

## STANDARD CONDITIONS OF SALE AND DELIVERY

of the private limited liability company WATERMAN ONIONS B.V. and of all of its subsidiaries and other affiliated companies, with its registered office and place of business in 8304 AR Emmeloord at Hannie Schaftweg 12. Listed in the trade register of the Chambers of Commerce under number 3906672

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### I GENERAL

#### 1 Article 1

- 1.1 These conditions apply to the private limited liability company WATERMAN ONIONS B.V. and of all of its subsidiaries and other affiliated companies.
- 1.2 These conditions apply to all our quotations, agreements and deliveries where we act as the seller, in as far as these are not deviated from in the contract or in our written confirmation of the agreement. In the event of a conflict between the text in our proposals and/or agreements and these general conditions, the text in the proposals and/or the agreement shall prevail.
- 1.3 An agreement is reached with us only definitely by our confirmation thereof in writing or by email, or by the signing by The purchaser of the contract we have offered him.
- 1.4 Our agents are not authorised to bind us unconditionally. They are only allowed to buy or sell subject to our approval.
- 1.5 All our proposals are entirely free of obligation unless the proposal explicitly states otherwise.

#### 2 Article 2

- 2.1 General conditions of other parties are hereby expressly rejected. In as far as conditions of the other party are applicable and deviate from or conflict with our conditions, our conditions shall prevail.
- 2.2 In the case of a dispute about the contents and purport of these terms and conditions, the Dutch text and its meaning within the Dutch territorial jurisdiction will be binding.
- 2.3 In the event that any of the clauses (or part thereof) in these conditions or any part of the underlying contract should be void or become void, this will either leave the effect of the clause and the conditions unimpaired, or the underlying contract unaffected.
- 2.4 Parties will in this case make an arrangement for the void or destroyed clause that is closest to the intention that parties had with the underlying contract or with these general conditions, unless this clause or this part of the agreement is so important to us that that compliance with the agreement cannot reasonably be expected from us.

### II DELIVERY AND PURCHASE

#### 3 Article 3

- 3.1 All our sales contract will be deemed to have been concluded in Emmeloord.
- 3.2 Our products are – in case of water transport – sold FAS (Free Alongside Ship – INCO-terms 2020) and delivered alongside the first vessel. Unless explicitly stated otherwise in the purchase contract, in all other cases we will sell Ex works (INCO-terms 2020) and deliver to the first means of transport. After delivery, the goods are transported at the risk of the purchaser. Any quality deterioration due to and during transport are for the purchaser's account and risk. Any damage and costs due to delay in transport or blockade of the goods and/or containers, such as demurrage costs, are at the risk of the purchaser at all times.
- 3.3 Payment of the purchase price will be done in Emmeloord. The purchase price is stated in euros and exclusive of VAT.

#### 4 Article 4

- 4.1 The purchaser is obliged to collect the goods he has bought (and call off is required), at the agreed location and time.
- 4.2 In the event it has been agreed that the sold quantity shall be delivered during a certain period of time, the purchaser

should call off and collect regular, equal, or roughly equal quantities during the entire period as much as possible. The purchaser should take into account a term of at least seven days for each delivery and call-off.

- 4.3 In the event the purchaser does not comply punctually and/or completely with these obligations for timely call-off and/or collection, we are entitled, without formal notice of default being required, to full compensation and/or to consider the contract annulled, to the extent that this has not been carried out, and to claim full compensation for the part of the contract that has not been carried out. We are in this case also entitled – even if we do not terminate the contract – to sell the goods for the purchaser's account and risk, and to offset the revenue with the damage we have incurred and/or the purchase price.
- 4.4 The agreed time of delivery is a target date, not a fatal deadline.
- 4.5 Returning goods, including onion seeds and first-year onion sets is not permitted.

