

## Berrybrothers B.V. general terms and conditions of supply

### Clause 1 Applicability and Definitions

- 1.1 In these general terms and conditions of supply, the following definitions shall apply:
- Berrybrothers:** Berrybrothers B.V., established at Nijken 18, 6088 NR Roggel;
- Customer:** the natural or legal person to whom Berrybrothers makes an offer or with whom Berrybrothers enters into an Agreement;
- Agreement:** any agreement entered into between Berrybrothers and the Customer, including any amendment or addition to the same and all legal transactions in preparation for or in implementation of the agreement;
- Products:** the soft fruit products offered for sale and supplied by Berrybrothers.
- 1.2 These general terms and conditions of supply apply to all offers made by Berrybrothers to the Customer and to all agreements between Berrybrothers and the Customer.
- 1.3 Any Customer with whom an agreement to which these general terms and conditions of supply apply has been entered into agrees to their application to all future agreements.
- 1.4 Any additions or variations to these general terms and conditions of supply are only valid if agreed in writing between Berrybrothers and the Customer.
- 1.5 The Customer's general terms and conditions do not apply and their application is hereby explicitly excluded.
- 1.6 Berrybrothers reserves the right to amend or supplement these general terms and conditions of supply unilaterally at any time. The new general terms and conditions are effective immediately from the time when notification of these general terms and conditions of supply is given to the Customer. From the time when notification is given, the new general terms and conditions also apply to any existing agreements between Berrybrothers and the Customer.
- 1.7 For the explanation and interpretation of these general terms and conditions, the Dutch text shall take precedence.

### Clause 2 Offers and orders

- 2.1 All offers and quotations by Berrybrothers are without obligation and are made on the basis of the prices and specification applicable at that time, unless Berrybrothers has explicitly stated otherwise.
- 2.2 The Customer may place an order by telephone, messaging service or email. An Agreement only comes into effect once Berrybrothers has confirmed the Customer's order in writing or when Berrybrothers has actually started carrying out the order.
- 2.3 Unless otherwise agreed in writing, any images, descriptions, size and weight indications and other information supplied by Berrybrothers are merely indicative and only intended to give a general impression of the quality of the Products offered by Berrybrothers.

## **Berrybrothers B.V. general terms and conditions of sale and supply**

- 2.4 Berrybrothers is not obliged to carry out an offer for a price that is obviously based on a printing or transcription error.

### **Clause 3 Delivery**

- 3.1 Any delivery period stated by Berrybrothers is always indicative, unless otherwise agreed in writing. Delay to a delivery does not entitle the Customer to terminate the agreement, unless the nature of the delay is such that the Customer can no longer reasonably be expected to purchase the Products.
- 3.2 Delivery of the Products takes effect out of the warehouse (ex works – Incoterms 2020). Unless otherwise agreed in writing, the manner of packaging (number and weight) and the type of transport will be determined by Berrybrothers. The transport costs are payable by the Customer.
- 3.3 Receipt of the Products will be confirmed by the Customer by signature of a mandatory delivery note from the relevant transporter. In the event that the Customer takes receipt of the Products at a time when Berrybrothers' business is closed, the Customer must sign the transport documents and leave them for inspection by Berrybrothers. The signed transport documents represent confirmation of receipt of the Products by the Customer.
- 3.4 The Customer is obliged to purchase the ordered Products from Berrybrothers and to pay for them in accordance with the agreed payment terms.
- 3.5 All risk in respect of the Products passes to the Customer when the Products that are to be supplied leave the Berrybrothers warehouse.
- 3.6 Berrybrothers is entitled to deliver the order in parts and to invoice each partial delivery separately.
- 3.7 All supplies are subject to the harvest. If a disappointing harvest means that less Products, in terms of the quantity and/or the quality of the Products, than the Customer could reasonably have expected at the time of entry into the Agreement are available, then Berrybrothers is entitled to reduce the quantities it sells accordingly and to invoice for the same. By doing so, Berrybrothers satisfies its delivery obligation. In that situation, Berrybrothers is not obliged to deliver replacement Products or liable for any damage and/or loss.

