



**GENERAL CONDITIONS EUROPE RETAIL PACKING B.V.**

Section A: General (Article 1 - Article 7)

Section B: With respect to provision of logistic services (Article 8 - Article 20)

Section C: With respect to contract for services (Article 21- Article 25)

Section D: With respect to sales (Article 26 - Article 34)

Section E: With respect to purchase (Article 35 - Article 42)

**Section A: GENERAL**

**Article 1. Applicability**

1. The provisions stipulated in the General Terms and Conditions of Europe Retail Packing B.V. (to be referred to below as 'General Terms and Conditions ERP') govern any and all legal relationships between all subsidiaries or group companies forming part of Europe Retail Packing B.V. (to be referred to below as 'ERP') and its third parties (to be referred to below as 'Contracting Party') such as: quotations, offers and agreements, unless the parties explicitly agree otherwise in writing. In the event that ERP and its Contracting Party (Client, Contractor or Supplier) conclude more than one agreement, these General Terms and Conditions will govern any and all such subsequent agreements, even if they have not been explicitly declared applicable.
2. Insofar as the application of a provision stipulated in these General Terms and Conditions would be contrary to a provision stipulated in a written agreement – other than general terms and conditions – between ERP and a Contracting Party, that provision will be deemed to be inapplicable, but the other provisions stipulated in these General Terms and Conditions will continue to apply in full.
3. The applicability of a Contracting Party's general terms and conditions, explicitly including any transferability clause or pledge clause with respect to any claims that ERP has against the Contracting Party in those terms and conditions, is explicitly rejected.

**Article 2. Scope of application**

1. In the event that transport activities are carried out – with due observance of the General Terms and Conditions ERP and insofar the parties have not derogated from them – the Dutch Transport General Terms and Conditions of 2002 (*Algemene Vervoerscondities 2002*, to be referred to below as the 'Transport Terms and Conditions') also will apply, in the version that has been deposited with the Registrar of the District Court of Rotterdam at the time at which note is taken of these General Terms and Conditions ERP. The Transport Terms and Conditions can be found at: [https://www.sva.nl/sites/bva\\_sva/files/downloads/2018-02/6012%20General%20Conditions%20of%20Transport%20-%20A4%20web.pdf](https://www.sva.nl/sites/bva_sva/files/downloads/2018-02/6012%20General%20Conditions%20of%20Transport%20-%20A4%20web.pdf). In the event that there is any conflict between any provision stipulated in Transport General Terms and Conditions and General Terms and Conditions ERP, the latter will prevail.
2. The CMR Convention governs cross-border transport with, as a supplement to that convention, the provisions stipulated in the preceding clause.
3. In the event that forwarding activities are carried out – with due observance of General Terms and Conditions ERP and insofar the parties have not derogated from them – the Dutch Forwarding Terms and Conditions (Nederlandse Expeditievoorwaarden) also will apply, in the version that has been deposited with the Registrar of the District Courts of Amsterdam, Arnhem, Breda and Rotterdam, the Netherlands, at the time at which note is taken of these General Terms and Conditions ERP. The Forwarding Terms and Conditions can be found at: <http://www.fenex.nl/Documents/Nederlandse%20Expeditievoorwaarden%201%20mei%202018/NEDERLANDSE%20EXPEDITIEVOORWAARDEN%20-%20EN.pdf>. In the event that there is any conflict between any provision stipulated in Forwarding Terms and Conditions and General Terms and Conditions ERP, the latter will prevail.
4. In the event that there is any doubt regarding which terms and conditions apply and combined services are being provided in that context, the activities referred to in this Article that must be deemed to be the most distinctive in light of the services to be provided will be considered determinative. ERP has the authority to decide which activities are the most distinctive, insofar as such cannot be determined unequivocally.

**Article 3. Confidentiality**

1. The Contracting Party undertakes to keep confidential any and all business information that it has acquired in the context of the agreement from ERP or from any other source, such as information about products and knowhow in the broadest sense of the words, unless it has a statutory obligation or professional duty to disclose the information or in the event that ERP has discharged it in writing from the duty of confidentiality.
2. The Contracting Party will also impose the duty stipulated in this Article on its staff members and/or any third parties that it engages in connection with the performance of the agreement.

**Article 4. Intellectual property**

1. ERP reserves all intellectual property rights to items that it uses or that may rest upon items that it delivers to a Contracting Party.
2. ERP has and retains ownership of all intellectual property rights to all graphic designs, tools, packaging, etc., produced on ERP's instruction and these may not be used by third parties without ERP's written permission.
3. The Contracting Party guarantees that the use of the Products/Delivery or the tools purchased or produced by the Contracting Party on behalf of ERP does not infringe upon any patent rights, brand rights, model rights, copyrights or other intellectual property rights held by third parties.
4. The Contracting Party indemnifies ERP against all claims ensuring from any infringement of the rights referred to in the previous paragraph and will compensate ERP for any losses resulting from any infringement.



