from any other guarantee obligations or liability and will not affect the rights of ABB Growers B.V. pursuant to the Agreement, these conditions and the law.

Article 7. Delivery

1. Unless the Parties agree otherwise in writing, the agreed delivery deadline will be a final deadline. If the Vendor fails to deliver in time, therefore, the Vendor will be in default by operation of law and without notice of default being required.
2. Unless the Parties agree otherwise in writing, delivery will be made free domicile at the agreed location of ABB Growers B.V.
3. As soon as the Vendor knows or should know that it will fail to perform the Agreement correctly or in time, the Vendor must communicate this to ABB Growers B.V. as soon as possible, but in any case within 12 hours, stating the reasons.
4. The Vendor will be liable for any losses sustained by ABB Growers B.V. and its customers as a result of non-delivery or overdue delivery by the Vendor.
5. ABB Growers B.V. may refuse partial deliveries and deliveries made before the agreed time if it has not consented to this in writing.
6. ABB Growers B.V. is entitled at all times to return packaging materials at the Vendor's expense and risk.
7. The ownership of Products will pass to ABB Growers B.V. at the moment of delivery. The Vendor guarantees that the full and unencumbered ownership of the Products will be transferred.

Article 8. Inspection and consequences of inspection

1. ABB Growers B.V., or a third party of its choice, has the right to inspect the Products before, during and after their delivery. The Vendor will fully cooperate in such an inspection, among other things by granting

- access to the storage location of the Products and providing inspection of the documents required for the inspection.
2. If the Products do not comply with the Agreement before, during or after delivery and are therefore rejected, ABB Growers B.V. will notify the Vendor. In that case, the Vendor will be obliged to take the necessary measures in order to comply with the Agreement after all.
 3. After the delivery of the Products to its warehouse, ABB Growers B.V. will inspect them or have them inspected within a reasonable period. If ABB Growers B.V. has not rejected the Products within four days of the aforesaid delivery, the Products will be deemed to have been approved provided that they have a normal shelf life and are not affected by hidden defects.
 4. When notifying the Vendor of the rejection, ABB Growers B.V. will also state what consequences it wants to attach to the rejection of the goods. In this context, ABB Growers B.V. has the following options:
 - a. returning the Products at the Vendor's expense and demanding performance, whether or not in combination with compensation;
 - b. termination of all or part of the Agreement in conformity with Article 9, whether or not in combination with compensation;
 - c. a price reduction, on the understanding that the Parties must reach agreement on the extent to which the price will be reduced;or:
 - d. selling the Products on consignment.
 5. The Vendor will be liable for all the costs incurred by ABB Growers B.V. as a result of the rejection of the Products supplied, which include the costs of inspection.
 6. As soon as the Products are rejected, their ownership will pass to the Vendor. From that moment, ABB Growers B.V. will hold the Products at the Vendor's expense and risk.
 7. The circumstance that the goods were inspected will not release the Vendor from any liability, including liability for losses sustained by ABB Growers B.V. as a result of hidden defects in the Products supplied.

Article 9. Termination

1. Without prejudice to its other rights pursuant to the law and/or the Agreement and/or these conditions, ABB Growers B.V. will be authorised to suspend its obligations or to terminate all or part of the Agreement by means of a written notification to the Seller, without any notice of default or judicial intervention being required, if:
 - a. the Vendor fails to fulfil an obligation which it has under the Agreement, or to do so properly or in time;
 - b. ABB Growers B.V. has good reason to fear that the Vendor will fail to fulfil one or more of its obligations;
 - c. the Vendor has been declared bankrupt, or a petition has been filed for the Vendor's bankruptcy;
 - d. the Vendor has been granted a provisional or final moratorium, or an application has been made for a moratorium;
 - e. the Vendor has been granted a statutory debt restructuring scheme, or an application has been made for such a scheme;
 - f. the Vendor's business has been wound up;
 - g. assets of the Vendor have been the subject of an executory attachment, or of a pre-judgment attachment which has not been lifted within one month of the date on which the assets were attached.
2. In the event that ABB Growers B.V. terminates all or part of the Agreement, it will not be obliged to pay any compensation. ABB Growers B.V. will remain fully entitled to all its other rights, including the right to full compensation and restitution of the purchase price.
3. In the situations referred to in this article, all claims which ABB Growers B.V. may have or obtain against the Vendor will become immediately due and payable in full.

Article 10. Liability

1. The liability of ABB Growers B.V. towards the Vendor will be limited to the purchase price of the goods that are the subject of the (purchase) agreement.

