

## **GENERAL TERMS AND CONDITIONS OF SALE**

Van Geest International B.V. established in De Lier (the Netherlands) as well as its legal successors and/or affiliated firms, hereafter referred to as '**VGI**', has adopted the following General Terms and Conditions of Sale:

### **Article 1 Definitions**

1. The Other Party: each (legal) entity entering into an Agreement with **VGI**, and to whom **VGI** has submitted an offer, and in addition, its (authorised) representative(s), successor(s) in title as well as beneficiaries.
2. The Agreement: each Agreement that comes about between **VGI** and the Other Party, each alteration thereof or addition to, and also all (legal) acts performed in preparing and executing the Agreement.

### **Article 2 Applicability**

1. These General Terms and Conditions of Sale apply to all offers submitted by **VGI**, agreements entered into, and projects accepted. Hence these General Terms and Conditions of Sale apply to all (legal) acts (including omission thereof) performed by **VGI** and the Other Party in this matter.
2. The agreements as referred to in the first paragraph of this article include sales agreements, commission, consignment, framework agreements as well as related agreements. They also include storage and transshipment contracts.
3. The Other Party, in executing the stipulation of the Agreement, has given **VGI** permission to engage third parties, not being **VGI**'s staff members. The General Terms and Conditions of Sale also apply to these third parties – within the context of the fulfilment of the commitments of **VGI** pursuant to the Agreement – for the legal acts performed.
4. Deviations from and/or additions to any of the stipulations of these General Terms and Conditions of Sale shall bind **VGI** exclusively if **VGI** and the Other Party have emphatically agreed to these deviations and/or additions in writing and unreservedly. Any deviations and/or additions agreed upon shall only pertain to the Agreement in question.
5. If and insofar the Other Party upon accepting an offer or signing an Agreement, refers to the general terms and conditions not being the General Terms and Conditions of Sale of **VGI**, seeking to apply these general terms and conditions to the Agreement, then the other terms and conditions not being these terms and conditions shall apply to the Agreement provided **VGI** has emphatically accepted these general terms and conditions in writing and unreservedly.
6. If any of the stipulation of these General Terms and Conditions of Sale – subsequent to intervention by a judicial body – proves to be void, then only the stipulation concerned shall be nullified. All the other stipulations shall apply in full force.

### **Article 3 Offer and prices**

1. All agreements signed by **VGI** are deemed incorporated at the **VGI** office in De Lier (the

Netherlands), for both the execution of the Agreement and also as the payment for the Agreement.

2. All amounts stated in the offers, agreements and assignments are presented in euro or other common currencies, unless the parties have explicitly agreed otherwise. Also all prices are exclusive of any travel expenses and turnover tax, unless the parties have explicitly agreed otherwise in writing.
3. **VGI's** offers are noncommittal.
4. **VGI** reserves the right to dismiss assignments without stating grounds.
5. **VGI** is not obliged to maintain an offer and/or Agreement at a price that is based on a printing or writing error.

#### **Article 4 Agreement**

1. If an offer includes a noncommittal proposal that is accepted by a third party (Other Party), then **VGI** shall have the right to revoke the acceptance within two working days of the day of acceptance.
2. The Other Party is to receive a written confirmation of the instruction, and/or a written confirmation of the Agreement from **VGI**. This written confirmation may consist of the invoice and/or the purchase order.
3. If the parties after signing the Agreement have made further and/or additional agreements or if they have agreed upon alterations, then these shall only be binding if and insofar these agreements are laid down in writing. Again, the written confirmation may consist of the invoice and/or the purchase order.

#### **Article 5 Cancellation of the Agreement**

1. The Other Party may only cancel the Agreement in writing and prior to the commencement of the execution of the Agreement. Notwithstanding the stipulation below, if the Agreement is cancelled then **VGI** shall charge the Other Party all the preparatory costs incurred at all times.
2. If the Agreement is cancelled within 72 hours prior to the agreed time of delivery, then the Other Party shall pay both the preparatory costs that include the investment costs which **VGI** has incurred on behalf of the Other Party, and also compensation set at 50% of the agreed price. If the Agreement is cancelled later than 23 hours prior to the agreed time of delivery, then the Other Party is to pay the entire agreed price.
3. Upon cancellation of the Agreement the Other Party, regardless of the time of cancellation, shall pay **VGI** the costs which **VGI** must pay to third parties pursuant to and in connection with the – cancelled – Agreement.

#### **Article 6 Delivery**

1. The delivery date agreed upon is not a deadline, unless the parties have explicitly agreed otherwise.
2. Delayed delivery – within the limits of reasonableness – does not entitle the Other Party to cancel

the Agreement nor to any compensation.