**Article 5. Delivery in Pooling Fust/other packaging**

1. ERP makes use of various Pooling Partners. If the parties agree that delivery will take place via a Pooling system, the provisions of paragraphs 2 up to and including 6 of this article will apply. The Contracting Party acknowledges that the general conditions of the relevant Pooling Partner may apply to the use of the provided Pooling Fust and will observe these conditions.
2. ERP grants no guarantee with respect to delivery of the ordered Pooling Fust.
3. The Pooling Fust will remain the inalienable property of the relevant Pooling Partner. The Contracting Party may not give third parties the use of an empty Pooling Fust provided by ERP, unless a contract for (re)use has been concluded with the Pooling Partner. The Contracting Party will exclusively use the Pooling Fust for the performance of the agreement.
4. A deposit will be charged for the Pooling Fust provided by ERP to the Contracting Party. ERP will bindingly determine and separately communicate the amount of the deposit. The deposit is claimable and payable on acceptance of the Pooling Fust. The deposit will be refunded to the Contracting Party on return of the Pooling Fust in a good condition, as described in the paragraph below.
5. The Contracting Party will properly maintain and transport the Pooling Fust. The Contracting Party will return the Pooling Fust in an empty, clean and undamaged condition (damage includes staples or irremovable stickers), sorted according to type and placed on permitted pallets, to the depot of the Pooling Partner. A foldable Pooling Fust will be returned in a folded condition.
6. ERP is in case of non-compliance entitled to deduct the costs of emptying, discharge, repair, removal of stickers and staples and suchlike from the deposit.

**Article 6. General provisions**

1. Any amendments to the agreement and any derogations from these General Terms and Conditions will be valid only if they have been agreed in writing (which in all cases includes by e-mail).
2. In the event that any provision stipulated in these General Terms and Conditions is null and void or is nullified, the other provisions stipulated in these General Terms and Conditions will continue to apply in full.
3. ERP is authorised to amend and re-adopt these General Terms and Conditions. Those amended Terms and Conditions will enter into effect at the time at which the Contracting Party has had a reasonable opportunity to take note of them.
4. The Contracting Party's obligations that, by their nature, are intended to continue in effect after the agreement has been terminated will remain in force. The termination of the agreement explicitly will not discharge the Contracting Party from the provisions stipulated in respect of matters such as intellectual property rights, confidentiality, the applicable law and the competent court.
5. In the event that there are any derogations between translations of the agreement or this text, the Dutch version will prevail.

**Article 7. Applicable law and disputes**

1. Any and all agreements and any and all agreements that ensue from those agreements between ERP and the Contracting Party are governed exclusively to Dutch law.
2. Any and all disputes that arise between the parties in connection with this agreement and any and all agreements that ensue from it will be submitted exclusively to the District Court of The Hague, the Netherlands, unless, in appropriate cases, ERP wishes to subject such disputes to the determination of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) in accordance with that Institute's rules and regulations, in which case the arbitration proceedings will be conducted in Rotterdam.

**Section B: WITH RESPECT TO PROVISION OF LOGISTICS SERVICES**

**Article 8. Offering supply of logistics services**

1. A contract for the provision of logistics services is understood to include:
  - a. The entry of goods in a storage space on condition that such is carried out by ERP.
  - b. The keeping of goods in a storage space.
  - c. The other handling or processing of goods in a storage space on condition that such is carried out by ERP.
  - d. The removal of goods from a storage space on condition that such is carried out by ERP.
2. ERP will be able to carry out the work to the best of its ability, exercising the utmost care that is customary in the sector.
3. All offers and quotes by ERP are free of obligation, unless explicitly stated otherwise.
4. Dates and deadlines are approximates only. If a time period for execution is agreed, ERP will strive to observe it as closely as possible. Failure to observe the time period for any reason whatsoever will not entitle the Client to compensation or termination of the agreement.
5. ERP may transfer its rights and obligations under the agreement to a third party provided that continuity of the agreement is guaranteed.

**Article 9. Prices/rates**

1. Unless a price/rate has been explicitly agreed upon, the Client will owe the prices/rates that are usually charged by ERP and that are customary in the sector.
2. The agreed prices/rates relate only to the activities of ERP as expressed in the agreement. In the event that the work is not specified, this refers only to: entry, storage and the removal of goods.
3. If the Client cancels an order placed in whole or in part, ERP is entitled to charge the Client, either in whole or in part, for the space already ordered or prepared for the order.
4. ERP may pass on price increases of more than 10% in case of price changes in, e.g., energy costs, exchange rates, wages, raw materials and packaging material.