### **Clause 4 Prices and Payment**

- 4.1 All price quotations are indicative, unless otherwise agreed in writing.
- 4.2 Unless explicitly agreed otherwise, all amounts mentioned in quotations, offers, Agreements and orders are in euros and exclusive of VAT and other government levies. Costs for transport and packing materials will be charged separately by Berrybrothers.
- 4.3 In the event that, after an offer is issued and/or an Agreement comes into effect, changes occur to factors determining the cost price, including taxes, duties, import charges, exchange rates,

## **Berrybrothers B.V. general terms and conditions of sale and supply**

wages or the price of goods and/or services involving third parties or otherwise, then Berrybrothers is entitled to adjust the prices accordingly.

- 4.4 Payments will be made without any deductions or discounts within 30 days following the invoice date.
- 4.5 If the payment period of 30 days is exceeded then, without any further notice of default or demand for payment, the Customer is immediately in default and Berrybrothers is entitled to charge the Customer interest on the outstanding amount at the statutory commercial rate, from the deadline for payment of the invoices until the day when payment is made in full.
- 4.6 If even after notice of default has been given the Customer still fails to comply with their payment or other obligations, all recovery costs arising as a result, including both court costs and out-of-court expenses (including all costs charged by external experts), are payable by the Customer, with a minimum charge of €40.
- 4.7 If there are reasonable doubts as to the Customer's ability to make payment, Berrybrothers is entitled to suspend its obligation to deliver the Products until the Customer has provided security for payment. If any delay occurs to delivery of the Products as a result, the Customer is liable for any damage and/or loss suffered by Berrybrothers as a result.

### **Clause 5 Conformity and complaints**

- 5.1 Berrybrothers undertakes that the Products supplied satisfy what the Customer is entitled to expect pursuant to the Agreement. In this context, the Customer must take account of the fact that the Products supplied by Berrybrothers are fresh and freshly picked each day, with the result that the quantity and/or quality of the Products may vary each day. Consequently, minimal deficiencies in the quantity and/or quality of the Products do not qualify as a defect and should be accepted by the Customer. Deficiencies that, taking account of all circumstances, reasonably have no or only minor effect on the value of the Goods for use or consumption, will always be regarded as deficiencies with minimal significance.
- 5.2 The Customer must check the Products supplied (or arrange to have them checked) for any shortcomings or visible defects immediately on delivery.
- 5.3 Any shortcomings or visible defects that are capable of being identified on delivery should be clearly stated, giving reasons, by the Customer on the delivery note or otherwise notified to Berrybrothers in writing (by email or messaging service) on the same day, but no later than 8 hours following delivery, as otherwise the Customer will be deemed to have approved the delivered items.
- 5.4 Complaints relating to shortcomings or defects that cannot be identified immediately must still be notified by the Customer, giving reasons, to Berrybrothers in writing (by email or messaging service) no later than 24 hours after delivery.

## **Berrybrothers B.V. general terms and conditions of sale and supply**

- 5.5 Complaints with respect to invoices must be notified to Berrybrothers within 7 days from the date on which the invoice is sent.
- 5.6 After the expiry of the periods stated in this Clause 5, all the Customer's rights to make a claim against Berrybrothers with respect to errors in the delivery or defects in or on the Products delivered will irrevocably cease to apply.
- 5.7 Any right to make a claim also ceases to apply if the Customer does not cooperate sufficiently with Berrybrothers' investigation into whether the complaint is well-founded.
- 5.8 If Berrybrothers finds that the complaint is well-founded, Berrybrothers will, as soon as possible and at the sole discretion of Berrybrothers, either remedy the defect or supply a replacement Product or provide the Customer with a credit note for the unsatisfactory Products, without the Customer being entitled to any compensation.
- 5.9 Due to the perishability of the Products and the government's chilled supply chain guidelines, Berrybrothers is in principle unable to accept returns of the Products. Consequently, returns of delivered items may only take place with the written consent of Berrybrothers and on terms and conditions specified by Berrybrothers.

### **Clause 6 Limited period of use**

- 6.1 The Customer undertakes that the Products bearing a use before or sell before date will not be used, processed, sold on or offered for sale, use or consumption after that date.
- 6.2 Where Products have a limited period of use, the storage instructions must be strictly observed by the Customer and any third parties to whom the Customer has sold the Products. The Customer will indemnify Berrybrothers against any claims by third parties for compensation for damage and/or loss arising from failure to comply with the storage instructions stated by Berrybrothers, and against any costs incurred by Berrybrothers as a result.

