

General Purchase Conditions and General Purchase on Consignment Conditions of Fresh Diamond B.V.

General

The following Purchase Conditions apply if Fresh Diamond B.V. is the purchasing party. The following Purchase on Consignment Conditions apply if Fresh Diamond B.V. accepts items on consignment from its supplier for the purpose of selling these to third parties. If Fresh Diamond B.V. purchases items from a supplier and no explicit choice has been made for either purchase or consignment, the parties will be considered to have entered into a consignment agreement. Chapter 3 of these General Conditions is applicable regarding both purchase transactions, to which Chapter 1 applies, and purchase on consignment transactions, to which Chapter 2 applies.

Chapter 1: Purchase Conditions

Article 1: The establishment of an agreement; prices

1. If the supplier does not inform Fresh Diamond B.V. in writing within 48 hours after the order date that he will not accept the order and/or these general conditions, the order and these General Purchase Conditions are considered to have been accepted.
2. Agreed prices are fixed and exclusive of turnover tax. Unless agreed otherwise the prices are deemed to comprise all costs and levies arising from the delivery condition agreed upon by Fresh Diamond B.V. and the supplier.

Article 2: Delivery

1. Unless agreed to the contrary, the delivery condition will be: "DDP" at the place of delivery as indicated by Fresh Diamond B.V.. The obligations of the parties within the context of the delivery condition as referred to in the previous sentence, and within the context of other delivery conditions that the parties may agree to, will be determined on the basis of the most recent edition of the Incoterms.
2. In any case, delivery is also understood to mean the delivery of health certificates and other documents required by Fresh Diamond B.V. within reason with regard to food safety which are necessary for the import of the purchased items and the safe usage thereof by consumers in the agreed country of delivery, or, if import is not an issue, for the safe usage of the purchased items by consumers in the country where delivery takes place. These documents shall be sent immediately to Fresh Diamond B.V. by express delivery, whilst, if Fresh Diamond B.V. so desires, these documents must be provided to Fresh Diamond B.V. by fax or email prior to delivery.
3. Delivery periods or dates of delivery that have been agreed upon are strict deadlines. If the supplier does not comply with the agreement, or does not comply on time, or does not comply properly, he will be in default by this single event without a notice of default by Fresh Diamond B.V. being necessary.

4. Without prejudice to the provisions of the previous paragraph, a supplier is obliged to inform the purchase department of Fresh Diamond B.V. immediately of a delay or possible delay in the execution of the agreement, clearly stating reasons for this and indicating what the supplier is capable of delivering at which time and under which conditions.
5. The supplier guarantees that the items will be soundly packaged with due observance of the current requirements of the country of delivery and of the countries through which transport may take place and with due observance of any reasonable packaging instructions made by Fresh Diamond B.V..
6. Without prejudice to further reasonable instructions made by Fresh Diamond B.V., the items shall be marked with the order number of Fresh Diamond B.V., and shall state the product name, the net weight and the country of origin per packaging unit.
7. As long as the supplier has not proceeded to deliver, Fresh Diamond B.V. is entitled to require that the supplier postpones the delivery and/or changes the place of destination. Fresh Diamond B.V. has the authority as laid down in the previous sentence only if and insofar as the supplier can reasonably fulfil the request made by Fresh Diamond B.V., whereas Fresh Diamond B.V. is furthermore obliged to reimburse the supplier for any reasonable additional costs.

Article 3: Force majeure

1. If the supplier wishes to invoke force majeure, the supplier is obliged to inform Fresh Diamond B.V. immediately of the reasons for this and, if Fresh Diamond B.V. so desires, to make the existence of those reasons plausible immediately.
2. The supplier is obliged to add to the statement as referred to in the previous sentence a message indicating what the supplier, according to reasonable expectations, will be capable of at which time.
3. After receiving the statement of the supplier, Fresh Diamond B.V. will decide within a reasonable term whether, and if affirmative, which performance it requires of the supplier and will inform the supplier thereof.
4. In the event of force majeure, Fresh Diamond B.V. is entitled to opt for a termination of the agreement, either wholly or otherwise, by written notice to the supplier. Fresh Diamond B.V. is not obliged to give the supplier notice of default prior to the statement of termination.
5. Force majeure of the supplier shall not include at any time a circumstance in which a performance, which is of importance to the performance of the supplier itself, has not been delivered properly, has not been delivered on time, or has not been delivered at all towards the supplier.