**Article 10. Term of the agreement**

1. The fixed-term agreement ends on expiry of the specified period, unless the parties have agreed otherwise.
2. If the agreement is entered into for an indefinite period of time, the parties have the right to terminate the agreement, subject to a notice period of one month. Notice of termination will be provided in writing.



**Article 11. Delivery, storage and collection of goods**

1. Goods will be delivered to ERP in a good condition and, if packaged, properly packaged.
2. The Client will ensure that the goods are delivered to the storage space free of costs.
3. Following receipt of the goods at its complex, ERP will provide the Client with a receipt. This receipt serves as exclusive proof that the goods described thereon have been received by ERP for storage/processing at the expense of the Client.
4. If it is agreed that the goods will be received at a different place than referred to in the first paragraph and transported to the complex of ERP, ERP will charge the Client the usual rates for this.
5. ERP is free to choose the place of storage unless expressly agreed otherwise. ERP is at all times authorised to move the goods to another storage space.
6. The delivery and collection of goods will take place during the applicable working hours for ERP personnel.
7. If goods, before being taken into receipt by ERP, must be provided with accompanying documents or are subject to any other government regulations (e.g., coding), the Client will arrange such. ERP therefore accepts no liability for any loss incurred by the Client as a result of the Client's failure to comply with any (government) regulation. The Client indemnifies ERP against all (financial) consequences that may result from non-compliance with this obligation.
8. Delivery to and acceptance by the Client takes place by ERP handing over the goods and receipt thereof by Client, at the place of storage.

**Article 12. Risks and insurance**

1. All storage and/or processing of goods will take place at the risk and expense of the Client.
2. The Client will always take out adequate insurance against all risks that the stored and/or processed goods may incur during the term of the agreement. ERP is not obliged to take care of any insurance of the goods, unless expressly agreed in writing with the Client.

**Article 13. Temperature**

1. If the Client and ERP have not agreed on a storage temperature of the goods, ERP will determine the storage temperature to the best of its knowledge and experience. ERP accepts no liability for damage resulting from the choice of storage temperature.
2. Minor fluctuations, including those resulting from the entry and removal of goods or the opening of doors, will not be regarded as deviations.
3. If the Client offers goods to ERP that are sensitive to CO<sup>2</sup> damage, require a critical storage temperature or otherwise require special attention, the Client will explicitly report this in writing to ERP in advance. In the absence of such a report, ERP accepts no liability for damage resulting from such circumstances.

**Article 14. Work to be carried out for the Client**

1. Work within the context of this article includes repacking, packing, bulk packing, checking, weighing, cutting, marking and applying stickers. With due observance of Article 18, ERP accepts no liability to the Client or third parties for damage caused by or in connection with the aforementioned work.
2. Insofar as work by ERP gives rise to a new product within the meaning of product liability legislation, the Client and not ERP will always be regarded as the producer. The Client will affix its own labels or distinguishing marks on the "processed" goods. If the Client fails to do so, ERP is entitled to provide the goods with the Client's name, address and place of residence. All related costs will be borne by the Client. ERP is entitled to cancel the agreement if the Client refuses to apply mandatory government markings.

**Article 15. Complaints**

1. All complaints of the Client against ERP will be reported in writing (including email) within 48 hours after the goods have left ERP. If the Client demonstrates that the complaint could not have been reported earlier, the notification will in any case be made within 24 hours after the claim has become known to the Client.
2. The written complaint will at least include a detailed description of the defect with accompanying photos. In the absence of a timely written report, the Client cannot appeal to any defects.

**Article 16. Invoicing and payment**

1. Payment for the provided services will be made within 21 days of the invoice date, unless the parties have explicitly deviated from this rule in writing.
2. ERP is entitled to send periodic invoices.
3. Any costs attached to payment in a currency other than invoiced, such as bank costs and exchange rate differences, will be fully for the account of the Client.
4. Complaints or objections against the amount of the invoice will not suspend the payment obligation.
5. The Client is not entitled to set off amounts owed to ERP against claims on a company forming part of the ERP concern.
6. The Client will on expiry of the term of payment be in default without any notice of default being required. The Client will from that moment owe compound interest of 1% per month on the entire outstanding amount. The Client will also owe extrajudicial costs set at 15% of the principal due, subject to a minimum of € 500.



