

A close-up photograph of a variety of fresh fruits including strawberries, raspberries, blueberries, blackberries, pears, and a cherry, arranged in a basket.

General Conditions  
FruitMasters Holland

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## GENERAL TERMS AND CONDITIONS OF FRUITMASTERS HOLLAND B.V.

### PART A GENERAL

#### Article 1 Definitions

1. In these General Terms and Conditions the following terms have the following meanings:
  - a. *'Agreement'*: the Purchase Agreement and/or the Sales Agreement entered into with the Buyer.
  - b. *'Buyer'*: every natural person, legal entity or company with which Fruitmasters Holland enters into a Sales Agreement or with which Fruitmasters Holland conducts negotiations on the formation of a Sales.
  - c. *'Delivery ex Fruitmasters Holland'*: delivery from the premises of Fruitmasters Holland, located at Deilseweg 7 in Geldermalsen. For the Buyer, delivery *'ex Fruitmasters Holland'* means delivery *'ex works'* within the meaning of Incoterms 2010.
  - d. *'Direct Delivery'*: delivery to the address designated by the Buyer, on the understanding that, for the Buyer, *'Direct Delivery'* means *'Delivery Duty Paid'* within the meaning of Incoterms 2010.
  - e. *'Dutch Recipients' Liability Act' (Wet Inlenersaansprakelijkheid)*: all the laws and regulations pertaining to the recipients' liability.
  - f. *'Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act' (Wet Ketenaansprakelijkheid)*: all the laws and regulations pertaining to the vicarious tax liability.
  - g. *'Fruitmasters Holland'*: the private company with limited liability Fruitmasters Holland B.V., having its registered office and principal place of business at Deilseweg 7 at (4191 NX) Geldermalsen.
  - h. *'Loss/Damage'*: any disadvantage in whatever form, both direct and indirect, this includes: a penalty clause, immaterial loss, trading loss and environmental damage, and consequential loss such as loss relating to lost profits.
  - i. *'Offer'*: the tender and/or quotation Fruitmasters Holland submits to the Buyer with regard to the sale and delivery of Products.
  - j. *'Order'*: every assignment given by Fruitmasters Holland to the Supplier for the delivery of Products to Fruitmasters Holland or the assignment given by any Buyer to Fruitmasters Holland for the delivery of Products to the Buyer.
  - k. *'Product'*: (overseas) fruit.
  - l. *'Purchase Agreement'*: any agreement that Fruitmasters Holland and the Supplier enter into with regard to the purchase and delivery of Products and any amendment or addition thereto, as well as all (legal) acts performed in the preparation for and the performance of the Purchase Agreement.
  - m. *'Sales'*: the formation of Sales Agreements by Fruitmasters Holland with Buyers.
  - n. *'Sales Agreement'*: any agreement that Fruitmasters Holland and the Buyer enter into with regard to the sale and delivery of Products and any amendment or addition thereto, as well as all (legal) acts performed in preparation for and the performance of the Sales Agreement.
  - o. *'Supplier'*: every natural person, legal entity or company with which Fruitmasters Holland enters into a Purchase Agreement or with which

Fruitmasters Holland conducts negotiations on the formation of a Purchase Agreement.

- p. *'The Other Party'*: the Buyer or the Supplier, depending on the type of Agreement that is entered into.
  - q. *"Written/In Writing"*: a notice by letter, telefax or email.
2. In case the plural form of a word is defined, this definition must be understood to include the singular, and vice versa.

