



GENERAL TERMS OF DELIVERY

DEFINITIONS

In these General Terms of Delivery, the following terms will have the following meanings:

General Terms of Delivery:

These General Terms of Delivery of Xfresh B.V.

Xfresh B.V.:

Xfresh B.V. and/or its affiliates, hereafter to be referred to as “the Seller”.

Buyer:

The party which issues an assignment to the Seller and for which the Seller performs (production) activities in relation to the purchase of Products, or has agreed with the Buyer to do so, as well as the party from which the Seller accepted or may accept an assignment of a different (service-related) nature.

Contract:

The Contract for one or more services between the Seller and the Buyer, any amendment or addition to this Contract and all legal acts in preparation for and in implementation of this Contract.

Product / Products:

Flowers, plants, vegetables, fruit, herbs and other commercial goods, as well as packaging.

1. Scope of General Terms of Delivery

- 1.1 These General Terms of Delivery apply to all requests, quotes, offers, assignments, confirmations of assignments, contracts and other (legal) acts regarding Products to be supplied by the Seller to the Buyer, the provision of services, the execution of assignments and optionally the performance of other activities.
- 1.2 Any deviations from and/or additions to these General Terms of Delivery can only be agreed upon in writing.
- 1.3 These General Terms of Delivery also apply to all contracts with the Seller under which the Seller engages the services of third parties for the purpose of executing the assignment(s).
- 1.4 In the event that the Contract differs from these General Terms of Delivery in terms of contents, the contents of the Contract will prevail.
- 1.5 If one or more provisions of these General Terms of Delivery should be void or voided, the remaining provisions of these terms will remain applicable to the Contract in full.
- 1.6 Any general terms and conditions on the Buyer’s part, under whatever name, will explicitly not be applicable.

2. Offers, assignments and formation and amendment of the Contract

- 2.1 All quotes and offers issued by the Seller, in any form, are subject to confirmation, unless the quotes and/or offers unambiguously show that a term for accepting such quote or offer has been stated and offers etc. will have become irrevocable upon acceptance by the Buyer within the set term.
- 2.2 A Contract between the Seller and the Buyer will only be formed after the Seller has explicitly accepted an order and/or assignment from the Buyer in writing, or after the Seller has started implementing the



Contract. In these General Terms of Delivery, “in writing” is understood to mean any form of communication by post, email or other electronic data traffic.

- 2.3 All communications relating to the Contract must be made or confirmed in writing by the Seller and the Buyer. An oral assignment will not be binding on the Seller, unless the Seller has confirmed the oral assignment in writing.
- 2.4 If the Seller should receive an oral assignment for additional work from the Buyer or its representative during the production or activities, the Seller may assume that said additional work was done at the Buyer’s explicit request at the prices and rates applied by the Seller.
- 2.5 All prices, price lists, brochures and other information provided in the context of an offer will have been drawn up to the best of the Seller’s ability, but will not be binding, unless explicitly agreed otherwise in writing.
- 2.6 The Seller reserves the right to attach further conditions to an order or to refuse an order/assignment without stating reasons.

3. **Prices, invoicing and payment**

- 3.1 All prices in the offers are denominated in euro and exclude VAT and any other government levies, such as administrative charges and taxes, and exclude charges for storage, export, shipping and any transport and packaging costs, unless explicitly agreed otherwise.
- 3.2 The Buyer will be unable to derive any rights from possible errors in offers and quotes.
- 3.3 The Buyer must effect payment within thirty (30) days of the invoice date, or up front by means of an advance payment by the invoice date. Objections against the amount of the invoice will not entitle the Buyer to suspend payment(s).
- 3.4 The Seller may pass on cost increases (such as rises in wages, transport costs, taxes and/or levies) which arose after the formation of the Contract to the Buyer if the costs increased by at least five (5) per cent after the formation of the Contract. In the event that cost increases are passed on, the Buyer will have the right to terminate the Contract if the Buyer cannot be reasonably expected to continue the Contract in view of the extent of the price rise. Termination by the Buyer on this ground will not affect the Seller’s right to compensation, without the Seller being obliged to pay any compensation itself.
- 3.5 The Seller will notify the Buyer in writing of any intention to increase prices or increase rates. On this occasion, the Seller will state the extent of the increase and the date on which the increase will take effect.
- 3.6 If the Buyer fails to pay the invoice(s) within the agreed term, the Buyer will be in default by operation of law. In that case, the Buyer will owe interest at two (2) per cent per month, or the part of a month that has already expired. However, the statutory interest rate will apply if that rate is higher. Interest on the due and payable amount will be calculated as from the moment the Buyer is in default up until the moment the full amount has been paid.
- 3.7 If several invoices are outstanding for payment, the Seller will offset a payment received against the oldest invoice amount still outstanding. The Buyer will never be entitled to offset the payment against other invoices, goods returned or any discounts, or to suspend any payment.
- 3.8 Discounts can only be agreed upon in writing.
- 3.9 In the event of liquidation or (a petition for) bankruptcy/insolvency, or if the Buyer is allowed to participate in the statutory debt restructuring scheme, is placed under guardianship or put into administration, or if an attachment is made against the Buyer or the Buyer is granted a (provisional) moratorium, the Seller’s claims against the Buyer will be immediately due and payable.