Article 4: Inspection and complaints

1. If Fresh Diamond B.V. discovers that the performance of the supplier is not in accordance with the agreement, Fresh Diamond B.V. is entitled to postpone the expression of a complaint until after it has received a complaint by its purchaser.
2. In the event that items are rejected by Fresh Diamond B.V. on valid grounds, these items will remain at the supplier's risk.

Article 5: Quality of the items to be delivered

The supplier guarantees that the items to be delivered are in accordance with the agreement, including the agreed specifications, and that the supplier complies with all current statutory provisions. Furthermore, the items shall meet all statutory requirements regarding food safety which are applicable at the place of delivery.

Article 6: Non-performance by and liability of the supplier

In the event that the supplier does not carry out the agreement on time, does not carry out the agreement properly or does not carry out the agreement at all, Fresh Diamond B.V., at its discretion and without prejudice to its other rights pursuant to these General Conditions and the law, may claim:

- Prompt replacement free of charge,
- Prompt remedy free of charge,
- Reduction of the purchase price or refund thereof. A written statement by Fresh Diamond B.V. requiring reduction (whether up to the full purchase price or not) implies that a proportional termination of the agreement is invoked,
- Compensation, including consequential loss, whether or not in connection with a cover purchase to be made by Fresh Diamond B.V. and whether or not together with other rights to be exercised by Fresh Diamond B.V.,
- Termination of the agreement, whether partially or not,
- Suspension of its obligations towards its supplier, therefore also those obligations which are not connected to the agreement which the supplier fails to comply with,
- The provision of adequate security by the supplier regarding the fulfilment by the supplier of all its obligations, therefore also those obligations which are not connected to the agreement which the supplier fails to comply with. In this paragraph, "prompt" is understood to be a term which enables Fresh Diamond B.V. to fulfil its obligations towards its purchaser or purchasers.

Article 7: Secrecy and intellectual and industrial property

1. The supplier will use any oral or written information received from Fresh Diamond B.V. exclusively for the execution of the order concerned. This information remains property of Fresh Diamond B.V. and shall, insofar as it is in written form, be returned to Fresh Diamond B.V. at its request, together with the copies that have been made thereof.

2. The supplier is obliged to maintain secrecy regarding the information received from Fresh Diamond B.V. with regard to the company of Fresh Diamond B.V. and of which information the supplier should understand the confidential nature, unless a legal provision obliges the supplier to the contrary.
3. Fresh Diamond B.V. is entitled to all intellectual and industrial rights which arise from, or are the consequence of, the performance of the agreement by the supplier. Insofar as necessary the supplier transfers these rights to Fresh Diamond B.V. by means of entering into the agreement, and in addition the supplier undertakes to comply with the necessary formalities in order to effectuate that Fresh Diamond B.V. becomes the entitled party.

Article 8: Payment and costs

1. Unless agreed to the contrary, Fresh Diamond B.V. will pay the agreed price within 45 days after receipt of the item as well as a well drawn up invoice, unless Fresh Diamond B.V. has rejected the items and/or the accompanying documentation. Fresh Diamond B.V. reserves the rights of setoff and suspension.
2. The supplier will state the order number of Fresh Diamond B.V. on its invoices.
3. If Fresh Diamond B.V. makes a payment to the supplier, this does not mean that Fresh Diamond B.V. forfeits its right to put forward a claim against the supplier with regard to a breach and/or acting wrongfully.
4. If the supplier does not pay a claim of Fresh Diamond B.V. and Fresh Diamond B.V. hands over its claim to a third party, the ensuing extrajudicial costs and legal costs are payable by the supplier. These costs are equal to the rate that, insofar as this is reasonable and whether the rate is on an hourly basis or not, is charged by the third party who has been engaged by Fresh Diamond B.V., plus the costs to be paid within reason by the third party to other third parties. Regarding the legal costs, a minimum applies consisting of the amounts to be settled by the Court outside the agreement.

Chapter 2: Purchase on consignment

Article 9: Purchase on consignment contract, sale by Fresh Diamond B.V.

1. Unless agreed to the contrary, the following provisions are applicable to all delivery contracts in which Fresh Diamond B.V. acts as purchaser on consignment.
2. Fresh Diamond B.V. will deliver the items accepted on consignment to third parties in its own name, however always at the expense and risk of its supplier. The items remain property of the supplier until Fresh Diamond B.V. sells and delivers them to a third party. Fresh Diamond B.V. is not obliged to insure the items it receives on consignment.
3. Fresh Diamond B.V. is always entitled, without explanation, to place items, which have been delivered on consignment by the supplier, at the disposal of the supplier in the storage space of Fresh Diamond B.V., and to charge the costs incurred by Fresh Diamond B.V. to the supplier. These costs include, but are not limited to, costs for cooling and storage charges. In that event the consignment agreement is considered to be terminated, and the supplier shall repossess those items as soon as possible in the

storage space of Fresh Diamond B.V., without charging compensation to Fresh Diamond B.V..