7. Payments made by the Client will always first serve as settlement of interest and costs due, followed by the oldest principal due.
8. ERP can award a credit limit to the Client. A credit limit is the maximum balance of all outstanding claims and orders at any time.
9. ERP may require an advance payment or other form of security from the Client if the parties have no transaction history or, in ERP's opinion, the Client's payment behaviour to us and/or the size of the transactions give reason for such.
10. ERP's claims fall immediately due in case of liquidation, bankruptcy or a moratorium of payment on the part of the Client.

**Article 17. Force majeure**

1. ERP is entitled in case of temporary force majeure to suspend the agreement and in case of permanent force majeure (a contiguous period of at least 2 months) to terminate the agreement with immediate effect, without owing any compensation.
2. Force majeure will in any event include – but is not limited to – any and all circumstances that prevent or seriously impede the performance of the agreement, such as war, threat of war, civil war, riots, flooding, flood damage, fire, a pandemic or an epidemic, (state) measures with regard to a pandemic or an epidemic (such as a (semi-)lockdown), unforeseen technical complications, business interruptions, strikes, industrial actions, embargos, import and export bans, full or partial attachment, or seizure of stocks by civil or military governments, all of the foregoing at either ERP or third parties engaged by ERP.

**Article 18. Liability**

1. Based on the nature of the agreement and the fact that the goods are perishable, the parties agree that the liability of ERP is limited in the sense determined below. One of the reasons for this lies in the fact that contractual liability can only be insured at very high premiums, while the Client can insure the goods against external calamity at a significantly lower cost and the nature of the products and their quality at the time of entry have a major influence on perishability, whereas ERP cannot exert any influence other than to maintain the storage temperature.
2. Notwithstanding what is stipulated elsewhere in these terms and conditions with regard to the exclusion of liability, ERP will accept no liability to the Client for damage, loss or third-party claims on any grounds whatsoever, unless the Client demonstrates that this can, according to objective standards, be attributed to intent or gross negligence on the part of ERP.
3. Liability of ERP for auxiliary persons and subordinates engaged by ERP in this agreement or the performance thereof is excluded.
4. Supplementary to the relevant provisions of the terms and conditions as referred to above in Article 2 and Article 14, if it is established in law that liability nevertheless exists, this liability is limited to the amount paid to ERP by its insurer under the insurance policy.
5. If ERP cannot invoke the limitation of liability set forth in Article 18.4, the liability will be maximised at an amount equal to 6 times the calculated storage fee for a month of the goods concerned and, in the event of processing, to a maximum of 2 times the handling fee charged for the goods concerned, or at least the part thereof that can be attributed to the damage in the case in question.
6. ERP accepts no liability for indirect loss, including consequential loss, loss of profit, missed savings, loss resulting from stagnation in operations and all other loss not falling under direct loss in the sense of these General Conditions.
7. Any legal claim for compensation of loss by ERP will lapse if the Client does not report such to ERP in writing within 10 calendar days of the occurrence of the loss event and subsequently has not issued a summons against ERP within at least 6 months after the Client could have known of both the loss and ERP's liability.
8. The Client indemnifies ERP, its employees and engaged auxiliary persons against all third-party claims ensuing from, or in any way related to, the storage or processing of goods by ERP, including claims based on (an infringement of) intellectual property rights and (product) liability ensuing from any defect in the stored or processed goods.

**Article 19. Right of retention and pledge**

1. In order to secure payment of all that the Client owes or will owe ERP for whatever reason, ERP will acquire both the right of retention and pledge on all monies and goods of the Client, which ERP may have in its custody at any time. The right of pledge is automatically established on entering into the contract for services (including transport) and bringing goods under the control of ERP, for example because they are on its premises.
2. The sale of any collateral will take place in the manner determined by law or by private sale, if the parties agree thereto.

**Article 20. Suspension and termination**

1. In respect of all agreements, ERP is authorised to suspend the agreement or to terminate the agreement effective immediately, in whole or in part, by means of a written notification, without any prior notice of default being required:
  - a. if the Client imputably fails to comply with one or more of its obligations and/or compliance is impossible;
  - b. if ERP deems it likely that the Client is (or will be) unable or unwilling to comply with its obligations, including in the event that attachment is levied on its goods in connection with substantial debts and that attachment is maintained for longer than two months;
  - c. if the Client has applied for or granted a suspension of payments, petitions for or is declared bankrupt, files an application for the application of a debt rescheduling scheme or if the Client is placed under receivership or administration, liquidates its business or ceases its activities, or in any way appears to be insolvent;
  - d. if significant changes are implemented in the ownership or control structure at the Client or at ERP itself, including mergers and acquisitions; or
  - e. in case of permanent force majeure as described in Article 17.
2. ERP is never obliged to pay any form of compensation in case of suspension or termination.
3. If ERP suspends compliance with its obligations, it will retain its claims under the agreement and the law. If the agreement is terminated, all the claims of ERP against the Client will become due and payable immediately.
4. If the agreement is terminated, the Client will compensate all costs incurred by ERP, without prejudice to the right of ERP to demand compensation in full.



