

General Terms and Conditions  
Marktvertrieb Dieter Schwerin GmbH

**1. Validity**

1.1 These General Terms and Conditions ("GTC") apply to all contracts for the supply of goods between Marktvertrieb Dieter Schwerin GmbH ("Seller") and its contractual partners ("Buyer") unless otherwise expressly agreed in writing. Deviating conditions of the Buyer, such as general purchase conditions are not binding for the Seller. This shall also apply if the Seller performs the delivery to the Buyer without explicitly contradicting to the Buyer's purchase conditions and/or unconditionally accepts the consideration of the Buyer.

1.2 The Seller's offers are always subject to change and can be revoked by the Seller if not accepted by the Buyer before.

**2. COFREUROP**

In addition to the GTC the provisions of the "COFREUROP"-Business Conditions including the Annexes 1 to 3 (classification according to loss rates, classification according to degree of perishability and template of an expert opinion form) for freshly edible horticultural products (EU) in its latest version, which is valid at the conclusion of the contract, shall apply. In case of inconsistencies between said "COFREUROP"-Business Conditions and these GTC, the provisions of the GTC shall prevail.

**3. Retention of Title**

3.1 Until the complete fulfillment of all actual and future claims of the Seller against the Buyer irrespective of legal basis the delivered goods shall remain the property of the Seller.

3.2 The Buyer is entitled to resell the goods in normal business operations. In this case, the Buyer assigns to the Seller all claims against including all ancillary rights against the purchasers or third parties which result from the resale of the goods no matter if the goods under retention of title are resold without or after processing. The Seller accepts this assignment. The Buyer shall remain authorised to collect a debt assigned to the Seller. The Seller's right to collect the claims assigned to him shall remain unaffected. However, the Seller undertakes to not collect claims assigned to him as long as the Buyer meets his payment obligations. The Buyer shall be obliged to (i) inform the Seller of the debtors and details of the assigned claims, (ii) to hand over the relevant documents and (iii) to inform the debtors of the respective assignment. If the goods were resold together with other goods that do not belong to the Seller, the claim of the Buyer against the customer shall be deemed assigned in the amount of the agreed purchase price.

3.3 The purchaser shall be entitled to process the goods in normal business operations. In case of processing of the goods with goods of the Buyer, the Buyer transfers ownership of the new property to the Seller; the Buyer shall store the new item in favor of the Seller. The new items shall be considered as goods under retention of title according to the provisions of the GTC.

If the goods are processed with other items not belonging neither to the Seller nor to the Buyer, the Seller shall acquire co- ownership of the new item in proportion of the invoice value of the reserved goods to the invoice value of the other goods at the time of processing or mixing used. The resulting co-ownership shall be considered as goods under retention of title within the meaning of these GTC. If the Seller combines goods with other movable objects into a single object or inseparably mixes these goods and the other item is to be regarded as the main item, it is agreed that the Buyer proportionately transfers ownership to the Seller, if and to the extent that the main object belongs to him. The resulting from the combining or mixing shall be considered as goods under retention of title within the meaning of these GTC.

3.4 If the Buyer is in default of payment, the Seller is entitled to revoke the authorizations of the Buyer to resell or process the goods under retention of title. The exercise of the aforementioned right does not imply a rescission of the contract.

3.5 If the value of the collateral deposited for the benefit of the Seller exceeds the amount of secured claims by a total of more than 15%, the Seller will release the securities on request of the Buyer insofar as their value exceeds the secured claims of more than 15%.

3.6 The Buyer shall immediately inform the Seller about the case of attachment or other interventions by third parties with regard to the goods under retention of title in order to be able to seek judicial

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protection. If the third party is not capable to refund the Seller for any judicial and extrajudicial costs of a lawsuit, the Buyer shall be liable to do so.

3.7 In the event of breach of contract by the Buyer, especially default in payment, the Seller is entitled to take back the goods subject to retention of title or to claim the transfer of the Buyer's claim for return against third parties. If the Seller takes back the goods this shall also constitute a rescission of the contract. The rescission of the contract does not exclude the right of the Seller to demand compensation.