3. The quantity delivered by **VGI** in terms of number and weight, as well as the requirements prescribed and under private law must meet whatever the parties have agreed to in this context, unless the Other Party presents a evidence to the contrary. Hence the parties are to agree upon an explicit presumptive evidence.
4. Delivery is to take place at the client's address, unless the parties have agreed otherwise in writing. The moment of delivery is the moment upon which the items are delivered at the client's address.
5. If the parties agreed that **VGI** shall store the items that are meant for delivery on behalf of the Other Party, not at its own location or a third party's location, then delivery shall take place once these items are stored.
6. **VGI** is entitled at all times and prior to meeting its obligations that ensue from the Agreement, to demand sufficient security for the observance of the payment obligation of the Other Party.
7. If the Other Party is still to pay **VGI**, particularly if the Other Party still has not (fully) paid **VGI**'s invoices, **VGI** may suspend delivery until the Other Party has met all its commitments.

#### **Article 7 Acceptance and objection**

1. Once **VGI** has delivered the items agreed then the Other Party shall inspect these items forthwith. This inspection is to take place in the presence of the driver. The Other Party must check whether the items delivered meet the stipulation of the Agreement. The Other Party is to check whether:
  - a. the right items have been delivered;
  - b. the items delivered meet the quality requirements agreed upon, or the requirements that may be set in view of common use and/or for commercial purposes;
  - c. the quantity of the items delivered (number, amount, weight) is consistent with that which parties have agreed to. If the Other Party establishes a deviation of less than 10%, then the Other Party is obliged to fully accept the delivery, while proportionally reducing the price agreed.
2. If items are delivered ex works in De Lier in accordance with Incoterms 2010, then the Other Party is to inspect the delivery at **VGI**'s net sales area.
3. Any shortcomings or objections other than the circumstances stated in paragraph 1c, must be reported to **VGI** in writing upon establishment yet within 24 hours after delivery. If **VGI** does not receive a complaint immediately after the delivery then the goods are expected to have been delivered in accordance with the stipulation of the Agreement and without any shortcomings.
4. Complaints concerning faults that are not directly visible must be reported to **VGI** in writing and once they have been established, thus allowing **VGI** to study the fairness of the incoming complaint. The Other Party must allow **VGI** to check the Other Party's complaint for correctness. If **VGI** does not receive the Other Party's written complaint within 24 hours after delivery, then it is assumed that the shortcoming and/or fault did not exist upon delivery, and the parties shall conclude that this shortcoming and/or fault presented itself subsequent to delivery.
5. The stipulation in this article is fully applicable if **VGI** delivers the items at a third party's address

on behalf of the Other Party. Hence the Other Party may never claim that he has not checked the delivery because it was stored elsewhere at a third party's address.

6. The Other Party is to treat the items as a careful debtor and/or proprietor at all times in order to preserve these items.

#### **Article 8 Payments**

1. The Other Party must pay the agreed price upon receiving the invoice for the delivery – without a discount or claim to compensation – within 14 days of the invoice date, unless this arrangement has been deviated from.
2. The Other Party may not settle the amounts invoiced by **VGI** with the Other Party's counterclaim, nor shall the Other Party suspend payment with regard to the Other Party's counterclaim, unless **VGI** has acknowledged the indebtedness of the counterclaim emphatically and unreservedly, or if the existence of the counterclaim has been legally and irrevocably established.
3. By exceeding the payment term the Other Party shall be indebted a 1% penalty interest rate, without prejudice to **VGI**'s other right to repayment of the extrajudicial expenses and statutory interest.
4. By exceeding the payment term the Other Party – without a prior notice being required - shall owe the outstanding amount and also the statutory commercial interest. Insofar it is established by law that the purchaser is not indebted the statutory commercial interest, then it is indebted the statutory interest to **VGI**.
5. If the Other Party, after receiving **VGI**'s notice of default, remains in default and fails to pay the outstanding invoices to **VGI**, the Other Party shall be indebted the total amount that consists of the outstanding amounts and the indebted interest, and it must pay the extrajudicial collection charges. The amount of the extrajudicial collection charges are set at 15% of the indebted principal sum.
6. All payments made by the Other Party shall be used to settle all indebted interest and costs in the first place and then for payment of the oldest payable invoices. This is no different if the Other Party states that the payment involves a more recent invoice.

