

**General Sales Conditions and General Sales on Consignment Conditions of Fresh Diamond B.V.**

**General**

The following Sales Conditions apply if Fresh Diamond B.V. is the selling party. The following Sales on Consignment Conditions apply if Fresh Diamond B.V. sells items on consignment. If Fresh Diamond B.V. delivers items and no explicit choice has been made for either sale or consignment, the parties will be considered to have entered into a sales agreement. Chapter 3 of these General Conditions is applicable regarding both sales transactions, to which Chapter 1 applies, and sale on consignment transactions, to which Chapter 2 applies.

**Chapter 1: Sales Conditions**

Article 1: Offer, prices

- 1. Unless otherwise indicated by Fresh Diamond B.V., all offers made by Fresh Diamond B.V. are subject to contract. Fresh Diamond B.V. is entitled to revoke an offer which is subject to contract within three working days after acceptance thereof, even if Fresh Diamond B.V. has already delivered. Unless stated otherwise, the prices to be quoted by Fresh Diamond B.V. are in Euros, are based on the Ex Works delivery condition and are exclusive of turnover tax. Fresh Diamond B.V. is entitled to rectify printing errors, writing errors and any other errors made by Fresh Diamond B.V. during communication. Furthermore, price quotations are submitted under the assumption of favourable conditions of cultivation and harvest and logistic handling without impediments. It is also assumed that no extraordinary development in prices will take place on the purchasing side of Fresh Diamond B.V.. If one or more of these assumptions is not realized, and as a consequence thereof Fresh Diamond B.V. is faced with a raise in cost price of more than 10 %, Fresh Diamond B.V. is entitled to charge the entire raise in costs to the purchaser.

Article 2: Delivery

- 1. A date of delivery or a term of delivery as agreed by Fresh Diamond B.V. and its purchaser is not a strict deadline. Fresh Diamond B.V. will only be in default after the date or term referred to in the previous sentence has expired and the purchaser has granted Fresh Diamond B.V. a reasonable term, to be agreed on by consultation with Fresh Diamond B.V., to deliver within that term and Fresh Diamond B.V. fails to do so.
- 2. 2. If the transport does not take place by or on behalf of Fresh Diamond B.V., delivery will take place Ex Works warehouse .....
- 3. If the transport takes place by or on behalf of Fresh Diamond B.V., whether or not by means of its own transport company, delivery will take place on the basis of CPT on the agreed place of destination, whereby the place of delivery to the carrier will be the place stated in paragraph 2 of this Article, unless agreed otherwise or announced otherwise by Fresh Diamond B.V..

4. The obligations of the parties in the context of the delivery conditions as referred to in the previous two paragraphs of this Article and any other delivery conditions that parties may agree to will be determined on the basis of the most recent edition of the Incoterms.
5. If, at the request of the purchaser, the item sold is stored by Fresh Diamond B.V. on its premises or on the premises of a third party, this will be at the risk and expense of the purchaser. Fresh Diamond B.V. is not obliged to insure the item it takes into storage.
6. The risk of the item passes to the purchaser from the time of delivery thereof. If the purchaser fails to act when the purchaser's cooperation with a delivery is required, the purchaser will be in default from that time on and will bear the risk of the item.

#### Article 3: Retention of title

1. All deliveries shall take place subject to retention of title. Fresh Diamond B.V. will retain ownership of items delivered to and to be delivered to the purchaser under any agreement until the purchaser:
  - a. Has fully paid the price of all these items, plus payable interest and costs,
  - b. Has paid all claims with regard to work carried out or to be carried out by Fresh Diamond B.V. for the benefit of the purchaser in the context of the agreements concerned and,
  - c. Has paid all claims that Fresh Diamond B.V. will hold against the purchaser in the event that the purchaser fails to fulfil the obligations as referred to in the above.
2. The purchaser is not permitted to have the items subject to retention of title serve as security in anyway whatsoever for other claims than those of Fresh Diamond B.V.. Fresh Diamond B.V. authorises the purchaser to sell the items subject to retention of title to third parties in the context of the normal course of business of the purchaser. In the event that the purchaser is in default to Fresh Diamond B.V. regarding claims to which the retention of title as stipulated in paragraph 1 applies, Fresh Diamond B.V. is entitled to revoke this authorization effective immediately. In that event Fresh Diamond B.V. is also entitled to reclaim the items subject to retention of title. The purchaser will offer any reasonable contributions thereto. In that respect the purchaser shall authorise Fresh Diamond B.V. irrevocably to enter the purchaser's company premises and storage spaces.