## **Article 2      General**

- 1. These General Terms and Conditions form part of and apply to any and all Offers, Orders and Agreements, as well as to all other legal relationships between Fruitmasters Holland and the Other Party.
- 2. Articles 1 through 5 of these General Terms and Conditions pertain to:
  - a) Sales Agreements that Fruitmasters Holland enters into with Buyers;
  - b) Purchase Agreements that Fruitmasters Holland enters into with Suppliers.
- 3. Articles 6 through 16 of these General Terms and Conditions pertain to Sales Agreements that Fruitmasters Holland enters into with Buyers.
- 4. Articles 17 through 38 of these General Terms and Conditions only pertain to Purchase Agreements that Fruitmasters Holland enters into with Suppliers.
- 5. These General Terms and Conditions set aside any general or specific conditions or stipulations of the Other Party, unless expressly otherwise agreed in advance, In Writing.
- 6. Stipulations varying from these General Terms and Conditions or derogating provisions, conditions and/or arrangements are only valid if and insofar as Fruitmasters has expressly confirmed these In Writing.
- 7. The Other Parties with regard to which these General Terms and Conditions have applied will be deemed to have agreed to these General Terms and Conditions applying to all subsequent Offers, Orders and Agreements, as well as to all other subsequent legal relationships between Fruitmasters Holland and the relevant Other Party.
- 8. Should, in the opinion of the competent court, any provision of these General Terms and Conditions be inapplicable or contrary to public order or the law, the relevant provision will be considered as not written, while the rest of these General Terms and Conditions will continue to apply in full. Instead of any invalid provision, a provision which approaches the parties' intention as closely as possible will come to apply.
- 9. Fruitmasters Holland is entitled to make amendments to these General Terms and Conditions.
- 10. In the event of conflict, the Agreement will prevail over these General Terms and Conditions. The headings of the articles of these General Terms and Conditions have no independent significance, and these headings do not affect the interpretation of the stipulations of these General Terms and Conditions.

## **Article 3      General provisions**

- 1. Without prior permission, the Other Party is not entitled to transfer the rights and obligations under the Agreement or any agreements arising therefrom to third parties or to pledge these rights and obligations, wholly or in part.
- 2. Should the circumstances assumed by the parties upon the formation of the Agreement change to such an extent that, as a result, one of the parties cannot reasonably be required any longer to comply with one or more of the provisions of

this Agreement or the General Terms and Conditions, the parties will hold consultations on the interim amendment of the Agreement.

#### **Article 4 Applicable law and disputes**

1. All agreements and transactions to which these General Terms and Conditions apply are subject to Dutch law, to the exclusion of the provisions of international conventions such as the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention), insofar as these have no obligatory force.
2. Any dispute that may arise between Fruitmasters Holland and Suppliers and/or Buyers whose places of business are in a Member State of the European Union will be exclusively adjudicated by the District Court of Gelderland, location Arnhem, without prejudice to the right of Fruitmasters Holland to summon the Other Party to appear before the court which has jurisdiction according to the law or convention.
3. Any dispute that may arise between Fruitmasters Holland and Suppliers and/or Buyers whose places of business are outside the Member States of the European Union will to the exclusion of any other court be settled in accordance with the Arbitration Regulations of the International Chamber of Commerce (ICC) by one arbitrator appointed in accordance with those Arbitration Regulations, unless Fruitmasters Holland chooses to have the disputes referred to hereinabove be settled by three arbitrators. The place of arbitration will be Arnhem (the Netherlands) and the language will be Dutch.
4. A dispute exists as soon as one of the parties has informed the other party thereof In Writing.
5. If there are discrepancies between these General Terms and Conditions and translations thereof, the Dutch text will prevail.

#### **Article 5 Scope of applicability of these General Terms and Conditions**

These General Terms and Conditions apply to any and all agreements and transactions entered into by Fruitmasters Holland with any Other Party if reference is made to these General Terms and Conditions in written or e email communications and if these General Terms and Conditions are apparent on the website of Fruitmasters Holland and can be known to the other party.

### **PART B SALES**

#### **Article 6 Offers, Agreements and cancellation of Orders**

1. All Offers made by Fruitmasters Holland, regardless of where these may have been made public or how these have been made, are always without obligation and Fruitmasters Holland can revoke offers made at any time, even if they state a term for acceptance. In the event that the Offer does not state a term for acceptance, the term for acceptance will be 24 hours.
2. All depictions, descriptions, weight and size specifications and other information are not binding on Fruitmasters Holland and only serve to give a general impression of the quality of the Products offered by Fruitmasters Holland.
3. Fruitmasters Holland makes all Offers to the best of its knowledge and with the greatest care. However, Fruitmasters Holland does not guarantee that there will be no deviations.