#### **Article 9 Retention of title**

1. Items delivered by **VGI** remain property of **VGI** until the Other Party has paid all of **VGI**'s invoices by virtue of the Agreement they have entered into, including interest and expenses.
2. The Other Party may only resell the items delivered by **VGI** which are covered by retention of title, as is referred to in the first paragraph of this article, if resale is part of the Other Party's ordinary business operations.
3. If the Other Party fails to meet his obligations, or if **VGI** has a well-founded reason to believe that the Other Party is unable to meet his commitments by virtue of the Agreement, or if **VGI** suspects that the Other Party is not willing to meet its commitments, then **VGI** may withdraw the items delivered and which are covered by retention of title as referred to in the first paragraph of this article – from the Other Party and/or the third party that is keeping the items on behalf of the Other

Party. The Other Party must render assistance to these measures on the side of **VGI**.

4. If third parties wish to establish or exercise a right to items which **VGI** has delivered subject to retention of title, the Other Party is to inform the **VGI** of its intention forthwith. Also the Other Party is to draw this third party's attention to the fact that items have been delivered subject to retention of title. The Other Party is to provide the third party with the Agreement which the parties have entered into and which confirms that the items delivered are subject to retention of title.
5. The Other Party is obliged to render assistance to all measures which **VGI** wishes to take in order to protect its proprietary rights concerning the items it has delivered.

#### **Article 10 Liability and risks**

1. If the Other Party has access to items delivered by **VGI** and which are the property of **VGI** (including packaging) and/or items covered by retention of title as referred to in Article 9 of these General Terms and Conditions of Sale, then the Other Party, upon receiving the items delivered until it has returned these items, shall be liable for loss caused by and/or with these items.
2. The Other Party – if the Other Party has access to items that are the property of **VGI** (including packaging) and/or items covered by retention of title as referred to in Article 9 of these General Terms and Conditions of Sale – is also liable for loss which **VGI** has suffered as a result of the damage, loss or destruction of these items and provided the loss occurred in the period between the moment upon which **VGI** delivered the items and the moment upon which these items are returned and/or the moment upon which the ownership of these items has transferred.
3. If **VGI** due to circumstances for which the Other Party is held responsible must use its retention of title, suffering a loss nevertheless, then the Other Party shall be held liable for this loss.
4. If the Other Party in order to execute the Agreement has access to items that are property of **VGI** (including packaging) and/or which are covered by retention of title as referred to in Article 9 of these General Terms and Conditions of Sale, then the Other Party is to report theft, loss or damage o these items immediately to **VGI**. In case of theft or acts of war the Other Party is to notify the police of the municipality in which the theft has taken place and/or where acts of war have taken place without delay. The Other Party is to provide **VGI** with a copy of the police report.
5. If **VGI** has delivered items to the Other Party that are property of a third party, then the Other Party is to indemnify **VGI** against all third-party claims pertaining to loss caused by and/or with the items which **VGI** has delivered to the Other Party, including damage of items which **VGI** has delivered to the Other Party.
6. If the Other Party, and/or a third party to whom the Other Party has forwarded the items delivered by **VGI**, and if the Other Party performs a recall action directly or indirectly, then **VGI** can only be held liable for (some) of the related costs, if i) it is a fact that **VGI** is liable for the circumstance that has led to the recall, and ii) **VGI** has been consulted and has had a say prior to the recall, and also iii) if it is a fact that the Other Party has behaved like a reasonably acting and competent professional and has endeavoured to keep the costs that ensue from the recall as low as possible.
7. If **VGI** is liable for any loss whatsoever, then any liability of **VGI** shall be limited to the amount in question paid out by **VGI**'s business liability insurance, increased by this insurance's own risk. If

for any reason a payment is not made by virtue of this insurance then each liability shall be limited to the invoice amount corresponding with the Agreement on the basis of which the Other Party is submitting the claim, on the understanding that each liability shall amount to no more than EUR 40,000.

#### **Article 11 Force majeure**

1. In case of force majeure **VGI** shall be entitled to suspend the execution of the Agreement or terminate the Agreement partly or fully, without the Other Party bringing the matter before the court in order to claim compensation from **VGI**.
2. Force majeure on the part of **VGI** is also taken to mean:
  - strikes by **VGI**'s staff members and/or third parties which **VGI** has engaged in executing the Agreement;
  - sickness of **VGI**'s staff members and/or third parties which **VGI** has engaged in executing the Agreement;
  - measures and/or bans of the Netherlands and/or the foreign government to which **VGI** is bound;
  - unforeseen and unpredictable traffic impediments;
  - accident(s) with means of transportation used in executing the Agreement as well as unforeseen technical failures of these means of transportation;
  - **VGI** suppliers' (attributable) failure to observe;
  - theft of items required for executing the Agreement;
  - as well as all other unforeseen circumstances that disable **VGI** to execute the Agreement properly and on time and which are not at the risk and expense of **VGI**.
3. If **VGI** at the commencement of force majeure has already met some of its obligations, or is only able to meet some of its obligations, it may send out a separate invoice for the items/parts that have been delivered already. The Other Party is to pay the invoice as if it were a separate Agreement.
4. All Agreements the purpose of which is to sell agricultural products are subject to harvest proviso. If due to a disappointing harvest and in terms of the amount and/or the quality of the agricultural products much fewer products are available, including rejection by the competent authorities then is reasonably expected upon concluding the Agreement, **VGI** shall have the right to reduce the amounts sold accordingly. By delivering this reduced quantum **VGI** has met all of its delivery obligations and **VGI** is not obliged to deliver alternative agricultural products. Hence it shall not be held liable for any damage whatsoever.