**Section C: WITH RESPECT TO CONTRACT FOR SERVICES**

**Article 21. Offers, conclusion of agreement and prices**

1. All requests, orders and offers by ERP, in any form whatsoever, are always free of obligation, unless explicitly stated otherwise.
2. An agreement will be deemed to have been concluded following confirmation by ERP within 48 hours after the Contractor has sent the acceptance or, in the event that the offer is made by the contractor, when ERP accepts that offer.

**Article 22. Payment**

1. Payment will be made within 21 days of the invoice date.
2. ERP is entitled at all times to set off its claims and of its directly or indirectly affiliated companies against the outstanding invoices of the Contractor addressed to ERP and/or of its directly or indirectly affiliated companies.
3. Payment by ERP does not entail acknowledgement that the Contractor has (adequately and/or fully) fulfilled all its obligations to ERP.

**Article 23. Liability**

1. The Contractor is liable for and indemnifies ERP against any and all damage, of any kind whatsoever, that it or third parties suffer as a result of the performance by the Contractor.
2. The Contractor indemnifies ERP against any third-party claims within the meaning of the first paragraph.
3. The Contractor will take out adequate liability insurance within the meaning of this article, with exclusion of any recourse against ERP or its clients. The Contractor will, on request, allow ERP to inspect the policy.

**Article 24. Suspension and termination**

1. If the Contractor fails to comply with any obligations arising from the agreement or other agreements that ensue from it, or in the event that the Contractor fails to do so properly and in a timely manner, and/or in the event that the Contractor goes bankrupt, the Contractor is granted a suspension of payments, attachment is levied on the Contractor's goods or assets, the Contractor's business is shut down, the environmental permit is revoked, or in the event of liquidation or any other comparable situation within or at the Contractor's business, the Contractor will be in default by operation of law and without any notice of default being required.
2. In the circumstances referred to in the preceding paragraph, ERP will be entitled to terminate the agreement in whole or in part and/or suspend its payment obligations and/or transfer the performance of the agreement to third parties in whole or in part, without being obliged to pay any compensation and without prejudice to any other rights that are vested in it, such as the right to full compensation of damage and the reimbursement of costs.
3. In the case referred to in paragraph 1 of this article, any and all claims that ERP may have or acquire against the Contractor will become due and payable immediately.

**Article 25. Transfer**

1. The Contractor will not transfer the performance of its obligations under the agreement to third parties in full or in part without the prior written permission of ERP.

**Section D: WITH RESPECT TO SALES**

**Article 26. Offers, quotes, conclusion of agreements and prices**

1. All offers and quotes by ERP are free of obligation, unless expressly stated otherwise.
2. Agreements will be regarded as concluded:
  - a. following the signing by both parties of an agreement;
  - b. in the absence thereof, following the written acceptance and confirmation by ERP of an order placed by the Client;
  - c. in the absence thereof, by the factual delivery of the sold Products.
3. Further and/or supplementary agreements or changes will only be valid if agreed in writing by the parties.
4. The person granting the assignment on behalf of the Client declares to be authorised to represent the Client and to have fulfilled all necessary formalities in that respect.
5. Verbal commitments by and agreements with employees of ERP are binding only if and insofar as confirmed by us in writing by the authorised persons..
6. ERP may charge on price increases of more than 10% if between the time of acceptance and delivery price changes have occurred with respect to, for example, prices of the Product, exchange rates, wages, raw materials and packaging materials.

**Article 27. Delivery**

1. Delivery will be made from one of ERP's locations (ExW Incoterms version 2020), unless agreed otherwise in writing. The Client will take receipt of the purchased Products at the agreed location(s).
2. The Client assumes the risk of loss or damage with respect to the sold Products from the time of delivery and - if the Client does not cooperate in the delivery - from the time that delivery is refused or no cooperation is granted while the Client was obliged to do so. As soon as the Products have left ERP's company, the Client, also in deviation of the provisions of paragraph 1 of this Article, will assume risk for all damage, directly or indirectly, that may be caused by or to the Products.
3. The Client will accept the Products at the agreed location(s) and times. If the Client fails to take receipt of the Products on the day of delivery, ERP is entitled to store or destroy the Products, whereby the costs of transport, storage, sale or destruction of the Products are for the account of the Client.
4. If the Products are stored by ERP or a third party on behalf of the Client, delivery will be deemed to have taken place at the time of storage of the Products. The storage will take place for the risk and account of the Client.