### **Clause 7 Product recall**

- 7.1 If the Customer becomes aware of a defect in the Products (including packaging) that would or could affect human health, the Customer must inform Berrybrothers of this immediately both by telephone ([telephone number]) and in writing ([email address]), providing i) the name of the Products concerned; ii) the batch number; iii) the delivery date; iv) a description of the defect; and v) all other information that could be relevant.
- 7.2 The parties will enter into discussions concerning all measures that need to be taken in the relevant situation. These measures may include stopping deliveries, stopping production of the Products and/or the combined products that the Products form part of, placing an embargo on using stocks of Products (held by the Customer or elsewhere) and/or carrying out a recall. Only

## **Berrybrothers B.V. general terms and conditions of sale and supply**

Berrybrothers is entitled to decide whether to take any of these measures, and if so which, and how this will be implemented.

- 7.3 The Customer must lend all reasonable cooperation for the implementation of the measures described in the previous sub-clause and bear the costs of the same, without prejudice to the other provisions of these general terms and conditions of supply.

### **Clause 8 Deposit charge for packing materials**

- 8.1 Berrybrothers is entitled to charge the Customer for any packing materials supplied via Berrybrothers, including pallets, crates and boxes, that are subject to a deposit charge system. Unless otherwise agreed between the parties, the deposit charge for packing materials will be stated separately on the invoice. Once the Customer has paid the invoice, these packing materials are the property of the Customer.
- 8.2 Unless otherwise agreed in writing, Berrybrothers will **not** accept returns of packing materials, such as pallets, crates and boxes.
- 8.3 In the event that the parties have varied the provisions of the previous sub-clause to agree that Berrybrothers will accept returns of the packing materials, the Customer is obliged to return the packing materials to Berrybrothers in good condition. In that case, Berrybrothers will refund to the Customer the amount charged, less the costs incurred by Berrybrothers for taking back and processing the packing materials, amounting to 10% of the amount originally paid by the Customer as a deposit charge for packing materials. In the event that the packing materials returned by the Customer are not in good condition, Berrybrothers is entitled to refuse to repay part or all of the deposit charge for packing materials.
- 8.4 The Customer is obliged to make the packing materials available to Berrybrothers at the Berrybrothers site. In the event that the parties have agreed that Berrybrothers will take back the packing materials via Berrybrothers' own transport vehicles, the Customer will ensure that the packing materials are sorted and ready for transportation at the time stated by Berrybrothers. In that case, as well as the costs for taking back and processing the packing materials, Berrybrothers is also entitled to deduct the transport costs from the amount to be repaid to the Customer.

### **Clause 9 Liability**

- 9.1 In the event of an error in the delivery or a deficiency in the Product, Berrybrothers is only liable in accordance with the provisions of Clause 5. In all other cases, Berrybrothers is only liable for damage and/or loss in the event of deliberate action or conscious recklessness on the part of Berrybrothers or its staff.

## **Berrybrothers B.V. general terms and conditions of sale and supply**

- 9.2 Liability for indirect loss, including consequential loss, loss of profit and trading losses, is excluded in all cases.
- 9.3 The total liability of Berrybrothers is always limited to the amount paid out under its insurance. If the insurer does not pay out or the damage and/or loss is not covered by the insurance, the total liability of Berrybrothers is limited to the purchase price of the relevant Products supplied.
- 9.4 Berrybrothers does not accept any liability towards third parties. The Customer indemnifies Berrybrothers fully and unconditionally against all claims by third parties, regardless of the nature and scope of these claims.
- 9.5 With respect to transport (including internal transportation) and storage of the Products supplied by Berrybrothers, the Customer is obliged to observe the applicable laws and regulations and the storage instructions. If it fails to do so, Berrybrothers cannot accept any liability for defects in the products (or for damage and/or loss resulting from the same).