### III FORCE MAJEURE

#### 5 Article 5

- 5.1 In the event of force majeure, we are entitled to suspend the fulfilment of our contracts for the duration of the force majeure.
- 5.2 If the duration or the severity of the force majeure makes such necessary – which is subject to our judgment only – we are entitled to consider the sales agreement as annulled, to the extent that this has not been carried out, without judicial intervention, and we are not bound to any payment of compensation. We may terminate the agreement, without any right of compensation, if the force majeure situation lasts more than one month and/or the prospects exist that the force majeure situation will last more than one month.
- 5.3 Unless stipulated differently below, we consider force majeure as any special circumstance that makes fulfilment of our delivery obligation either impossible or so burdensome, that fulfilment that cannot reasonably be expected of us, such as war, mobilisation, strike, excessive absenteeism of personnel, labour disturbances, revolution, riot, insurrection, storm, ice formation, flood, stagnation in the delivery of electricity or water, industrial fire, industrial stagnation caused by machinery failure or difficulties in the delivery of energy, obstructions in traffic, transport problems, complete or partial crop failure, unusual dry spells or continued rains and/or abnormal amounts of rain, disease in the crop, plagues of vermin, the being in default of suppliers, etc. Moreover, we are entitled to terminate the agreement, in as far as this has not been fulfilled, without any right of compensation, when government measures obstruct the import, export or transit of sold goods and/or have a more negative financial effect for us, and purchaser is not prepared to compensate the disadvantage of this measure to us for the delivery of the goods at our first request.
- 5.4 Any situation of force majeure experienced by our suppliers, including growers, should be considered as a situation of force majeure for us.

#### 6 Article 6

- 6.1 All the sales contracts concerning agricultural products we conclude, regardless of whether the products have been grown by us or by third parties, are executed subject to post-harvest availability. In case fewer products are available than could have reasonably been expected when

concluding the agreement as a result of a disappointing harvest with regard to the quantity and/or quality of agricultural produce, including products that have been declared unfit by the competent authorities, we retain the right to reduce the quantity we sell correspondingly. This may be the case if the amount of products we have bought on the basis of cultivation contracts is insufficient to deliver to all our purchasers in full. By delivering the thus reduced quantity, we will fully comply with our delivery obligations. We will in this case not be obliged to supply substitute agricultural produce, and will neither be liable for any damage incurred whatsoever.

#### **IV Quality**

##### **7 Article 7**

- 7.1 The products we deliver are perishable, and after delivery the shelf life and quality will depend largely upon the manner of transport and/or storage, both of which we can no longer control after delivery. This is why the purchaser must have the produce presented for delivery weighed and checked prior to delivery – either by himself or by his expert, and for his own account –, including a spot-check which includes cutting produce in half, measuring the size of the produce, the temperature of the produce and any residues such as pesticides, in order to determine whether the produce in his opinion meets the agreed requirements and quality. In addition, the purchaser must for his own account check whether there are any product-foreign objects mixed in with the delivered produce, and remove these.
- 7.2 The purchaser can only make any claims relating to the quality, size and quantity of the goods supplied prior to the delivery of the goods, or when parties agree about this in writing – prior to unloading of the goods.
- 7.3 The purchaser has forfeited his right to make a claim when the produce has been delivered, or – when parties have agreed in writing to conduct inspections prior to unloading – unloaded at the location he has indicated.
- 7.4 The purchaser who refuses to receive our goods on the basis of alleged bad quality, is – on penalty of the loss of rights – obliged to inform us immediately and at least within 1 hour after refusal by email. In the event we reject the claim or do not accept the complaint within 1 hour by email, the purchaser must for his own account – on penalty of the loss of his right to complain about the produce delivered or the produce offered by us for delivery – immediately, meaning within 2 x 24 hours after lodging the complaint, - in our presence -, have an independent expert survey carried out by an independent sworn expert. We are entitled to have a contra-expertise carried out. Purchaser is – on penalty of the loss of his right to complain about the quality – obliged to properly condition the goods. In the event purchaser makes a claim too late and/or requires an independent expert survey too late and/or the independent expert survey or the contra-expertise does not show that the produce did not comply with the agreement at the time of delivery, it is established between purchaser and us that the produce complies with the agreement.
- 7.5 We are entitled to replace the produce that was refused on good grounds with other produce, but we are not bound thereto. In the latter case, we are entitled to deduct the quantity refused from the total quantity sold.
- 7.6 In the event the purchaser unduly refuses to accept the goods offered for delivery, we are entitled, also in case of a partial delivery, to annul the entire agreement in as far as this has not been fulfilled, and to demand compensation.
- 7.7 We must be repaid in full any damages incurred as a result of not or not fully purchasing the goods sold by us. This compensation amounts to at least the difference between

the price agreed with the purchaser and the current market price at the date of noncompliance, propagated with the loss of profits and other damages, including consequential damage.