5. Delivery times are indicative only. If several days of delivery are stated in an order confirmation, ERP will strive to evenly distribute delivery over those days. Any delay in delivery, insofar as within reasonable bounds, will not entitle the Client to rescind the agreement or to claim compensation.

**Article 28. Products for delivery**

1. The delivered quantity will as regards number and weight comply with requirements made under public and private law, including the agreements between the parties, barring evidence to the contrary by the Client.
2. Minor deviations in terms of size, quality and colour will be tolerated.
3. Products that are delivered from the company of a supplier/grower only give right to delivery of the quantity and quality of products available at the grower on the specified date. The Client will sign a delivery note on receipt of the Products. If the grower has insufficient Products available for delivery on the specified date, ERP can in consultation with the Client supplement the order with Products of the same type, price and quality that are elsewhere available to ERP.
4. All agreements regarding the sale of (agricultural) Products are subject to reservations with respect to harvest and processing. If as a result of a disappointing harvest, including the rejection of agricultural products by the competent authorities, the quality and quantity of Products are less than may reasonably have been expected on conclusion of the agreement, ERP is entitled to reduce the quantity of sold Products accordingly. Delivery of the adjusted quantity will constitute full compliance with ERP's delivery obligations. ERP is in that case not obliged to deliver replacement Products and accept no liability for any losses whatsoever.

**Article 29. Complaints**

1. The Client will directly on delivery of the Products and packing materials check whether the delivery complies with the agreement, namely:
  - a. whether the correct Products have been delivered;
  - b. whether the delivered Products comply with the agreed quality requirements for normal use and/or tracking purposes;
  - c. whether the quantity (number, amount, weight) of the delivered Products complies with that which was agreed. If the deviation is less than 10% of the total, the Client will accept the delivery against a proportionate reduction of the price.
2. Complaints will be stated by the Client on the delivery note/freight document, failing which the Client cannot appeal to any defects.
3. Any defects that could not be ascertained during the aforementioned check will be reported immediately by the Client to ERP, by means of an email to the relevant commercial contact. The Client will in any event, report the defect within 12 hours of delivery of the Products to the Client. The written complaint will at least include a detailed description of the defect with accompanying photos. In the absence of a timely written report, the Client cannot appeal to any defects.
4. The Products subject to complaint will be stored in their entirety and the Client will give ERP an opportunity to inspect them. The Client will take care of the Products as befits a good custodian.
5. The Client can only return Products with ERP's written approval. All return shipments are for the risk and account of the Client.
6. If the Products are wrongly rejected by the Client, all related costs, including the costs of (re)inspection (whether or not by third parties), handling and storage, will be for the account of the Client.
7. If ERP deems the complaint founded, it can at its election retrieve and replace the Products or credit the Client for the relevant part of the delivery. ERP's liability in case of a justified and correctly submitted complaints is limited within the boundaries of Article 33.

**Article 30. Retention of title**

1. Ownership of the Products delivered by ERP will first pass to the Client after the latter has fulfilled all its obligations to ERP, including the payment of invoices, contractual interest and extrajudicial collection costs. The consequences under property law of the extended and extensive retention of title are governed by the laws of the country of destination.
2. The Client may only within the context of its normal business operations use or resell the Products delivered by ERP, which pursuant to Paragraph 1 fall under the retention of title.
3. If ERP wishes to exercise the retention of title provided for by this article, the Client now for then gives its unconditional and irrevocable permission to ERP or third parties designated by ERP to access the places where its property is located and to retrieve the Products.
4. If third parties wish to attach any right to the Products delivered under retention of title, the Client will inform ERP thereof as soon as can be reasonably expected.
5. The Client will insure the Products delivered under retention of title and keep such insured against fire, theft, explosion and water damage, and will provide ERP with a copy of the policy at its first request.

**Article 31. Invoicing and payment**

1. Payment of the delivered Products will take place within 21 days of the invoice date, unless expressly agreed otherwise in writing.
2. ERP is entitled to send periodic invoices.
3. Any costs attached to payment in a currency other than invoiced, such as bank costs and exchange rate differences, will be fully for the account of the Client.
4. Complaints or objections against the amount of the invoice will not suspend the payment obligation.
5. The Client is not entitled to set off amounts owed to ERP against claims on a company forming part of the ERP concern.
6. The Client will on expiry of the term of payment be in default without any notice of default being required. The Client will from that moment owe compound interest of 1% per month on the entire outstanding amount. The Client will also owe extrajudicial costs set at 15% of the principal due, subject to a minimum of € 500.
7. Payments made by the Client will always first serve as settlement of interest and costs due, followed by the oldest principal due.
8. ERP can award a credit limit to the Client. A credit limit is the maximum balance of all outstanding claims and orders at any time.
9. ERP may require an advance payment or other form of security from the Client if the parties have no transaction history or, in ERP's opinion, the Client's payment behaviour to us and/or the size of the transactions give reason for such.
10. ERP's claims fall immediately due in case of liquidation, bankruptcy or a moratorium of payment on the part of the Client.



