

## General Terms and Conditions of Sale

of Port International GmbH and its subsidiaries

Port International Fruit GmbH, Port International European Sourcing GmbH,

Port International Organics GmbH, Port International Bananas GmbH and

Port International Dutch Growers B.V.

Lippeltstraße 1, 20097 Hamburg

### I. Validity of these General Terms and Conditions of Sale and other General Terms and Conditions

1. For all transactions in which Port International GmbH or its subsidiaries Port International Fruit GmbH, Port International European Sourcing GmbH, Port International Bananas GmbH, Port International Organics GmbH and Port International Dutch Growers B.V. (hereinafter: Port International) is the seller, these General Terms and Conditions of Sale apply; they also apply for all future business relationships even if they are not explicitly agreed again. Any of the buyer's terms and conditions of purchase shall not be valid; these are hereby explicitly opted out of.

2. For sales of fresh fruit and fresh vegetables, the "Terms and Conditions for Commerce with Fruit and Vegetables (compiled and issued by the Federal Horticultural Working Group) in the version which was respectively applicable at the time of contract execution shall be subordinately applicable, with these General Terms and Conditions of Sale taking precedence in the event of any contradicting provisions.

3. For transactions with preserves, frozen products, dried fruits, dried vegetables, seasonings and honey, the "Terms and Conditions, Rules of Arbitration, Rules of Procedure for Experts, published by Waren-Verein der Hamburger Börse e.V." shall apply in the version which was respectively applicable at the time of conclusion of the transaction.

4. For potato trading (including of early potatoes), the Rules & Practices of the Inter-European Trade in Potatoes (RUCIP), in the version which was respectively applicable at the time of conclusion of the transaction, shall take precedence.

5. For fresh flowers trading, the terms and conditions of "Union Fleur" shall take precedence.

### II. Place of performance

1. The place of performance for all buyer liabilities is Hamburg.

2. Unless agreed otherwise in individual cases, the place of performance for the delivery of the goods by Port International as the seller is as follows: in the case of sale of goods from an incoming maritime vessel cargo, the sea port location at which the goods are unloaded from the maritime vessel; in the case of sale from a warehouse, the place where the warehouse is located; for all other obligations of Port International as the seller, Hamburg.

### III. Buyer's obligation to inspect and object

1. For the buyer's obligation to inspect and object to goods, Sections 377 and 378 Handelsgesetzbuch [German Commercial Code, "HGB"] apply. Unless there are shorter objection periods in accordance with the law, commercial practice or the conditions specified in Section 1, 2-5, any notice of defects must be executed within 12 hours from the earliest time at which the buyer or its representative was able to view the goods at the place of delivery.

2. Unless agreed otherwise in individual cases, the place of delivery in the sense of the above-specified provisions of the HGB is as follows: in the case of a sale from an incoming maritime vessel cargo, the sea port location at which the sold goods are unloaded from the maritime vessel; in the case of sale of goods from a warehouse, the place in which the warehouse is located.

### IV. Delivery delay on the part of our suppliers

Deliveries are subject to our own receipt of correct and on-time deliveries. Port International as the seller is therefore only obliged to provide performance if Port International has received correct and on-time deliveries. If delivery to us fails without Port International being at fault, Port International may withdraw from the sales agreement.

### V. Impairment of performance

1. Events that delay performance or make performance by Port International as the seller impossible – actually or economically – such as force majeure, war, governmental acts, embargo, fire, epidemics, riot, strike, lockout, theft, interruption of operations, ice, traffic jams, transport obstacles, lack of workforce, state bans, lack or cancellation of import licences or the introduction of EC measures that hinder import after contract execution, even if they occur at suppliers of Port International or its sub-suppliers, are not the responsibility of Port International, including in respect of bindingly agreed deadlines and dates. Such events entitle Port International to delay the delivery of the goods by the duration of the hindrance plus an appropriate lead time, or in respect of a not-yet-fulfilled portion, to fully or partially withdraw from the contract without obligation for Port International to provide compensation.

2. If difficulties in delivery arising due to the above-stated reasons affect only a portion of the sold goods, Port International may withdraw from the contract in relation to these portions of sold goods, if delivery to the buyer of the remaining goods is reasonable based on the specific circumstances. In such cases, the parties must fulfil the contract with respect to this

remaining portion of the sold goods. If the partial delivery is not reasonable for the buyer, Port International can in this case also withdraw from the entire contract.

## VI. Change of purchase price

If foreign exchange prices, customs, taxes, fees or other levies rise above what they were at the time of contract execution, such increases shall be borne at the expense of the buyer, in the sense that a corresponding increase in the purchase price shall be considered agreed.

## VII. Delivery time

1. Delivery dates and deadlines must be in written form to be effective.

2. In instances where Port International is responsible for non-compliance with promised deadlines and dates, or if it is in default, the buyer is entitled to compensation for delayed completion in the amount of 1/2% for each completed week of delay, up to a maximum of 5% of the invoice value of the deliveries and services affected by the delay. Claims going beyond this are ruled out unless the delay is due to, at minimum, gross negligence on the part of the managing directors and the managing employees of Port International.

3. The buyer commits to immediate collection.

## VIII. Partial deliveries

Port International is entitled to deliver the sold goods to the buyer in partial deliveries if and to the extent that partial deliveries of this type are reasonable and acceptable for the buyer, or if partial deliveries can be performed in a manner customary in the trade for this type of contract.

## IX. Advance payments by the buyer

If the buyer is in default with its payments or partial payments from this or another transaction with Port International, if it ceases its payments, or if insolvency proceedings are opened against its

assets, or an application to open insolvency proceedings is made, or if an application to open insolvency proceedings is refused for lack of assets, or if a notice from a credit insurer is received concerning cessation or restriction of insurance protection, Port International as the seller will be entitled to demand the purchase price for delivery of the goods beforehand as an advance payment. For as long as the payment has not been made, Port International is not obliged to deliver the goods.

