

## General terms and conditions of Berrybrothers B.V.

### Article 1 - Applicability and Definitions

1.1 In these general terms and conditions, the following is to be understood by:

**Supplier:** Berrybrothers B.V., established at Nijken 18, 6088 NR Roggel;

**Client:** the natural person or legal entity to whom the Supplier makes an offer or with whom the Supplier concludes a Contract;

**Contract:** any contract that is concluded between Supplier and Client, including any alteration or supplement thereto and all legal acts preparatory to and in implementation of the contract;

**Products:** soft fruit products as listed on the website [www.Berrybrothers.nl](http://www.Berrybrothers.nl);

1.2 These general terms and conditions are applicable to all offers made by the Supplier to the Client and to all contracts between the Supplier and the Client;

1.3 Supplements to or derogations from these general terms and conditions are only valid in so far as these have been agreed in writing between the Supplier and the Client.

1.4 The General terms and conditions of the Client are not applicable and are hereby expressly excluded.

### Article 2 - Offer and order

2.1 All offers and quotations made by the Supplier are without prejudice and subject to contract, unless it has been expressly specified otherwise.

2.2 The Client can place an order by telephone or by e-mail ([n.vanzuilen@berrybrothers.nl](mailto:n.vanzuilen@berrybrothers.nl)). A Contract only comes into being at the moment when the Supplier has confirmed the Client's order in writing (by e-mail) or if the Supplier has actually commenced on the execution of the order.

### Article 3 - Delivery

3.1 A delivery time specified by the Supplier is always indicative, unless it has been expressly agreed otherwise. Delay in the delivery does not give the Client the right to dissolve the contract, unless the delay is of such a nature that the Client can no longer in reasonableness still be expected to purchase the Products.

3.2 Supply of the Products takes place by means of delivery ex warehouse unless it is otherwise agreed. The manner of packaging (number and weight) and transport is determined by the Supplier. Receipt of the Products is confirmed by the Client by means of the signing of a delivery note from the transporter concerned.

3.3 The Client is obliged to purchase the Products ordered from the Supplier and to make payment in accordance with the agreed payment conditions.

3.4 The risk relating to the Products devolves upon the Client at the moment when the Products to be delivered by the Supplier leave the warehouse.

### Article 4 - Prices and Payment

4.1 All price quotations are indicative, unless it has been expressly agreed otherwise.

4.2 All prices quoted are exclusive of BTW (VAT). Transport costs are chargeable to the account of the Client unless it has been otherwise agreed.

4.3 Payments are to be made, without deduction or any discount, within 30 days after invoice date.

4.4 In the event that the payment deadline of 30 days is exceeded, the Client, without further notice of default or demand for payment, is immediately in default and the Supplier is entitled to charge the Client 1.5% in interest per month on the amount owing from the due date of payment until the date of payment in full.

4.5 If, even after notice of default, the Client fails to fulfil his payment obligations or otherwise fails to fulfil his obligations, then all costs arising for the purpose of collection, being the costs both in and out of court (included amongst which are all the costs of external experts) will be charged to the Client, with a minimum of € 40,-.

4.6 If reasonable doubt exists as to the Client's capacity to pay, then the Supplier is entitled to suspend its obligation to delivery of the Products until the Client has provided security for the payment. If as a result of this a delay occurs in the delivery of the Products, then the Client is liable for possible damage suffered by the Supplier in consequence thereof.

4.7 The Products delivered by the Supplier remain the property of the Supplier until the Client has paid in full the purchase price owing and possible interest and costs. The Client is obliged to carefully preserve the Products delivered under retention of title and as the recognisable property of the Supplier.

### Article 5 Complaints

5.1 The Client is obliged, immediately upon delivery, to check the Products delivered (or to have them checked) for possible shortages or visible defects.

5.2 Possible shortages or visible defects that can be observed at the time of delivery should be reported by the Client on the delivery note, clearly and giving reasons, or notified to the Supplier in another way in writing (by e-mail) on the same day, but at the latest within 4 hours after delivery, in default of which the Client is deemed to have approved the delivery.