4. If, together with the request for an Offer, the Buyer provides Fruitmasters Holland with documents, details and suchlike, Fruitmasters Holland may assume these to be correct and will base its Offer on them. Fruitmasters Holland is not liable for any levy, payment or penalty relating to the performance of these acts, which are entirely at the risk and expense of the Buyer.
5. The Buyer is obliged to provide Fruitmasters Holland, in time and at all times, with the information required for the performance of the Sales Agreement, failing which the Buyer is liable to Fruitmasters Holland for any Loss/Damage arising therefrom.
6. The Buyer must ascertain that the Products ordered or to be ordered and the corresponding packaging, labels and other information comply with all the regulations prescribed by the government in the country of destination. The import and use of the Products and the conformity with the governmental provisions is at the risk of the Buyer.
7. A Sales Agreement will only be concluded at the time Fruitmasters Holland has confirmed the Buyer's assignment, either in Writing or by telephone, or when Fruitmasters Holland proceeds to carry out the assignment.
8. Amendments or additions to the Sales Agreement have only a binding effect if these have been agreed In Writing or if the Sales Agreement is performed in accordance with the amendments or additions.
9. All acts, legal acts and actions performed by an officer or employee of the Buyer for the purposes of the formation, performance or amendment of a Sales Agreement will be deemed to have been carried out on behalf of the Buyer in a duly authorised manner, and will be binding on the Buyer. The Buyer cannot rely in this regard on the fact that, in respect of such acts or actions, the relevant person was not legally authorised to represent or to bind the Buyer.
10. Unless otherwise agreed, the Buyer can only cancel an Order placed if Fruitmasters Holland has not yet accepted the Order In Writing, or if the Products have not yet been delivered, and if Fruitmasters Holland has agreed to the cancellation of the Order In Writing. Cancellation of Orders must be made In Writing. The Buyer is obliged to compensate for any Loss suffered by Fruitmasters Holland as a result of the cancellation within one week of the cancellation. This Loss is set at at least 30% of the invoice amount, without prejudice to the right of Fruitmasters Holland to compensation of the actual Loss suffered by Fruitmasters Holland as a result of the cancellation of the Order by the Buyer. The Buyer indemnifies Fruitmasters Holland against any claims whatsoever which third parties may enforce against it in respect of any Loss it has suffered or may suffer as a result of the cancellation of the Order by the Buyer.

#### **Article 7 Prices**

1. Unless otherwise agreed, all the prices are expressed in euro and are based on delivery ex Fruitmasters Holland. Unless otherwise agreed, these prices are exclusive of the transport and shipping costs, insurance premiums, direct and indirect taxes, import and export duties and excise duties. Unless otherwise agreed, the above-mentioned transport and shipping costs, insurance premiums, direct and indirect taxes, import and export duties and excise duties will be at the risk and expense of the Buyer.
2. The fruit traded by Fruitmasters Holland is obtained from the growers, connected to Cooperatie Koninklijke Fruitmasters U.A. If the price of the Products to be delivered increases after the Offer has been submitted because of unforeseen developments of the market and fluctuations in such a manner, that it may not be



expected from Fruitmasters Holland to supply at the original price, Fruitmasters Holland is after informing the Buyer, entitled to increase the price accordingly and to charge the price increase on to the Buyer.

#### **Article 8 Payment**

1. Unless otherwise agreed, the Buyer must pay the full amount payable by the Buyer by transfer to the bank account of Fruitmasters Holland within 30 days of the invoice date.
2. If the Buyer fails to pay any amount payable by the Buyer within the stipulated time limit, the Buyer will be in default by operation of law without further notice of default being required.
3. In case of default, the Buyer will be payable a default interest on the invoice amount or the unpaid part thereof in the amount of the statutory commercial interest, to be calculated from the due date until the date of payment. All costs related to the collection of the payment will be borne by the Buyer. The extrajudicial costs will amount to at least 15% of the principal amounts payable.
4. If the claim has been brought before the court, the Buyer will be liable to pay the actual costs incurred in respect of the legal proceedings. These include the costs of lawyers, attorneys of record and representatives ad litem, as well as the court fee. The provisions of this article continue to apply even if the aforementioned costs exceed an order for costs, if any, pursuant to Article 237 et seq. of the Dutch Code of Civil Procedure.
5. Any payment made by the Buyer will first be applied to the interest due in this respect and subsequently to the costs related to the collection of the payment, with the exception of the legal costs. Only after these amounts have been paid, any payment made by the Buyer will be deducted from the principal of the outstanding principal of the debt.
6. In case of failure to pay any invoice in time, all outstanding invoices, including those invoices of which the payment term has not yet expired, will be immediately due and payable.
7. Fruitmasters Holland will at all times be entitled to require (partial) advance payments from the Buyer and/or to require the Buyer to provide adequate security, at the discretion of Fruitmasters Holland.
8. Complaints relating to invoices sent must be submitted to the sales department of Fruitmasters Holland - In Writing - within 3 days of the invoice date, failing which Fruitmasters Holland will be entitled not to accept complaints in that connection.
9. The Buyer is never permitted to set off debts. The Buyer is not entitled to suspend any obligation to pay.
10. As regards payments and setoffs, the books and accounting records of Fruitmasters Holland will be binding at all times.