3.8 The Seller is entitled to assign its claims resulting from the business relationship with the Buyer.

### **4. Right of Retention and Set-off**

The Buyer may only withhold or offset due payments against their own counter-claims if these are accepted, uncontested or have been found to be legally binding.

### **5. Force Majeure**

If the Seller for reasons of force majeure is not able to fulfill its delivery obligations, the Seller shall be exempt from its obligations for the duration of the state of force majeure. If the state of force majeure continues for more than 4 weeks, the Seller is entitled to rescind the contract. Claims for damages of any kind are excluded in this case. Force majeure shall include in particular, but not limited to, natural disasters of any kind, such as storms, earthquakes, floods and volcanic eruptions, fires, explosions, accidents or delays of means of transport, kidnappings, wars, riots, civil war, revolution, terrorism, sabotage, strikes or other organized actions of workers, and atomic / reactor accidents.

### **6. Reservation of Self-Supply**

The timely delivery of the Buyer is subject to the correct and timely delivery of the Seller under a congruent hedging transaction that the Seller has completed to the Buyer's order. If the Seller is not (timely) supplied by its supplier and if the Seller is not responsible for that, the Seller shall be automatically released from its delivery obligation if the delivery period is exceeded by more than one week. In this case the Seller is obliged to inform the Buyer without undue delay about the unavailability and to refund the Buyer.

### **7. Payment**

7.1 All invoices of the Seller are - unless otherwise agreed – payable without deductions 10 days after the invoice date, but in no event later than 7 days after receipt of the invoice.

7.2 In the event of default of payment the Seller shall be entitled to demand default interest of 9 percentage points. The aforementioned provision of sentence 1 shall not apply if the base rate according to sec. 288 para. 2 German Civil Code (*BGB*) is  $\geq 0\%$ ; in this case the statutory default interest rate shall apply. In addition, the Seller is entitled to claim a lump-sum compensation in the amount of 60 euros in the event of default by the Buyer; if the Seller claims the refund of the costs of legal proceedings the aforementioned lump-sum shall be credited in full hereto.

7.3 Payments by the Buyer shall always be made according to the provisions of sec. 366 para. 2, 367 para 1 *BGB*; any conflicting notification of the Buyer shall be null and void.

7.4 Cash payments, bank transfers or check payments, which are made after having received a note (*Wechsel*) issued by the Seller and accepted by the Buyer, shall be deemed as a payment only if the note is paid and the Seller has been exempted from the endorser's liability. The Seller's rights resulting from the retention of title according to sec. 3 of the GTC shall remain valid until the note has been paid.

### **8. Liability**

8.1 Any liability of the Seller and its officers, employees, representatives and agents from the business relationship with the Buyer, for whatever legal reason, is limited to cases of intent or gross negligence. The Seller's liability is limited to foreseeable, typically occurring damage, unless an intentional act was committed.

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8.2 The aforementioned limitation of liability does not apply to

- damages resulting from injury to life, body or health,
- damages resulting from a culpable breach of an essential contractual obligation (an obligation the breach of which puts the fulfillment of the purpose of the contract at risk) and on whose observance the Buyer regularly relies.
- defects of the goods, if the Seller is liable for personal or material damage resulting from these defects according to the provisions of the Product Liability Act (Produkthaftungsgesetz),  
or
- defects of the goods that were fraudulently concealed or if the Seller has granted a quality and/or durability guarantee; for damages that arise from the lack of guaranteed quality and / or durability, the Seller is only liable if the risk of such damage is covered by the quality and / or durability guarantee.

8.3 Buyer's claims for defects shall expire one year after the delivery of the goods. This shall not apply in cases that are listed in sec. 8.2 of the GTC.

### **9. Governing Law and Place of Jurisdiction**

9.1 Governing law shall be the laws of Germany with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

9.2 The place of jurisdiction shall be the place of business of the Seller. However, the Seller may also take legal action against the Buyer at the Buyer's place of business.

### **10. Severability Clause**

If any provision of the GTC is or becomes invalid or if the GTC contain a loophole, the validity of the remaining provisions thereof shall not be affected. The invalid provision shall be deemed replaced by an effective provision which economically comes closest to the sense and purpose of the ineffective regulation. A loophole is considered to be filled by a supplementary provision, which corresponds to the economic purpose of the contract as far as possible.