## X. Buyer payments

1. All payments by the buyer must be paid when they are due, strictly net cash, immediately after invoice receipt.

2. Offsetting and retention with respect to the purchase price claim are ruled out. This does not apply if an indisputable or legally established claim is to be offset against the purchase price.

3. In the event of the buyer defaulting on payment of the purchase price or other payments, the buyer shall pay the seller interest of 8% p.a. above the respective bank rate of the German Federal Bank, from the date of the default, as liquidated compensation for damage caused by delay. However, the buyer shall be entitled to prove that damage caused by delay has not occurred at all, or has occurred to an extent markedly less than the above-stated interest rate. The seller providing proof of higher damage is permitted.

4. All other rights due to default, of Port International as the seller, remain unaffected.

## XI. Warranty

1. If goods delivered by Port International as the seller have a defect, and if Port International is responsible for this defect, Port International is obliged to remedy the defect or deliver a replacement, at its own discretion. In the event of defect rectification, all expenses required for this purpose must be paid by Port International, insofar as the defects are not caused by the object of purchase having been

taken to a different location than the place of performance.

2. If defect rectification fails or is not possible, or if Port International is not prepared or not able to rectify the defect or provide a replacement delivery, or if this is delayed beyond a reasonable period of time for reasons that Port International is responsible for, the buyer shall be entitled to withdraw from the contract or demand a reduction in the purchase price.

3. Buyer claims going beyond this, in particular claims to compensation for damages including lost profit or due to other financial loss on the part of the buyer, are ruled out. This limitation of liability does not apply if the cause of damage is based on intent or gross negligence by the managing directors or managing employees of Port International. It also does not apply if the buyer asserts claims to compensation for damages in respect of the lack of a guaranteed feature.

4. If an obligation that is material to the contract is breached, the liability of Port International is limited to the foreseeable damage.

## XII. Reservation of title

1. Port International reserves ownership of the delivered goods until all payments arising from the contract have been received.

2. In the case of conduct by the buyer that is contrary to the contract, Port International shall be entitled to take back the object of purchase. The taking-back as well as seizure of the item which is subject to reservation of title shall constitute withdrawal from the contract. Port International is entitled to utilise the object of purchase after it has been taken back.

3. Goods which the buyer receives on a delivery note from Port International, from collective storage at which several parties are authorised, shall be received by the buyer as custodian for Port International as the seller, to which the buyer hereby transfers ownership in

accordance with Section 930 German Civil Code [Bürgerliches Gesetzbuch, "BGB"].

4. The buyer is authorised to resell the delivered goods in the ordinary operation of business, as long as the buyer fulfils its obligations arising from the purchase contract on time. However, if the buyer agrees a sale on credit with its own onward purchasers, the buyer is obliged to make reference to the reservation of title existing with Port International and also to itself reserve title with respect to its onward purchaser until its onward purchaser has paid the purchase price. In addition, the buyer therewith also assigns to Port International its claims arising from the resale of the goods, in particular the claim to payment of the purchase price against its onward purchaser, to safeguard the purchase price claim under this contract. As long as it fulfils its obligations from this contract on time, the buyer is entitled to collect the purchase price. Port International therewith assigns back to the buyer these acquired claims from the resale of the goods under the condition precedent of payment of any amounts due under this contract.

5. If this resale of the goods that are subject to reservation of title is performed with third-party goods, the assignment of the purchase price claim from the resale is considered completed in the amount of the invoice created by Port International for the goods subject to reservation of title. The same applies in respect of the purchase price claim for items newly created in the course of further processing, combination or mixing of the goods subject to reservation of title.

6. The buyer is obliged to notify the seller of the advance assignment of the claims from the resale against its onward purchaser at any time, at the request of the seller. Port International is entitled to disclose the advance assignment to the buyer's onward purchaser as soon as the buyer is in default with respect to any obligation to Port International which arises from this contract.

7. In the case of third-party access to the goods, in particular seizure, the buyer must make reference to ownership by Port International and

immediately notify Port International so that Port International can assert its ownership rights. If the third party is not able to reimburse Port International for any judicial and extrajudicial costs arising in this context, the buyer shall be liable for these.

8. Port International is obliged to release the securities due to Port International at the request of the buyer, to the extent that the value of these securities exceeds the claims to be safeguarded by more than 20%.

### **XIII. Certification of suppliers and service providers**

In principle, we favour IFS certification when selecting service providers and suppliers. The IFS standard requires that if an IFS standard exists for the product category (IFS Food, IFS HPC, IFS PACsecure), the supplier or service provider (food, HPC or packaging) working for Port International must be IFS certified. We would like to point out that in individual cases suppliers or service providers may be certified according to a different quality management standard or a GFSI (Global Food Safety Initiative) recognised standard. The Global GAP standard is mandatory for suppliers at producer level.

### **XIV. Written form requirement**

Agreements and assurances that deviate or supplement the above conditions shall only be valid if they have been stipulated in writing and signed by both parties, or if they have been confirmed in writing by Port International.

### **XV. Exclusion of the application of the uniform UN Convention on Contracts for the International Sale of Goods**

The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply for this contract.

### **XVI. Law and competent court**

1. This contract shall be governed by the law of the Federal Republic of Germany.

2. Solely the ordinary courts of the Free and Hanseatic City of Hamburg are responsible for deciding disputes.

3. If a provision in these General Terms and Conditions of sale or a provision in the framework of other agreements is or becomes ineffective, the efficacy of all other provisions or agreements will not be affected by this.