#### **Article 9 Delivery and transfer of risk**

1. Unless it has been agreed In Writing that it involves Direct Delivery, the delivery of the Products will take place ex Fruitmasters Holland. Delivery will take place at the date specified in the order confirmation and as from that date the Products will be at the risk and expense of the Buyer and the Buyer will be obliged to take delivery of the goods. If there is no order confirmation, or if no mention is made of a time limit in the order confirmation, the delivery is deemed to take place within 48 hours after formation of the agreement, unless agreed In Writing otherwise.
2. Fruitmasters Holland may require the Buyer to sign for receipt of the Products.

3. In the event of short delivery or visible damage to the packaging, the Buyer must raise objections to that effect upon delivery and express a reservation on the waybill, such subject to losing the right to make a claim.
4. Irrespective of the provisions of paragraph 1 of this article - which will continue to apply - the parties may agree that Fruitmasters Holland will arrange for the transport of the Products, in which case the Buyer will nevertheless be liable for the risk involved in the storage, loading, transport and unloading of the Products, unless otherwise agreed In Writing. The transport takes place at the risk and expense of the Buyer.
5. The delivery dates are approximate only and are never to be considered as firm dates. In the case of overdue delivery, the Buyer must give Fruitmasters Holland notice of default In Writing within 24 hours and the Buyer will allow Fruitmasters Holland a reasonable period to meet its obligations. The Buyer is not entitled to compensation from Fruitmasters Holland caused by the fact that the delivery date agreed or specified by Fruitmasters Holland has been exceeded. In case the delivery date is exceeded, the Buyer is not entitled to dissolve or terminate the Sales Agreement, unless the delivery date is exceeded to such an extent that the Buyer can no longer reasonably be required to uphold the Sales Agreement.
6. Fruitmasters Holland reserves the right - after consultation with the Buyer - to make deliveries in consignments and to invoice these partial deliveries separately.
7. In the event that receipt is not taken of the Products to be delivered within the delivery period or in the event that the Buyer fails to observe the agreed delivery date on demand, Fruitmasters Holland is entitled to (arranging for third parties to) store, re-auction, sell or to (arrange for third parties to) destroy the Products, at the risk and expense of the Buyer. The costs involved in transport, storage, re-auction, sale or destruction will be borne by the Buyer.
8. Fruitmasters Holland depends for its supplies on the Product quantities available at the members of the *Cooperatie Koninklijke Fruitmasters U.A.* (a fruit cooperative). If due to disappointing crops, different dimensions of the product, change of weather conditions, other harvest times as a result of other times of the year that the Product is ripe, poor harvest or any other cause, less Product or Product with a different composition or size will be delivered, Fruitmasters will not be obliged to deliver the quantities agreed with the Buyer. In that case Fruitmasters will divide the available Product quantities proportionally among the buyers of the Product in question, such without prejudice to the provisions of Article 11 herein concerning Force majeure. Fruitmasters is not obliged to buy additional products.

#### **Article 10 Inspection and complaints**

1. Fruitmasters Holland warrants that the Products comply with European laws and regulations, more specifically the laws and regulations regarding food safety and the Maximum Residue Limit (MRL) applicable at the time of delivery and/or the provision of services.
2. Unless otherwise agreed In Writing, the Buyer is obliged to check the Products for quality and any other defects, shortcomings and/or damage immediately upon delivery. At the risk of forfeiting any right of claim, the Buyer must submit complaints in Writing and with a clear description of the complaints with regard to the Products as well as the packaging to Fruitmasters Holland as soon as possible, but - if it concerns externally visible defects - within 24 hours of delivery and - if it concerns externally invisible defects - within 24 hours after the time that the Buyer could reasonably have discovered. Exclusively and only for apples and pears this



period is a maximum of 4 days. In all cases, Buyer must submit to Fruitmasters Holland complaints in Writing and with a clear description of the complaints and the defects failing which Fruitmasters Holland is entitled not to accept the complaints in that regard and there is no right to compensation available. Furthermore, in all cases the Buyer must engage an independent expert to establish the damage and defects and inform Fruitmasters Holland about the time and place thereof and give Fruitmasters Holland the opportunity to carry out a loss assessment at the risk of loss of rights.