3.10 Payments will first of all serve to reduce the costs, subsequently to reduce the interest still due and finally to reduce the principal sum and the accrued interest.

4. Cancellation

4.1 An agreed assignment can only be cancelled in writing, which must be done before the Seller has started the implementation of the Contract. The implementation also includes the conclusion by the Seller of contracts with third parties for the performance of one or more assignments.

4.2 If the Buyer cancels the Contract in accordance with the provisions of this article, thirty (30) per cent of the cancelled order will be charged, without prejudice to the Seller's right to claim further compensation at all times.

4.3 If Products have already been produced especially for the Buyer by the moment of cancellation, the Buyer will also be obliged to reimburse the Seller for all the associated costs.

4.4 If any Products are (temporarily) unavailable, the Seller will notify the Buyer of this no later than 48 hours prior to the scheduled delivery. In that case, the Seller may cancel the Buyer's order without any obligation to pay costs and/or compensation.

5. Suspension, termination and early termination of the Contract

5.1 The Seller will be entitled to suspend the fulfilment of its obligations or to terminate the Contract in the event that:

5.1.1 the Buyer has any overdue payment obligations or fails to fulfil any other obligations under the Contract, or to do so in full or in time;

5.1.2 the Seller has become aware of circumstances that give reason to believe that the Buyer will be unable to fulfil its obligations;

5.1.3 the Buyer has been asked to furnish security for the fulfilment of its obligations, and no or inadequate security has been furnished.

5.2 If the Contract is terminated, the Seller's claims against the Buyer will be immediately due and payable. If the Seller suspends the fulfilment of its obligations, it will retain its rights under the law and the Contract.

5.3 If the Seller terminates the Contract or suspends its obligations, it will never be obliged to pay compensation for any resulting losses and costs.

5.4 If the termination can be attributed to the Buyer, the Seller will be entitled to compensation of the loss amounting to at least fifteen (15) per cent of the net invoice value of the cancelled assignment(s), without prejudice to the Seller's right to claim further compensation at all times.

6. Delivery and Product to be delivered

6.1 The quantities delivered will be in accordance with the quantities stated in the Contract, subject to minor deviations. Minor deviations in the Seller's deliveries in terms of quantity, weight and composition will never constitute a breach.

6.2 With regard to number and weight, as well as the requirements prescribed by public and/or private law, a delivered quantity will be deemed to comply with what has been agreed or prescribed respectively, except where the Buyer provides proof to the contrary.

6.3 The Seller will determine the quantity and the quality and sorting grade of the Products purchased by the Buyer. The quality definition previously communicated by the Seller will be decisive in assessing the quality of the Product.

6.4 Delivery periods stated will be estimates only and can never be regarded as final deadlines. The delivery period being exceeded due to whatever cause will not give the Buyer any right to compensation, or to



termination of the Contract or the suspension/non-fulfilment of any obligation of the Buyer towards the Seller.

- 6.5 Changes to an order placed by the Buyer may result in a delivery period indicated earlier by the Seller being exceeded. The Buyer will be unable to invoke this to the detriment of the Seller.
- 6.6 The moment of supply will be the moment when the Products are delivered or the moment when the Products are collected.
- 6.7 Unless agreed otherwise, the Seller will deliver the Products Ex Works, in accordance with Incoterms 2000.
- 6.8 If the Buyer wants the Products to be delivered otherwise than in the customary manner, the Seller will pass on the associated costs to the Buyer, unless agreed otherwise.
- 6.9 If the delivery of the Product is prevented or delayed through the Buyer's actions, or if the Buyer is unable or unwilling to take possession of the Products, the Seller will be entitled to store or arrange the storage of the Products at the Buyer's expense and risk, or to supply the goods to third parties or destroy the goods. The Buyer will be liable for the losses and costs resulting from this.
- 6.10 The Seller will be authorised to use the services of third parties in delivering the order(s).
- 6.11 If the delivery is made in parts, the Seller will have the right to regard each delivery as a separate transaction.