#### Article 4: Force majeure

In addition to what the law considers to be force majeure, the unfavourable progression of cultivation and harvest circumstances as well as logistic handling which did not proceed according to plan are to be considered force majeure. Furthermore, force majeure is constituted by a breach of contract and/or force majeure and/or acting unlawfully on the part of suppliers of Fresh Diamond B.V., its carriers or other third parties which are involved in the agreement, obstructing measures of any government authority, fire and other accidents in the company of Fresh Diamond B.V. and/or in the company of suppliers and/or auxiliary persons of Fresh Diamond B.V., and any other circumstances as a consequence of which the performance or further performance of the agreement cannot reasonably be expected or

cannot fully be expected of Fresh Diamond B.V.. If Fresh Diamond B.V. invokes force majeure, each of the parties is entitled to terminate the agreement wholly – if the force majeure is sufficiently substantial - or – for the part regarding which force majeure exists - partially, in which last event the parties are obliged to fulfil the agreement for the part which has not been terminated. If termination takes place on the basis of this Article, none of the parties is obliged to pay compensation to the other party regarding that part of the agreement which has been terminated.

#### Article 5: Inspection and complaints

1. Inspection at Fresh Diamond B.V.; expressing complaints:  
In the event that the purchaser collects the item at Fresh Diamond B.V., the purchaser is obliged to subject that item to a full inspection on that occasion, and to express a complaint without delay at the place where the collection of the item was made. In the previous sentence, "the purchaser" is understood to mean the purchaser itself, one or more of its members of staff, its buyer or the carrier who inspects on behalf of the purchaser. If the purchaser has the items sold collected by a different person than those referred to in the previous sentence, the items sold shall be inspected anyhow with regard to quantity and apparent condition.
2. Inspection and expressing complaints in the presence of the driver of Fresh Diamond B.V.:  
If the item is transported by the transport company of Fresh Diamond B.V., the purchaser shall inspect the item with respect to properties as yet uninspected immediately after arrival at the place of destination, and shall note possible complaints on the packing slip or waybill to be presented by the driver, or, if the driver does not present a packing slip or waybill, to express these to the driver in a different way. The provisions of this paragraph also apply if Fresh Diamond B.V. engages a different transport company than its own and the driver requires a full inspection on the occasion of the delivery.
3. Other instances of inspection and expressing complaints:  
If the item is not inspected on the basis of the provisions of paragraph 1, and inspection does not take place on the basis of the provisions of paragraph 2, the inspection and expressing of the complaint shall take place as soon as possible, and at any rate within four hours after delivery.
4. Inspection by any inspection institute:  
If the purchaser receives a visit from any inspection institute with public authority and this inspection institute believes to have discovered defects in the items delivered by Fresh Diamond B.V., the purchaser is obliged to warn Fresh Diamond B.V. immediately and by telephone, so that Fresh Diamond B.V., in as far as possible, is as yet able to speak to the inspection institute during the visit to the purchaser.
5. The purchaser shall describe a complaint as accurately as possible and shall confirm an oral complaint to Fresh Diamond B.V. in writing or by e-mail as soon as possible.
6. If after expressing the claim a solution is not reached instantly, the purchaser is obliged to give Fresh Diamond B.V. the opportunity to conduct an inspection itself or to have an inspection conducted. If Fresh Diamond B.V. does not opt for having the

inspection take place at the location of the item, Fresh Diamond B.V. is entitled to require that the purchaser returns the delivered items, or part of these as indicated by Fresh Diamond B.V., to Fresh Diamond B.V. at the expense of the party who is in the wrong, while the purchaser may retain a representative sample.