3. Any right of claim - including claims relating to defects which are not apparent at the time of delivery - will in any case lapse within 14 days of delivery at the latest. After discovering any defect and/or damage, the Buyer is obliged to do or refrain from doing, respectively, all that is reasonably possible and necessary to prevent (further) damage. Furthermore, the Buyer is obliged to follow any instructions given by Fruitmasters Holland in respect thereof and render Fruitmasters Holland every assistance deemed necessary for the investigation of the complaint, for instance by providing Fruitmasters Holland with the opportunity to (arrange for third parties to) conduct an investigation into the circumstances of the use of the Products. If the Buyer does not cooperate or if an investigation of the complaint is otherwise not or no longer possible, the Buyer can no longer enforce any rights.
4. In case of minor deviations in characteristics such as size, quality, colour and/or decay of less than 3% of the total per deviation, the Products delivered will be deemed to comply with the Sales Agreement.
5. Products delivered to the address designated by Fruitmasters Holland may only be returned after prior Written permission of Fruitmasters Holland. In the event that the Products are returned, they must be in their original condition and in the original packaging. The costs of return shipment will be borne by the Buyer.
6. Fruitmasters Holland is entitled to refuse return shipment of the delivered Products if the temperature of the Products do not meet the customary standards. If a complaint is considered to be well-founded, Fruitmasters Holland - without being liable to pay further compensation - will have the option of either replacing (part of) the Products in question or issuing a credit note for (part of) the delivered Products up to a maximum of the invoice amount.
7. The presence of a defect and/or damage as referred to in this article does not entitle the Buyer to suspend its obligations to pay.

#### **Article 11 Retention of title**

1. All Products delivered and to be delivered will remain the exclusive property of Fruitmasters Holland until any and all claims which Fruitmasters Holland has or will come to have against the Buyer, including in any case the claims referred to in Article 3:92(2) of the Dutch Civil Code, have been paid in full.
2. Fruitmasters Holland is entitled to take back from the Buyer the Products which have remained the property of Fruitmasters Holland if the Buyer fails to comply with its obligations to Fruitmasters Holland. The Buyer is obliged to give Fruitmasters Holland the opportunity to take the Products back. All the costs involved therein will be borne by the Buyer.
3. As long as the Products delivered are subject to a retention of title, the Buyer will not be entitled to dispose of these Products, unless all this takes place in connection with the normal operation of a business. Should Fruitmasters Holland so demand, the Buyer undertakes to cooperate in establishing a right of pledge on the claims which the Buyer has or will come to have on its customers pursuant to the

onward supply of the Products. If the Products are processed in or are used to make other products, a right of pledge will be established on those products for the benefit of Fruitmasters Holland.

4. The Buyer is obliged to keep the Products separate from other products as recognizable property of Fruitmasters Holland and to handle the Products with due care. Furthermore, the Buyer is obliged to insure the Products referred to in the previous sentence with an insurer of good report and to keep the Products insured against damage, loss and theft. Should Fruitmasters Holland so demand, the Buyer is obliged to show that it has complied with its obligation to take out insurance.
5. In derogation from the provisions of Article 4.1 of these General Terms and Conditions, the property law consequences of the retention of title are governed by the laws of the country in which territory the Products are at the time of delivery.
6. If it concerns Products destined for export, in derogation of the provisions of paragraph 5 of this article, the property law consequences of this retention of title are governed by the laws of the country of destination if, pursuant to those laws, the retention of title does not lose its effect until the price has been paid in full.

#### **Article 12 Force majeure**

1. In case of force majeure, Fruitmasters Holland is released from the performance of its obligations under the Sales Agreement, without the Buyer being entitled to any compensation whatsoever of costs and damage, direct or indirect.
2. On the part of Fruitmasters Holland, the term 'force majeure' is taken to mean any circumstance beyond the control of Fruitmasters Holland, as a result of which the performance of its obligations to the Buyer is reduced, wholly or in part, or as a result of which Fruitmasters Holland cannot reasonably be required to comply with its obligations, regardless of whether such circumstance could have been foreseen at the time the Sales Agreement was concluded. These circumstances include, for instance, industrial action, a delay in the supply of products, contingencies at Fruitmasters Holland and/or its Suppliers, failed harvest, disappointing harvest, below-average yield, deviating yield or a shift in harvest times, a different composition of the Product, (civil) war, threat of war, (natural) disasters, lockouts, blockages, uprisings, riots, fire, other business interruptions and measures taken by government bodies.