- 7.8 The purchaser who fails to comply with his obligations, is liable for compensation to us by the mere fact of not collecting the produce or not collecting the produce in time.

#### **V LIABILITY**

##### **8 Article 8**

- 8.1 Our liability for damage (including loss of profits, consequential damage and or intangible loss), however caused, is explicitly excluded, unless and in as far as this damage is caused with intent or by gross negligence of (directors of) Waterman Onions B.V. and/or another affiliated company, and/or the persons in charge of the management of our company.
- 8.2 In as far as damage (including loss of profits, consequential damage and or intangible loss) is caused with intent or by gross negligence of (directors of) Waterman Onions B.V. and/or another affiliated company, and/or the persons in charge of the management of our company, this damage will in all cases be limited to the net amount invoiced (the product price exclusive of transport costs and taxes) of the transaction from which the damage has arisen.
- 8.3 Purchaser indemnifies Waterman Onions B.V. for any claims from third parties, that any third parties may make against us, for instance on account of produce supplied by us.
- 8.4 Any claims that purchaser may have against us, for whatever reason, will become void after six months after the claim concerned has been made.

#### **VI PAYMENT**

##### **9 Article 9**

- 9.1 Our invoices must be paid within 30 days after the date on the invoice, unless otherwise agreed in writing. Purchaser is not allowed to offset invoices or to suspend payments. In case of non-payment within the above term or the term stipulated in the written agreement, the purchaser will owe us an interest compensation of 1.5% per month, whereby any part of a month shall be considered a whole month, without the necessity of proof of default.
- 9.2 Moreover, we are entitled to direct the collection of our claims to our legal adviser, collection agency or bailiff after the expiry of the payment due date. All the costs arising from the recovery of the amounts due, both legal and extrajudicial expenses, with a minimum €50,-, will be for the account of the purchaser on the basis of the table in Article 9.3. The legal expenses include the actual costs that we have incurred for our lawyers, bailiffs, and experts.
- 9.3 Extrajudicial expenses will be calculated as a lump sum according to the following table:

For the first €3,000.-	15%
For the part exceeding the previous amount up to €6,000.-	10%
For the part exceeding the previous amount up to €15,000.-	8%
For the part exceeding the previous amount up to €60,000.-	5%
For the part exceeding 60,000.-	3%
- 9.4 Should the actual extrajudicial expenses surmount the amounts calculated in the table in Article 9.3, the purchaser will owe the expenses that have actually been incurred.

- 9.5 When our invoices are not paid on time, we are entitled to suspend any further delivery or execution of the agreement until the due invoices have been paid. We may require a bank guarantee from a Dutch banking institution of good standing when we have valid reasons to doubt the purchaser's solvency at the time of delivery, without our being obliged to substantiate this doubt. We are entitled to annul the agreement when the purchaser does not provide this bank guarantee within 2 days after we have requested this. In this case, the purchaser must compensate our damage completely.
- 9.6 We are entitled to annul the agreement, in as far as this has not been fulfilled, when the purchaser remains in default on payment of the matured invoice within 2 x 24 hours after he has been summoned to pay in writing. In this case, we are entitled to claim compensation for the total damage that results from the non-performance.
- 9.7 We are entitled at all times to offset our outstanding debts against our payment obligations concerning the relevant debtor.