Article 10: Application for quotations by Fresh Diamond B.V.: termination of agreements and prices

1. All applications by Fresh Diamond B.V. with regard to the delivery of items on consignment by the supplier are subject to contract. Fresh Diamond B.V. is entitled to revoke such an application within three working days after acceptance thereof by the supplier.
2. Agreements are entered into by Fresh Diamond B.V. with the expectation of, and subject to, favourable cultivation and harvesting conditions and logistic handling without impediments. If these circumstances change to such an extent that Fresh Diamond B.V. reasonably anticipates that sale to a third party, at the prices and conditions reasonably expected by Fresh Diamond B.V., is not possible, Fresh Diamond B.V. is entitled, without prejudice to the provisions of Article 9 paragraph 3 and without having to pay compensation, to terminate the consignment agreement and to place the items, which may have been delivered in the meantime, at the disposal of the supplier on the company premises of Fresh Diamond B.V. where the items had been received. The provisions of this paragraph also apply if a change in costs, including import duties, leads to a higher cost price than the price with which Fresh Diamond B.V. originated.
3. The prices agreed upon by the supplier and Fresh Diamond B.V. are fixed and cannot be increased by the supplier, unless Fresh Diamond B.V. agrees to such an increase.

Article 11: Delivery of items on consignment to Fresh Diamond B.V.

The provisions of Article 2 of these General Conditions apply equally.

Article 12: Non-competition clause

The supplier acknowledges that Fresh Diamond B.V. incurs, and has incurred, considerable costs within its organisation in order to attract and maintain its customers. In connection with this, amongst other things, the supplier will owe a reasonable compensation to Fresh Diamond B.V. if the supplier terminates a current business relationship.

Article 13: Quality of the items to be delivered by the supplier and (the settlement of) Complaints

1. The provisions of the Articles 3, 4, 5 and 6 of these General Conditions apply equally.
2. If a claim is put forward against Fresh Diamond B.V. by its purchaser – whether in legal proceedings or not – the supplier will fully indemnify Fresh Diamond B.V. against all claims of that purchaser. Fresh Diamond B.V. may require that the supplier takes over legal proceedings, if necessary in the name of Fresh Diamond B.V., which have been commenced against Fresh Diamond B.V. by the purchaser of Fresh Diamond B.V., and that these legal proceedings are conducted at the expense of the

supplier. If Fresh Diamond B.V. decides to conduct the proceedings itself, this will take place at the expense and risk of the supplier.

Article 14: Payment by Fresh Diamond B.V.

Unless agreed otherwise, payment by Fresh Diamond B.V. takes place after it has drawn up the settlement concerned or – if it has been agreed that Fresh Diamond B.V. pays in response to an invoice of the supplier – after Fresh Diamond B.V. has received an invoice that meets the requirements of the law and Fresh Diamond B.V. has sold the items which have been made available by the supplier to a third party and this third party has paid the purchase price. Payment by Fresh Diamond B.V. does not mean that Fresh Diamond B.V. waives its rights against the supplier regarding any attributable breach or any unlawful act, either with regard to the delivery concerned or otherwise.

Chapter 3: Always applicable

Article 15: Industrial and intellectual ownership rights of Fresh Diamond B.V.

Unless explicitly stated to the contrary by Fresh Diamond B.V., without reservation and in writing, no agreement whatsoever entered into by Fresh Diamond B.V. with a purchaser or consignment purchaser will entail a transfer by Fresh Diamond B.V. of its intellectual and industrial ownership rights.

Article 16: Applicable law and competent Court

1. All agreements entered into by Fresh Diamond B.V. are governed by Dutch law with the exclusion of, if otherwise applicable, the United Nations Convention on Contracts for the International Sale of Goods (*Verdrag der Verenigde Naties inzake internationale koopovereenkomsten betreffende roerende zaken*).
2. All disputes arising between Fresh Diamond B.V. and the other party and to which these General Conditions are applicable, shall be judged in the first instance by the Court in Breda, unless mandatory law precludes this, and without prejudice to the right of Fresh Diamond B.V. to bring legal proceedings against the other party before an otherwise competent Court.