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- 5.3 Complaints relating to shortages or defects that are not immediately observable should be notified by the Client, without delay and at the latest within 24 hours after delivery, in writing (by e-mail) to the Supplier, and stating the reasons.
- 5.4 Complaints regarding invoices should be notified to the Supplier within 7 days after dispatch date.
- 5.5 After the expiry of the periods specified in Article 5, all the Client's rights of action against the Supplier relating to errors in the delivery or defects in or on the Products supplied become irrevocably null and void.
- 5.6 The right of recovery likewise becomes null and void if the Client fails to give sufficient cooperation in relation to the Supplier's investigation of the validity of the complaint.
- 5.7 If the complaint is found to be valid by the Supplier, then the Supplier will, as quickly as possible and at its own discretion, either remedy the defect or supply a replacement Product, or issue a credit note to the Client for the defective Products, without the Client having any right to possible damages. The Supplier's liability in these sorts of situations is at all times limited to the purchase price of the Products concerning which a complaint was made.
- 5.8 In connection with the perishability of the Products and the cold-chain guidelines of the government, the Products cannot, in principle, be taken back as returns by the Supplier. Returning of the delivery can therefore only take place after agreement in writing from the Supplier, and exclusively on the basis of conditions to be stipulated by the Supplier.

### **Article 6 Packaging**

- 6.1 Any packaging delivered via the Supplier, including pallets, crates and boxes for which a deposit has been charged, shall be charged on to the Client by means of the invoice. As soon as the Client has paid the invoice, this packaging is the property of the Client.
- 6.2 Returning of packaging takes place in consultation with the Supplier.

### **Article 7 Liability**

- 7.1 In the event of an error in the delivery or defectiveness in the Product, the Supplier is only liable in accordance with the provisions stipulated in Article 5. In all other cases, the Supplier is only responsible for damage in the event that there is a question of an intentional act or serious negligence on the part of the Supplier or its employees.
- 7.2 Liability for indirect damage, including consequential loss, loss of profit and trading loss is in all cases excluded.
- 7.3 The Supplier's total liability is in all cases restricted to the amount that is paid by its insurance policy. If the insurer does not proceed to make payment or if the damage is not covered by the insurance, the Supplier's total liability is restricted to, at maximum, the net invoice amount relating to the supplied Products concerned.
- 7.4 The Supplier accepts no liability in respect of third parties. The Client indemnifies the Supplier, wholly and unconditionally, against all claims of third parties, irrespective of the nature and the scope of the claims.
- 7.5 The Client is obliged to comply with the applicable legislation and regulations regarding the (internal) transportation and storage of good delivered by the Supplier, including the HACCP-norms and IFS Standard and the storage regulations, in default of which no liability whatsoever can be accepted by the Supplier for (damage resulting from) defects in the products.

### **Article 8 Force Majeure**

- 8.1 There is an issue of force majeure on the Supplier's side if the Supplier is prevented from fulfilling his obligations deriving from the contract, or in the preparation thereof, as a result of circumstances which are not attributable to the Supplier. By force majeure is to be understood, amongst other things: war and the threat of war, mobilisation, riot, strike, acts of terrorism, demonstrations, lack of personnel, operational and transportation disruptions of whatever nature, breach of contract/non-performance by suppliers, epidemics, hindrances caused by measures, laws or decisions of international, national or regional (governmental) authorities, fire, explosion, frost, hindrance caused by snowfall, floods, storm damage, heavy precipitation, extreme temperature changes and other natural disasters.
- 8.2 If the Supplier makes an appeal to force majeure, then the Supplier is entitled to temporarily suspend its obligations deriving from the contract. If the force majeure lasts longer than 1 week, then the Supplier and/or the Client is entitled to dissolve the contract, without being obliged to make compensation for any damage.

### **PART 9: Applicable law and disputes**

- 9.1 Dutch law is exclusively applicable to these general terms and conditions, with the exception of the Vienna Sales Convention.
- 9.2 Disputes which cannot be resolved amicably shall be exclusively submitted to the competent court of the Roermond District.