#### **Article 13 Liability**

1. Unless it involves intent or wilful recklessness on the part of Fruitmasters Holland or auxiliary persons engaged by Fruitmasters Holland, Fruitmasters Holland is not liable to the Buyer for any Loss/Damage, regardless of the way in which the Loss/Damage has arisen and regardless of the persons who have caused the Loss/Damage, such with due observance of the provisions set out hereinafter.
2. Liability for consequential loss is always excluded. Consequential loss includes, but is not limited to loss caused by a delay in the supply or late supply or handling, having to carry out a certain activity once again, lost profit, loss due to substitute purchases and lost savings, damage to the relationship of confidence and trust and to one's image and reputation, by whatever name.
3. In case Fruitmasters Holland is liable, the liability will be limited to the Loss/Damage assessed by the experts in accordance with the provisions of Article 13 herein.
4. In all cases, the liability is limited to the net invoice amount of the Product about which a complaint has been submitted by the Buyer with good reason.

5. In case of a product recall, the liability is limited to the cover provided by the insurance policy taken out by Fruitmasters Holland. The insurance policy and the insurance conditions are available for inspection.
6. The Buyer indemnifies Fruitmasters Holland against any and all claims of any kind whatsoever which third parties may enforce against Fruitmasters Holland with regard to any Loss/Damage suffered or that may be suffered, which exceeds the liability that the Buyer can enforce against Fruitmasters Holland, unless mandatory rules of law prescribe otherwise.

#### **Article 14 Suspension and termination**

1. Fruitmasters Holland is entitled, without prejudice to its right to compensation, without notice of default and without judicial intervention being required, with immediate effect to (a) suspend the performance of the Sales Agreement and all related agreements and/or (b) terminate the relevant Sales Agreement and all related agreements, wholly or in part, if
  - a) the Buyer fails to perform any obligation under the Sales Agreement, or fails to perform an obligation by the stipulated date, or in a proper manner;
  - b) in respect of the Buyer a petition for bankruptcy or an application for a moratorium has been filed, or if the Buyer is a natural person, a petition for debt adjustment has been submitted to the court;
  - c) the business of the Buyer is dissolved, liquidated or discontinued;
  - d) execution is levied on a substantial part of the Buyer's assets'
  - e) Fruitmasters Holland has well-founded reasons to fear that the Buyer is not or will not be able to comply with its obligations arising from the Sales Agreement, and the Buyer fails to provide security or sufficient security at the request to that effect of Fruitmasters Holland for the performance of the Buyer's obligations.
2. All claims which Fruitmasters Holland may have or may come to have against the Buyer in the circumstances referred to in paragraph 1 of this article will become immediately due and payable in full.
3. If Fruitmasters Holland proceeds to terminate the Agreement pursuant to paragraph 1 of this article, the Buyer will be obliged to pay Fruitmasters Holland 25% of the payment terms not yet expired and/or the amounts not yet payable as compensation for the cost of sales and the lost profits. In addition, the Buyer will be obliged to compensate all other expenses incurred by Fruitmasters Holland in preparation of the performance to be delivered by it, as well as all other Loss/Damage suffered by Fruitmasters Holland.
4. The Buyer is not entitled to invoke any right of suspension or setoff.
5. All the amounts in respect of which Fruitmasters Holland has a claim against the Buyer may be deducted from claims which the Buyer has against Fruitmasters Holland.
6. The Buyer is not entitled to terminate the Sales Agreement, wholly or in part, if the Buyer itself has already failed to comply with its obligations.
7. In the event of termination, Fruitmasters Holland will not be obliged to pay any compensation to the Buyer.

#### **Article 15 Packaging**

1. Unless otherwise agreed, multiple-use packaging, which is the property of Fruitmasters Holland and which is made available by Fruitmasters Holland to the Buyer, remains the property of Fruitmasters Holland.