2. The Vendor will be liable for all direct and indirect losses sustained by ABB Growers B.V. and/or third parties as a result of an imputable failure by the Vendor to fulfil an obligation, or as a result of an imputable unlawful act or omission by the Vendor itself or by an employee, non-employee or representative of the Vendor.
3. The Vendor must indemnify ABB Growers B.V. against third-party claims for compensation of losses as referred to in Paragraph 2 of this article. The Vendor will reimburse ABB Growers B.V. for the reasonable costs of putting up a defence against the aforesaid claims. The Vendor will not be obliged to indemnify ABB Growers B.V. insofar as the losses are a direct result of wilful misconduct or deliberate recklessness on the part of ABB Growers B.V. or executive staff members attached to its business.
4. For the purposes of this article, persons such as staff members, employees and customers of ABB Growers B.V. will be regarded as third parties.
5. The Vendor will take out and maintain adequate insurance in respect of its liability for losses as referred to in Paragraph 2 of this article. On request, the Vendor will provide ABB Growers B.V. with a copy of the policy or policies concerned and of the proof of premium payment in this respect.

Article 11. Payment

1. ABB Growers B.V. will pay the invoice within 30 days of receipt, provided that the goods supplied have been received and approved. The invoices must refer to the relevant order number, be properly itemised and meet the invoice requirements applicable in the Netherlands. ABB Growers B.V. reserves the right not to process invoices that do not meet the aforesaid requirements and to return these to the Vendor.
2. Payment by ABB Growers B.V. will not entail a waiver of rights in any way.
3. ABB Growers B.V. is entitled to offset payments which it owes to the Vendor for Products supplied against amounts still owed by the Vendor. A set-off by the Vendor will require the consent of ABB Growers B.V. If the Vendor fails to fulfil any of its obligations towards ABB Growers B.V., the latter will be entitled, without further notification, to suspend payments which it owes to the Vendor for Products supplied, or to offset these payments against amounts still owed by the Vendor.

Article 12. Third-party rights

1. The Vendor guarantees that the use of the goods it has supplied, or of the auxiliary materials it has purchased or produced for the benefit of ABB Growers B.V., will not constitute an infringement of a third party's patent rights, trademark rights, design rights, copy rights or other intellectual property rights.
2. The Vendor indemnifies ABB Growers B.V. against claims arising from any infringement of the rights referred to in the previous paragraph, and will compensate ABB Growers B.V. for all losses resulting from any infringement.
3. The graphic designs, matrices, blueprints, reproduction materials, tools, packaging etc. produced on the instructions of ABB Growers B.V. are and will remain the property of ABB Growers B.V. and may not be used by third parties, while all intellectual property rights to these items will be vested exclusively in ABB Growers B.V. The Vendor must return these items to ABB Growers B.V. immediately, without any additional costs.

Article 13. Inconsistent stipulations

Insofar as the application of any stipulation in these purchase conditions were to be inconsistent with any provision in a written Agreement - not being general terms and conditions - between ABB Growers B.V. and the Vendor, that stipulation will not be applied, but the remaining stipulations of these purchase conditions will remain in full force.

Article 14. Force Majeure

1. A Party will not be required to fulfil its obligations under the Agreement insofar as it proves:
 - a. that the failure to comply is due to one or more events which are outside the relevant party's control; and
 - b. that the event concerned could not be foreseen at the time when the Agreement was concluded, and the relevant Party was not required within reason to take account of the possible occurrence of such an event, which would prevent that Party from fulfilling its obligations; and

- c. that the relevant Party is not required within reason to bear the consequences of the circumstances referred to under a. and b.
2. In the event of force majeure, the obligations of both Parties will be suspended for the duration of the force majeure situation, with the exception of the part of the obligations that can nevertheless be performed. In such a situation, ABB Growers B.V. will only have to effect payment in respect of the obligations under the Agreement that were fulfilled.
3. ABB Growers B.V. and the Vendor will each pay for the losses sustained and costs incurred on their part insofar as these resulted from the force majeure situation.
4. Force majeure on the Vendor's part will in any case not include: lack of staff, sickness among staff, industrial action, breach of contract (imputable non-performance) and/or unlawful acts on the part of the Vendor's suppliers or carriers, or on the part of other third parties involved in the performance of the Agreement.

Article 15. Applicable law, competent court, disputes, cost of litigation and arbitration

1. The legal relationship between the Parties is governed by Dutch law. The applicability of the 1980 United Nations Convention on Contracts for the International Sale of Goods (Vienna Sales Convention) is excluded in this context.
2. All disputes (including those which are regarded as such by only one of the Parties) which may arise between the Parties pursuant to this Agreement or Agreements based on it will be submitted to the District Court of Roermond.
3. Without prejudice to the provisions of Paragraph 2 of this article, ABB Growers B.V. will always be authorised to have a dispute as referred to in that paragraph resolved in accordance with the Regulations of the Netherlands Arbitration Institute. The arbitral tribunal will consist of three arbiters. The place of arbitration and the place of the oral hearing or hearings will be Roermond. The arbitral tribunal will decide in accordance with the rules of law.
4. The costs associated with judicial and arbitral proceedings, including but not limited to the fees of lawyers, bailiffs, experts and translators actually incurred by ABB Growers B.V., will be borne in full by the Vendor if the latter is fully or predominantly found against.