7. **Packaging**

- 7.1 The Seller uses packaging in supplying Products, which includes pallets, crates, buckets, kegs and other reusable packaging materials. If the Seller or a third party charges a deposit or costs in this respect, the packaging will be taken back in exchange for the deposit or costs applicable at the time when the packaging is returned. A fixed fee will be charged for taking possession of returned packaging, in conformity with the regulations applicable in this connection. On request, the Buyer will receive a copy of these regulations.
- 7.2 The packaging which the Buyer wants to return must be empty and so clean and hygienic as to be suitable, without any further operations by the Seller, for containing fresh products similar in nature to the Products delivered in the packaging.
- 7.3 If packaging is returned via means of transport arranged by the Seller, the Buyer must ensure that the packaging is sorted and ready for transport so as not to cause any delay.
- 7.4 Any packaging not supplied by the Seller will only be taken back if and insofar as such packaging is part of the Seller's own range and is in good condition.

8. **Intellectual property rights**

- 8.1 The Seller expressly reserves any and all intellectual property rights, including patents, trademarks and designs, in relation to the Products it supplies.
- 8.2 The Buyer will not be permitted to infringe a third party's intellectual property rights using the Products supplied by the Seller. The Buyer indemnifies the Seller against any third-party claims on account of an infringement of intellectual property rights which are committed using the Products supplied by the Seller, and which occur after the Seller delivered the Products to the Buyer.

9. **Complaints, claims**

- 9.1 The Buyer is obliged to inspect the Products purchased, or the assignment carried out, at the time of delivery. In the event of complaints about Products delivered, the Buyer must notify the Seller in writing



- as soon as possible, but in any case within twenty-four (24) hours of delivery, describing the faults in detail. If the Seller so requests, the Buyer will have to return the Product(s) concerned to the Seller.
- 9.2 Any damage to the packaging and/or the Product delivered must be reported to the Seller immediately.
- 9.3 After the expiry of the period referred to in Article 9.1, the Buyer will be deemed to have approved the Products and the Buyer's right to complain will lapse.
- 9.4 If a claim is made in time, the Buyer will remain obliged to take possession of and pay for the Products. The Products may be returned or destroyed only with the Seller's prior written approval and in the manner indicated by the Seller.
In the event that the Products are destroyed, the Buyer undertakes to send the Seller proof of destruction.
- 9.5 Any typesetting errors, printing errors or typing errors contained in catalogues, assignments, the Internet site, offers, etc. will never be cause for a claim.
- 9.6 The Seller will not be obliged to compensate any losses or costs if the Buyer fails to demonstrate that the Buyer stored, kept and transported the Products correctly and in accordance with the standards applicable in the industry.
- 9.7 If proper proof has been furnished that the Products are faulty, the Seller will be entitled to make another delivery or to credit the invoice, this being at the Seller's discretion.
- 9.8 The Seller will never be obliged to do anything more than make another delivery of the Products concerned, except if the Buyer has demonstrated wilful misconduct or gross negligence on the Seller's part.
10. **Risk transfer and retention of ownership**
- 10.1 The risk of the Products being lost or damaged will pass to the Buyer at the moment of the transfer of the title to the Products and/or the actual delivery of the Products to the Buyer.
- 10.2 The Seller will retain the ownership of all Products and services delivered in the context of the Contract until the Buyer has fulfilled all its obligations, including payment of interest and costs.
- 10.3 If the Buyer fails to make one or more payments and the agreed payment term(s) has or have expired, the Seller will be entitled to take back the Products delivered, insofar as not used, without further notice. The Buyer will grant the Seller free access to its sites and/or buildings at all times for the purpose of inspecting the Products and/or exercising the Seller's rights.
- 10.4 For as long as the ownership of the Products has not passed to the Buyer, the Buyer will not be free to pledge the Products or grant third parties any right to the Products, except in the context of its normal business operations. When the Seller so requests, the Buyer will have to cooperate in the creation of a right of pledge in respect of the claims which the Buyer has or will obtain against third parties, for example on account of the onward delivery of Products to its own buyers. The Buyer is obliged to keep the unprocessed and delivered Products separate from other products and clearly mark them as the Seller's property.
- 10.5 The retention of ownership extends to all delivered Products, including any other products made using the Products and a proportional part of any mixtures incorporating the Products that are held either by the Buyer or by third parties after onward delivery.
- 10.6 If third parties attach the Products delivered subject retention of ownership, or wish to create rights in respect of these Products, the Buyer will have to notify the Seller of this immediately.