2. The Buyer is prohibited from selling, renting out or otherwise encumbering the multiple-use packaging, whether or not owned by Fruitmasters Holland, or making it available to third parties. The Buyer must handle the multiple-use packaging with due care and return it to Fruitmasters Holland in the same condition in which it was when made available to the Buyer. The Buyer is obliged to take out an insurance for the multiple-use packaging made available to it with an insurer of good report and to keep it insured against damage, loss and theft. Should Fruitmasters so demand, the Buyer is obliged to show that the obligation to take out an insurance policy has been complied with. The costs involved in cleaning and repair of the multiple-use packaging may be charged to the Buyer.
3. Fruitmasters Holland is entitled to charge the Buyer a fee and/or a deposit for the use of multiple-use packaging. The deposit will be refunded or will be set off after the Buyer has returned the multiple-use packaging undamaged, all this at the discretion of Fruitmasters Holland.
4. The Buyer is liable to Fruitmasters Holland for damage to and/or loss of the multiple-use packaging made available by Fruitmasters Holland.
5. Unless otherwise agreed, the multiple-use packaging must be returned by the Buyer at Fruitmasters Holland empty, clean and in a good condition against taking receipt of a deposit voucher for the amount of which a credit note will be issued.
6. When, upon being returned, packaging meant for multiple-use is not in a proper state of repair, Fruitmasters Holland is entitled to refuse to pay the full deposit or part thereof.

#### **Article 16 (Intellectual) Property**

1. Only with the Written permission and on the instructions of Fruitmasters Holland, the Buyer may make use of the trade names and brands used by Fruitmasters Holland in business transactions.
2. The Buyer is obliged to closely follow the instructions of Fruitmasters Holland with regard to the use of the trade names and brands used by Fruitmasters Holland.
3. Any and all rights arising from intellectual and industrial property as well as copy rights will remain vested in Fruitmasters Holland.

### **PART C. PURCHASE**

#### **PART C.I GENERAL**

#### **Article 17 Requirements in respect of the Supplier and supplier's declaration**

1. The Supplier and its suppliers must work in accordance with the BSCI standard.
2. To be able to properly assess a Supplier, a Supplier must complete a supplier's declaration should Fruitmasters Holland so demand.
3. The Supplier must complete the supplier's declaration truthfully, sign the declaration and return it together with the requested certificates.
4. If there are changes made and the supplier's declaration is not or no longer correct, the Supplier is obliged to inform Fruitmasters Holland thereof In Writing as soon as possible.

#### **Article 18 Requests, offers and formation of a Purchase Agreement**

1. All requests made by Fruitmasters Holland to enter into a Purchase Agreement are without obligation.

2. A request made by Fruitmasters Holland is followed by an offer of the Supplier. Offers made by the Supplier are free of charge and are deemed to be binding on the Supplier.
3. A Purchase Agreement will only be concluded at the time that the Order by which the offer has been accepted has been sent by Fruitmasters Holland to the Supplier or when the Supplier of Fruitmasters Holland has sent an order confirmation to Fruitmasters Holland. If a Purchase Agreement is entered into orally, the performance of the Purchase Agreement will be suspended until the time that the Written confirmation of the Order is sent by Fruitmasters Holland, unless on entering into the oral Purchase Agreement, Fruitmasters Holland has provided the Supplier with an order number, or where the performance has been commenced by Fruitmasters Holland.
4. In the case of on-call contracts (which are agreements whereby fixed amounts of the Products can be ordered on an on-call basis by Fruitmasters Holland as needed at pre-arranged prices and subject to pre-arranged conditions) Purchase Agreements for (partial) delivery are concluded each time when, within the framework of the on-call contract, the Order for a (partial) delivery has been sent by Fruitmasters Holland.
5. If specifications, instructions, inspection rules and suchlike made available or approved by Fruitmasters Holland are used in the performance of the Purchase Agreement, these will form part of the Purchase Agreement.
6. Purchase Agreements may only be entered into on the part of Fruitmasters Holland by persons authorized to do so by Fruitmasters Holland.