7. The purchaser always carries the burden of proof of its statement that the item, about which the purchaser has expressed a complaint, already had the properties, with which the complaint of the purchaser is concerned, at the time of delivery.
8. If the purchaser does not fulfil the obligations referred to in the above regarding inspection and complaints, this will result in the lapsing of a possible claim of the purchaser with regard to an alleged attributable breach or unlawful acting on the part of Fresh Diamond B.V..
9. If the purchaser does not comply with the rules as referred to in this Article and nevertheless handles a complaint, the efforts of Fresh Diamond B.V. shall be regarded as being an act of leniency without acceptance of any obligation or liability. If it appears that a complaint has been expressed mistakenly and Fresh Diamond B.V. performs work or delivers items in that context, Fresh Diamond B.V. may charge the costs thereof to the purchaser at the normal current rates of Fresh Diamond B.V..

#### Article 6: Performance and liability

1. If the purchaser has complied with the regulations as set out in the previous Article, legal proceedings based on an attributable breach can be instituted against Fresh Diamond B.V. during a period of one year only after the date of delivery, with due observance of the provisions of these General Conditions.
2. In the event that Fresh Diamond B.V. acknowledges that it has failed attributively, or if this is established otherwise, Fresh Diamond B.V. is entitled to announce to the purchaser within a reasonable term, and to require the purchaser to accept this, that Fresh Diamond B.V., without prejudice to its further rights under these General Conditions or the law:
  - Will repay the price paid by the purchaser,
  - Will redeliver free of charge,
  - Will deliver what is missing free of charge,
  - If possible: will remedy the performance free of charge.If Fresh Diamond B.V. thus performs within a reasonable term, this will mean that the agreement will have been performed in a correct manner, or, in the event of repayment of the price, that this agreement will have been terminated, in which events the purchaser is not entitled to compensation. In the making of its choice, Fresh Diamond B.V. is obliged to take the reasonable interests of the purchaser into account.
3. If it is judged that Fresh Diamond B.V. owes compensation in money by reason of an attributable failure, Fresh Diamond B.V. limits its liability to a maximum of the price agreed upon regarding the item concerned, exclusive of turnover tax. The purchaser will indemnify Fresh Diamond B.V. against all claims from third parties, including those regarding product liability, insofar as these claims exceed the maximum as referred to in the previous sentence.

Fresh Diamond B.V. will never be liable for damage as a result of incorrect storage or incorrect use of the item delivered by Fresh Diamond B.V..

4. In the event that, as a result of an attributable failure by Fresh Diamond B.V., personal injury or damage as a result of death takes place, Fresh Diamond B.V. limits the liability to the amount that is paid out under the liability insurance taken out by Fresh Diamond B.V.. If the liability insurance pays out a lower amount than the amount to which Fresh Diamond B.V. has limited its liability according to that which is stated in paragraph 3 of this Article, Fresh Diamond B.V. limits its liability to that amount.
5. In this Article, attributable failure also includes acting unlawfully.

#### Article 7: Packaging

1. Packaging originating from Fresh Diamond B.V., including pallets, crates and boxes, which are under deposit to Fresh Diamond B.V., will be taken back at the return price valid at the time of returning, possibly reduced by a fixed packaging payment. The packaging to be returned must be clean and fresh to such an extent that it is suitable for fresh, edible horticultural products.
2. In the event that Fresh Diamond B.V. takes back packaging by means of its own transport, the packaging must be sorted and ready for transport.
3. The purchaser shall always take a reasonable degree of proportionality into account regarding quantities of packaging taken out by the purchaser on the one hand and packaging to be taken back by Fresh Diamond B.V. on the other hand. If the purchaser does not comply with this, Fresh Diamond B.V. is entitled to refuse the packaging offered by the purchaser if and insofar as the logistic situation at Fresh Diamond B.V. gives rise thereto.
4. Packaging which has not been supplied by Fresh Diamond B.V. will not be taken back by Fresh Diamond B.V.