11. Force majeure

- 11.1 The Seller will not be obliged to fulfil any obligation towards the Buyer if it is precluded from doing so by a circumstance that is not the Seller's fault and cannot be at the Seller's expense pursuant to the law, a legal act or generally accepted practice.
- 11.2 In addition to the meaning assigned to "force majeure" in law and case law, for the purpose of these General Terms of Delivery this term is understood to mean all foreseen or unforeseen external causes which are beyond the Seller's control and which prevent the Seller from fulfilling its obligations. These include crop failure, abnormal weather conditions, crop diseases, pests, defaulting suppliers and strike action at the Seller's business or the business of third parties.
Force majeure on the part of the Seller's suppliers, including growers, will count as force majeure on the Seller's part.
The Seller will also have the right to invoke force majeure if the circumstance preventing (further) performance of the Contract occurs after the Seller should have fulfilled its obligation.
- 11.3 Inasmuch as the Seller has fulfilled or will be able to fulfil its obligations in part at the time when the force majeure occurs, and the part fulfilled or to be fulfilled has independent value, the Seller will be entitled to issue a separate invoice for the part already fulfilled or to be fulfilled. The Buyer will have to pay this invoice as if it involved a separate Contract.
- 11.4 Force majeure on the Buyer's part will in any case not include: lack of staff, strikes, breach of contract by third parties engaged by the Buyer, breakdown of resources, liquidity or solvency problems on the Buyer's part and government measures at the Buyer's expense.

12. Joint and several liability

If the Buyer consists of more than one person or legal entity at any time during the term of the Contract, each of these persons or legal entities will be jointly and severally liable towards the Seller for the obligations arising from the Contract.

13. Transfer of rights, change of legal position

- 13.1 The Buyer may transfer rights or obligations under the Contract to a third party, or have such rights and obligations taken over by a third party, only with the Seller's prior written consent. The Seller may attach further conditions to this consent.
- 13.2 If there should be any change to the Seller's or the Buyer's legal position during the term of the Contract, the Contract for services will pass to the Seller's or the Buyer's legal successor, unless the Contract was lawfully terminated in accordance with these General Terms of Delivery before the change took effect. The Seller may demand that the Buyer's legal successors comply with the Contract. The Buyer will have to notify the Seller of the change to its legal position no later than two months before this change takes effect. The Buyer or its legal successor will be liable for the losses sustained by the Seller as a result of non-fulfilment of the obligations under this article.

14. Indemnification

- 14.1 The Buyer indemnifies the Seller against any claims from third parties sustaining losses in connection with the performance of the Contract of which the cause can be attributed to parties other than the Seller. If the Seller should be held liable by third parties for that reason, the Buyer will have to assist the Seller both in and out of court and immediately do anything that may be expected of the Buyer in that case.



14.2 If the Buyer fails to take adequate measures as referred to in the previous paragraph, the Seller will be entitled to take these measures itself, without notice of default being required. All costs and losses incurred by the Seller and third parties as a result of this will be fully at the Buyer's expense and risk.

15. **Liability**

15.1 If the Seller should be liable, this liability will be limited to what has been laid down in this provision.

15.2 The Seller will not be liable for losses, of whatever nature, due to the Seller proceeding from incorrect and/or incomplete information provided by or on behalf of the Buyer.

15.3 If the Seller should be liable for any loss, the Seller's liability will be limited to no more than the invoice value of the assignment, or at least to that part of the assignment to which the liability relates.

15.4 The Seller will be liable only for direct losses.

Direct losses exclusively include the reasonable costs to establish the cause and extent of the loss, the reasonable costs incurred to bring the Seller's faulty performance in line with the Contract, insofar as these costs can be allocated to the Seller, as well as the reasonable costs incurred to prevent or limit losses, insofar as the Buyer demonstrates that these costs resulted in the prevention or limitation of direct losses as referred to in this paragraph.

15.5 The Seller will never be liable for indirect losses, including lost profits, lost revenues, missed savings, losses due to business interruption or business stagnation, or trading losses, reputational damage and other consequential losses.

15.6 The limitations of liability set out in this article will not apply if the loss is due to wilful misconduct or gross negligence on the part of the Seller or its (senior) staff.

15.7 The Buyer will be liable for all damage, of whatever nature, which is caused by the Buyer, its employees or auxiliary persons to persons and/or goods situated on any business site of the Seller, irrespective of whether the damage could have been foreseen by the Buyer.

16. **Applicable law**

16.1 All legal relationships between the Seller and the Buyer will be governed exclusively by Dutch law.

Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods 1980 (Vienna Sales Convention) is explicitly excluded.

16.2 Disputes will be submitted exclusively to the competent court of Haarlem.

16.3 The parties may agree upon a different form of dispute resolution, such as arbitration or mediation.