#### **Article 12 Default and termination**

1. If the Other Party fails to meet any of the obligations that ensue from the Agreement with **VGI** or the law, or if the Other Party fails to do so properly or on time, including its payment obligation as referred to in Article 8 of these General Terms and Conditions of Sale, then the Other Party shall be in default without a notice of default being required and **VGI** shall be entitled to suspend execution of the Agreement and/or partly or fully terminate this Agreement and all Agreements

related directly without being liable to compensation and without prejudice to its further rights.

2. If the Other Party is in default then the Other Party is to pay **VGI** the statutory (commercial) interest as well as all (extra)judicial expenses which **VGI** has incurred in fairness in order to establish the Other Party's liability and/or to obtain satisfaction of its claim, and these fall under the scope of Article 6:96 second paragraph of the Netherlands Civil Code.
3. If the Other Party has applied for a moratorium or is bankrupt, or if the Other Party's company is shut down or liquidated, then the Agreements with the Other Party shall expire by operation of law, unless **VGI** notifies the Other Party that it demands the observance of (some of) the Agreements concerned within a reasonable amount of time, in which case **VGI** is entitled to suspend the execution of the Agreement(s) concerned without a notice of default being required until payment is sufficiently secured, without prejudice to **VGI**'s further rights.
4. **VGI** is entitled to terminate the Agreement if the Other Party is experiencing permanent circumstances beyond its control (force majeure). In this case the Other Party shall pay **VGI** all costs (yet to be) incurred.
5. In all cases referred to in paragraphs 1, 2, 3 and 4 of this article, all of **VGI**'s claims against the Other Party shall be immediately due and payable and the Other Party is to return the rented items or items unpaid for without delay.
6. The Other Party is to inform **VGI** forthwith if movable and/or immovable property has been seized that belongs to **VGI** and to which the Other Party has access in order to be able to execute the Agreement.
7. Upon bankruptcy or moratorium the Other Party is to notify **VGI** without delay, and immediately show a bailiff, guardian or administrator the Agreement referring to the proprietary rights of **VGI**.

### **Article 13 Packaging**

1. **VGI** uses packaging in order to deliver items. Packaging includes pallets and crates. If **VGI** charges a deposit, then the packaging shall be returned at the invoice price that prevails at the time of return (if parties are doing business in a foreign currency then the packaging shall be returned at the exchange rate that prevails at the time of return). Upon receiving the return packaging a fixed expense allowance might be charged in accordance with the regulation concerned. Upon request the Other Party shall have access to this regulation.
2. The packaging which the Other Party wishes to return must be clean and fresh to such an extent that it can be used for fresh and edible horticultural products without **VGI** having to intervene.
3. If packaging is to be returned by means of **VGI**'s means of transportation then the Other Party is to make sure that the packaging is sorted and ready for shipment.
4. Packaging that was not delivered by **VGI** shall be accepted if and insofar **VGI**'s selection includes the products concerned and provided the packaging is in good condition.

### **Article 14 Industrial and intellectual property rights**

1. **VGI** expressly reserves any intellectual and/or industrial property rights (trademarks) concerning any products it has delivered.

2. The Other Party may not use products delivered by **VGI** for violating a third party's intellectual and/or industrial property rights. The Other Party indemnifies **VGI** against any third-party claims pursuant to a violation of the intellectual and/or industrial right for which items delivered by **VGI** are used, and which take place after **VGI** has delivered items to the Other Party.

#### **Article 15 Applicable law**

1. The legal relationship between **VGI** and the Other Party is governed by Netherlands law to the exclusion of the Vienna Sales Convention.

#### **Article 16 Disputes**

1. Disputes that might ensue from a project, offer or agreement that is subject to these General Terms and Conditions of Sale including conflicts involving these General Terms and Conditions of Sale, shall be exclusively settled by the competent court in the jurisdiction where **VGI** is established, on the understanding that this forum choice does not interfere with **VGI's** right to settle a dispute by arbitration or a binding advice.
2. Parties, in deviation of the stipulation of the first paragraph of this article, may decide in writing to settle the dispute at a competent court of another jurisdiction.