#### **VII RETENTION OF TITLE / PLEDGE**

##### **10 Article 10**

- 10.1 All products delivered for the execution of this agreement will remain our property until the sales price together with all extra charges and costs falling thereon have been paid in full, and we do not have any other claims against the purchaser in any other respect.
- 10.2 By entering into an agreement with Waterman Onions B.V. concerning onion seeds and/or first-year onion sets, a (future) right of pledge is established on the crops standing in the field and the crops to be harvested and/or the crops that have been harvested that the purchaser after concluding the said agreement will grow and/or purchase, concerning certainty of payment of everything the purchaser owes and/or will owe Waterman Onions B.V., including the purchase price and commercial interest for delivered goods, such as onion seeds and/or onion sets, loans and credits that will or have been provided, compensation as a result of (future) (attributable) deficiencies, for instance due to not or incomplete delivery by purchaser. Purchaser states that by entering into an agreement with Waterman Onions B.V. he is entitled to effectuate such pledge of said goods and that no restricted rights apply to the goods.
- 10.3 In case of non-timely payment, a moratorium on payments, or bankruptcy, we are entitled to retrieve our goods and, in order to do so, enter the premises of the purchaser. By means of entering into the purchase agreement, the purchaser authorises us to this end.

#### **VIII RETENTION OF TITLE GERMANY**

##### **11 Article 11**

- 11.1 With regard to customers who are established in Germany, the stipulations of Articles 11.1 through 11.9 will apply instead of Articles 10.1 through 10.3.
- 11.2 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.
- 11.3 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.
- 11.4 Bei einer Verarbeitung unserer 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 Gesamtwert aller mitverarbeiteten Vorbehaltswaren entspricht.

- 11.5 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.
- 11.6 Bei Verarbeitung im Rahmen eines Werkvertrages 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.
- 11.7 Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.
- 11.8 Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.
- 11.9 Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.

#### **IX PLANT BREEDER'S RIGHTS AND OTHER IP RIGHTS**

##### **12 Article 12**

- 12.1 The intellectual and/or industrial property rights regarding the products delivered by Waterman Onions B.V. are retained by Waterman Onions B.V., unless explicitly agreed otherwise in writing between parties.
- 12.2 Purchaser can only sow the onion seed and plant the first year onion sets on his own farm. Resale or re-delivery is not allowed.
- 12.3 By buying onion seed and/or first-year onion sets from Waterman Onions B.V., purchaser authorises Waterman Onions B.V., the holder of the plant breeders' rights, and the inspection authorities, to inspect and test all the plots that the seeds have been sown in and the first-year onion sets planted on, as well as the storage location. Purchaser must at the first request to do so, indicate the respective storage location and plots, and hand over the relevant record-keeping, including invoices to Waterman Onions B.V..
- 12.4 In the event Waterman Onions B.V. becomes involved in legal proceedings concerning plant breeders' rights or other intellectual and/or industrial rights, the purchaser is bound to provide any cooperation that Waterman Onions B.V. desires, including the collection of evidence. Moreover, purchaser must indemnify Waterman Onions B.V. in such proceedings.

#### **X DISPUTES**

##### **13 Article 13**

- 13.1 Dutch law applies to all our offers and agreements (with the exception of Article 11). Our agreements (with the exception of Article 11) will be executed completely in the Netherlands.
- 13.2 The stipulations of the Vienna Sales Convention are excluded.
- 13.3 All disputes arising from our offers and agreements or any of its consequences will be settled by means of arbitration, to be conducted by the Netherlands

Arbitration Institute (Stichting Nederlands Arbitrage Instituut; "NAI").

- 13.4 The arbitration board will consist of one arbitrator insofar as the amount of damage involved in the dispute does not exceed EUR 150,000.-. In case the amount of damage involved in the dispute exceeds EUR 150,000.-, the arbitration board will consist of three arbitrators. Arbitrators will be appointed as per the list procedure.
- 13.5 The place of arbitration proceedings will be Emmeloord.
- 13.6 The proceedings will be held in the Dutch Language.
- 13.7 The arbitration board shall make its award in accordance with the rules of law.
- 13.8 In the event that Waterman Onions B.V. is proved wholly or partially right by the arbitration board, all expenses made by us in connection with the proceedings shall be for account of The purchaser.
- 13.9 The merging of the arbitration proceedings with other arbitration proceedings, as foreseen by Article 1046 of the Civil Procedures Code, and Article 39 of the arbitration rules of the of the Netherlands Arbitration Institute (het Nederlands Arbitrage Instituut) are excluded.

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Thus deposited with the trade Register at the Dutch Chamber of Commerce under number 39066672, date: 20-05-2020