### **Clause 10 Force majeure**

- 10.1 Force majeure on the part of Berrybrothers applies if Berrybrothers is prevented from complying with its obligations under the agreement as a consequence of circumstances for which Berrybrothers cannot reasonably be held responsible. Conditions that qualify as force majeure include: war and threat of war, mobilisation, insurrection, strike, terrorist acts, demonstrations, staff shortages, business and transport interruptions of any kind, epidemics or pandemics and/or governmental measures taken in that context, impediments caused by measures, laws or decisions issued by international, national or regional bodies (including government bodies), export restrictions, problems not foreseen by Berrybrothers and affecting the production, harvest or transportation of the Products, non-performance or late performance by Berrybrothers as a consequence of missed or late delivery of items or services by third parties engaged by Berrybrothers, cyberterrorism or other types of cyber attacks, security incidents, (deliberate or other) corruption or loss of data, fire, explosion, frost, restrictions due to snow, flooding, storm damage, heavy rain, extreme temperature changes and other natural disasters, and any other circumstances not dependent on the will of Berrybrothers..
- 10.2 If Berrybrothers invokes force majeure, Berrybrothers is entitled to suspend its obligations under the agreement temporarily. If the force majeure lasts for longer than 1 week then Berrybrothers and/or the Customer is entitled to terminate the agreement, without being obliged to pay any compensation.

## **Berrybrothers B.V. general terms and conditions of sale and supply**

### **Clause 11 Retention of title**

- 11.1 Items supplied by Berrybrothers remain the property of Berrybrothers up to the time of full payment of all amounts owed by the Customer to Berrybrothers pursuant to Agreements entered into between them, including any interest and costs. The Customer is obliged to store the Products supplied subject to retention of title carefully and in such a way that they can be identified as the property of Berrybrothers.
- 11.2 Berrybrothers is entitled to recover the Products that remain the property of Berrybrothers from the Customer if the Customer remains in breach of its obligations to Berrybrothers. The Customer is obliged to give Berrybrothers the opportunity to recover the Products. All associated costs are payable by the Customer.

### **Clause 12 Intellectual property rights**

- 12.1 All copyright, model rights, trademark rights, patent rights, plant variety rights, portrait rights, rights to non-original writings, domain name rights, trade secrets and other intellectual (or semi-intellectual) property rights (the "Intellectual Property") relating to the Products supplied, including the design, preparatory material, packaging and nomenclature of the same, and relating to everything that Berrybrothers develops, designs, manufactures or supplies, accrue to and remain the sole property of Berrybrothers or its supplier.
- 12.2 With respect to the Intellectual Property, the Customer receives only a non-exclusive, non-transferable, non-pledgeable and non-sublicensable right of use, limited to what is necessary to use the Products for the agreed purpose and solely for its own use. Unless otherwise agreed in writing, the Customer is not permitted to reproduce, convert or otherwise process the Intellectual Property.
- 12.3 The Customer will not perpetrate any infringement of the Intellectual Property.
- 12.4 In the event of any dispute between Berrybrothers and the Customer concerning the Intellectual Property, Berrybrothers will be assumed to be the rightful owner, except as proven otherwise by the Customer.
- 12.5 The items supplied or to be supplied by Berrybrothers according to its design, or any essential part of them, may not, even if or to the extent that they are not subject to any copyright or other legal protection in favour of Berrybrothers, be reproduced in the context of any production process except with the written consent of Berrybrothers.

### **Clause 13 Protection of personal data**

- 13.1 When collecting and processing (or further processing) personal data in the context of the Agreement or for the benefit of the Customer, Berrybrothers will comply with and take protective measures appropriate to its obligations under the General Data Protection Regulation (GDPR),

## **Berrybrothers B.V. general terms and conditions of sale and supply**

the GDPR Implementation Act and, after it enters into force, the ePrivacy Regulation and all associated laws and regulations.

- 13.2 If Berrybrothers believes that it must be regarded as a data processor within the meaning of the GDPR, the Customer will on first request by Berrybrothers in addition to the provisions of this clause enter into and sign a written data processing agreement with Berrybrothers, in accordance with the model agreement supplied by Berrybrothers.
- 13.3 The Customer will indemnify Berrybrothers against all claims by third parties (including in any event users and government bodies), financial sanctions by governments and costs (including costs for legal assistance) arising from a breach by the Client of any legal provision relating to the processing of personal data.

### **Clause 14 Applicable law and disputes**

- 14.1 These general terms and conditions of supply are subject to Dutch law.
- 14.2 All disputes arising from or associated with an Agreement will subject only to the jurisdiction of the competent judge of the District Court of Limburg, Roermond location. In variation of this provision, Berrybrothers is also entitled at all times to refer a dispute to the competent court of the place where the Customer is established or has its actual place of business.