**Article 32. Force majeure**

1. ERP is entitled in case of temporary force majeure to suspend the agreement and in case of permanent force majeure (a contiguous period of at least 2 months) to terminate the agreement with immediate effect, without owing any compensation.
2. Force majeure will in any event include – but is not limited to - all circumstances that hinder or seriously impede the performance of the agreement, such as: war, war risk, civil law, civil unrest, water hazard, water damage, fire, a pandemic or an epidemic, (state) measures with regard to a pandemic or an epidemic (such as a (semi-)lockdown), transport problems, unforeseen technical complications, business interruptions, industrial action, blockades, import and export bans, full or partial seizure or reclamation of supplies by a civilian or military government, lack of transport capacity, late or non-delivery by ERP's suppliers, as well as scarcity that permanently or temporarily hampers or rules out delivery, both as regards ERP and any third parties engaged by ERP in the delivery.

**Article 33. Liability**

1. ERP accepts no liability for loss of any nature whatsoever, direct or indirect, including business interruption and consequential loss, except in case of intent or gross negligence on its part. This exclusion also extends to auxiliary persons and subordinates engaged by ERP in this agreement or the performance thereof.
2. If it is established by a court of law that ERP is liable for loss, the liability of ERP is limited to the amount paid to ERP by its insurer under the insurance policy.
3. If ERP cannot invoke the limitation of liability set forth in Article 33.2, its liability will not exceed the invoice amount, excluding VAT, or at least that part thereof that can be attributed to the loss event, or the amount paid out by ERP's insurer with respect to the loss event.
4. ERP accepts no liability for indirect loss, including consequential loss, loss of profit, missed savings, loss resulting from stagnation in operations and all other loss not falling under direct loss in the sense of these General Conditions.
5. Any legal claim for compensation of loss by ERP will lapse if the Client does not report such to ERP in writing within 10 calendar days of the occurrence of the loss event and subsequently has not issued a summons against ERP within at least 6 months after the Client could have known of both the loss and ERP's liability.
6. The Client will indemnify ERP, its employees and its engaged auxiliary persons for all claims (for compensation) by third parties ensuing from, or in any way related to, the sale or delivery of Products by ERP or the Client, including claims based on (an infringement of) intellectual property rights, such as breeder's rights, and liability ensuing from any defect in the delivered Products.

**Article 34. Suspension and rescission**

1. ERP is entitled, by means of a written statement and without prior notice of default or notification, to fully or partially suspend or rescind any agreement with immediate effect:
  - a. If the Client attributable defaults on one or more of its obligations and/or fulfilment is impossible.
  - b. If ERP considers it probable that the Client is unable or unwilling to fulfil its obligations, including if attachment is opposed on the property of the Client due to significant debts and said attachment is maintained for longer than two months.
  - c. If the Client applies for a moratorium of payment, is granted a moratorium of payment, applies for bankruptcy, is declared bankrupt, requests the application of a debt rescheduling scheme or if the Client is placed under guardianship or administration, proceeds to liquidate its company or ceases its activities or in any way appears to be insolvent.
  - d. If significant changes occur in the ownership or control structure of the Client or ERP, including mergers and takeovers.
  - e. In case of permanent force majeure as described in Article 32.
2. ERP is never obliged to pay any form of compensation in case of suspension or rescission.
3. If ERP suspends fulfilment of the obligations, it reserves its rights under the agreement and the law. All ERP's claims on the Client immediately fall due on rescission of the agreement.
4. The Client will in case of rescission of the agreement compensate all costs incurred by ERP, without prejudice to its right to demand compensation in full.

**SECTION E: PURCHASE**

**Article 35. Offers, quotes, conclusion of agreements and prices**

1. All requests, orders and offers by ERP, in any form whatsoever, are always free of obligation, unless expressly stated otherwise.
2. An agreement is concluded when confirmed by us within 48 hours after the Supplier has sent its acceptance or, in case an offer is made by the Supplier, by accepting the Supplier's offer.
3. The Supplier is not entitled to raise the agreed price, which will include the costs of packaging, transport, insurance and unloading, unless expressly agreed otherwise in writing.