#### Article 8: Payment

1. Unless stated otherwise on the invoice, payment thereof shall take place within two weeks after the invoice date.
2. Payments to be made by the purchaser or third parties shall always be deducted first from other claims than those regarding which Fresh Diamond B.V. can enforce the retention of title as described in Article 3. With due observance thereof, payments shall be deducted first from all costs payable, subsequently from all interests payable and finally, from that principal sum which has been due for the longest time.
3. The purchaser is not entitled to set off the payments owed by the purchaser to Fresh Diamond B.V. with counterclaims. The purchaser is also not entitled to refrain from making a payment to Fresh Diamond B.V. by invoking a right of suspension.

4. As soon as the purchaser allows the payment term as referred to in paragraph 1 of this Article to expire without having paid, the purchaser will be in default by operation of law and interest will become payable by the purchaser at 1% per month until payment.
5. If Fresh Diamond B.V. hands over any claim on the purchaser to a third party, extrajudicial and legal costs are payable by the purchaser based on the rates usually applied by the third party which has been engaged by Fresh Diamond B.V., insofar as these are reasonable. These rates may also imply a fee per unit of time. In addition, the costs to be incurred reasonably by the third party concerned will also be payable by the purchaser. Regarding the legal costs, a minimum applies of the amounts to be settled by the Court outside an agreement.

## **Chapter 2: Sales on consignment**

### Article 9: Definition of sales on consignment

If Fresh Diamond B.V. makes items available on consignment, this means that, unless agreed otherwise by the parties, Fresh Diamond B.V. sells the items concerned to the consignment purchaser, whereby the provisions of Chapter 1 of these General Conditions are applicable, and whereby the purchaser is entitled to resell these items to Fresh Diamond B.V.. If the parties have agreed that the providing of consignment items by Fresh Diamond B.V. shall not be regarded as a sales transaction, the provisions of Chapter 1 of these General Conditions are nevertheless applicable by analogy.

### Article 10: Resale by the consignment purchaser

1. The consignment purchaser can only exercise the right of resale to Fresh Diamond B.V. if this done by the consignment purchaser within the term agreed upon thereto with Fresh Diamond B.V., and moreover, if the consignment purchaser is able to redeliver these items in such a condition that Fresh Diamond B.V. can include these in its normal sales process at the price agreed upon with the consignment purchaser and is able to sell these items to its purchasers without any shortcomings to those purchasers. If no resale term has been agreed upon, the resale and the ensuing delivery shall take place at suchlike speed that Fresh Diamond B.V. is able to include these items in its sales channels in the manner described in the previous sentence. The delivery by the consignment purchaser to Fresh Diamond B.V. shall take place under the DDP ..... delivery condition, unless agreed otherwise.
2. The price payable by Fresh Diamond B.V. to the consignment purchaser in the context of the resale is, in the event that Fresh Diamond B.V. includes the item in its sales channels in the manner as described in the previous paragraph, equal to the price which was stipulated by Fresh Diamond B.V. in the context of the sale to the consignment purchaser, to be reduced by a reasonable deduction on account of the costs to be incurred by Fresh Diamond B.V. in connection with the sale to be effected by Fresh Diamond B.V. or otherwise.

3. If Fresh Diamond B.V. and the consignment purchaser agree on a sales price which shall be realised by the consignment purchaser, and the consignment purchaser finds that it is not possible, or only possible by means of a disproportionate effort, to realise that price, the consignment purchaser shall contact Fresh Diamond B.V. in order to coordinate a new sales price. That which has been stated in the previous sentence is also applicable if the sales price as coordinated by Fresh Diamond B.V. with the consignment purchaser is only a sales price recommended by Fresh Diamond B.V..
4. If no sales price to be realised by the consignment purchaser has been coordinated by Fresh Diamond B.V. with the consignment purchaser, the consignment purchaser shall always coordinate the sales price with Fresh Diamond B.V. before proceeding to sell.

### **Chapter 3: Always applicable**

Article 11: 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 12: 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.