**Article 36. Quality**

1. The Supplier guarantees:
  - a. That the Delivery complies with the quality requirements and specifications stated in the agreement and that the Delivery is free of defects.
  - b. That the composition and quality of the Delivery comply in full with all applicable requirements made by law and/or other government regulations, which are in force at the time of conclusion of the agreement.

**Article 37. Delivery and transfer of ownership**

1. Delivery will take place within the stated delivery times, unless the parties agree otherwise in writing. The Supplier will in case of late delivery be in default, without requiring further notice.
2. The Supplier will immediately notify ERP in writing as soon as it knows or expects that timely delivery of the Products is not possible, stating the circumstances that caused the delay, the measures (to be) taken and the expected duration of the delay. The Supplier will



remain obliged to effect delivery. If the Supplier fails to provide adequate notification, a later appeal to late delivery will not be accepted, also not in case of force majeure.

3. The Supplier is liable for all losses incurred by ERP and its clients as a result of late or non-delivery by the Supplier.
4. The delivery will be made to one of ERP's locations (DDP Incoterms version 2020), unless agreed otherwise in writing.
5. Delivery and transfer of risk thereon will pass in all events when the Delivery arrives at one of ERP's locations or another location designated by ERP also in the event of deviation from the provisions of the fourth paragraph above (for example, if another Incoterm is agreed upon).

**Article 38. Inspection**

1. ERP is entitled to inspect the Products before acceptance. Inspection and acceptance of the Delivery will take place at one of ERP's locations, or at another location designated by ERP in case of deviation from Article 37.4.
2. Inspection and/or testing by ERP and/or a third party designated by ERP can take place before, during and after delivery. The Supplier will provide its cooperation, including by granting access to the storage site of the Delivery and by giving insight into the documents required for the inspection.
3. ERP will inform the Supplier if the Delivery does not comply with the agreement during an inspection before, during or after delivery, and are therefore rejected. The Supplier will in that case take all necessary measures to fulfil the agreement. Non-compliance discovered at the inspection is deemed to have already existed at the time of the delivery without proof to the contrary.
4. ERP will inform the Supplier as soon as possible if the Delivery has been rejected after delivery. The Supplier is liable for all costs incurred by ERP as a result of the rejection of the Delivery, including the costs of inspection and transport and disposal costs.
5. ERP can in case of rejection of the delivered Products choose between:
  - a. A price reduction.
  - b. Returning the Delivery at the expense of the Supplier and fulfilment, whether or not in combination with compensation.
  - c. Full or partial rescission of the agreement in accordance with Article 41, whether or not in combination with compensation.
6. Inspection of the Delivery does not release the Supplier from any liability, including damage that ERP suffers as a result of hidden defects.

**Article 39. Payment**

1. Payment will take place within 21 days of receipt of the invoice and after the Delivery has been received in full and approved.
2. ERP is at all times entitled to set off any of its and/or of its directly or indirectly affiliated companies claims on the Supplier against outstanding invoices from the Supplier to ERP and/or companies directly or indirectly affiliated to ERP.
3. Payment by ERP does not entail acknowledgement that the Supplier has (adequately and/or fully) fulfilled all its obligations to ERP.

**Article 40. Liability**

1. The Supplier is liable for and indemnifies ERP against all losses, of any nature whatsoever, that ERP and/or third parties may incur as a result of the delivery by the Supplier.
2. The Supplier indemnifies ERP against third-party claims for compensation as referred to in the previous paragraph.
3. The Supplier will take out adequate insurance against liability referred to in this article, with the exclusion of recourse against ERP or its clients. The Supplier will allow ERP to inspect the policy sheet at its request.

**Article 41. Suspension and rescission**

1. The Supplier will be in default, without requiring any notice, if it does fails to adequately fulfil any obligation under an agreement and/or in case the Supplier is subject to bankruptcy, moratorium of payment, attachment, suspension of business, withdrawal of the environmental permit, liquidation or any other comparable circumstance regarding the business of the Supplier.
2. ERP is in case of the circumstances referred to above entitled to rescind the agreement in full or part and/or to suspend its payment obligations and/or assign performance of the agreement in full or part to third parties, without being obliged to pay any compensation and without prejudice to all ERP's other rights, including the right to full compensation and refund of the purchase price.
3. In case of the circumstances referred to in paragraph 1 of this article, all the claims that ERP has or may acquire on the Supplier will fall due immediately in full.

**Article 42. Transfer**

1. The Supplier will not assign the obligations under the agreement in full or part to a third party without the prior written permission of ERP.