#### **Article 19 Amendments and provision of information**

1. Additional arrangements and/or amendments to the Purchase Agreement do not have a binding effect on Fruitmasters Holland, unless such has been expressly confirmed In Writing by Fruitmasters Holland.
2. Fruitmasters Holland is at all times entitled to require that the size and/or quality of the Products to be delivered by the Supplier is changed. If, in the opinion of the Supplier, such a change has consequences for the agreements made by Fruitmasters Holland and the Supplier in that respect, the Supplier will inform Fruitmasters Holland thereof In Writing as soon as possible, but no later than within 5 working days of having received the notice concerning the change before complying with the change requested by Fruitmasters Holland. If in the opinion of Fruitmasters Holland these consequences are unreasonable in respect of the nature and the extent of the change, Fruitmasters Holland has the right to terminate the Purchase Agreement by given notice In Writing to the Supplier. Termination pursuant to this paragraph does not entitle the Supplier to a right to compensation.
3. The Supplier is not allowed to make or implement changes without the prior Written permission of Fruitmasters Holland.
4. The Supplier is obliged, immediately on request of Fruitmasters Holland, to provide all information without delay concerning the performance of the Purchase Agreement.
5. The Supplier is obliged to inform Fruitmasters Holland in advance of any change in the composition or characteristics of the Products to be delivered by the Supplier.

#### **Article 20 Prices**

1. The agreed or submitted prices are fixed prices and cannot be changed unilaterally by the Supplier.

2. The agreed or submitted prices are expressed in euro and are exclusive of turnover tax, unless otherwise agreed In Writing.
3. Unless otherwise agreed In Writing, the prices referred to in the second paragraph of this article are based on the delivery condition 'Delivered Duty Paid' in accordance with Incoterms 2010 at the agreed place of delivery and include all costs involved in connection with the performance of the Supplier's obligations under the Purchase Agreement.

#### **Article 21 Delivery and packaging**

1. The Supplier is obliged to deliver the agreed Products to Fruitmasters Holland within the agreed delivery period.
2. The mere fact of exceeding the agreed delivery period causes the Supplier to be in default and the Supplier is obliged to compensate for all the ensuing Loss suffered by Fruitmasters Holland or by a third party with which Fruitmasters Holland enters into a contract.
3. The Supplier shall inform Fruitmasters Holland without delay that there is a risk that the delivery date will be exceeded, stating reasons. If the agreed delivery date is exceeded, Fruitmasters Holland is entitled to either set another date for the Supplier within which the Supplier must comply with its obligations or to terminate the Purchase Agreement without further notice of default, however, without being liable to pay compensation.
4. The Products must be properly packed and must be marked in accordance with the statutory provisions and decrees and any additional regulations of Fruitmasters Holland, so that they may reach their place of destination in good condition. The Products must be accompanied by a packing list which in any case must specify the order number of Fruitmasters Holland as well as type and variety number, quantity/quantities, description(s), production date, best-before date and the contact person of Fruitmasters Holland. The Supplier is liable for Loss caused by defective packaging. All packaging (with the exception of returnable loan packaging) will become the property of Fruitmasters Holland upon delivery. Returnable loan packaging must be clearly marked as such by the Supplier. Return shipment of returnable loan packaging will take place at the risk and expense of the Supplier.
5. If Fruitmasters Holland requests the delivery to be postponed, the Supplier will store, secure and insure the Products destined for Fruitmasters Holland, and ensure that the Products are properly packed for Fruitmasters Holland and recognizable as such.
6. Delivery also includes all the relevant auxiliary materials as referred to in Article 22 herein.
7. Inspection, checks and/or tests in accordance with the provisions of Article 25 herein do not constitute delivery or purchase.

#### **Article 22 Auxiliary materials for the benefit of the performance of the Agreement**

1. Materials, instructions, specifications, calculations or other auxiliary materials made available to the Supplier or purchased or manufactured by the Supplier at the expense of Fruitmasters Holland remain the property of Fruitmasters Holland or will become the property of Fruitmasters Holland at the time these are bought or manufactured.
2. The Supplier is obliged to mark the auxiliary materials referred to in the first paragraph of this article as recognizable property of Fruitmasters Holland, to keep

them in a good state of repair and keep them separate from auxiliary materials of the Supplier or third parties, and to take out an insurance for them at its own expense against any and all risks as long as the Supplier acts as the holder of these auxiliary materials. At the request of Fruitmasters Holland, the Supplier will provide a certificate of insurance, a copy of the policy conditions as well as documentary evidence that the insurance premium has been paid in good time. The Supplier will refrain from any acts or omissions as a result of which the insurance cover is lacking.

3. The auxiliary materials referred to in the first paragraph of this article will be made available to Fruitmasters Holland should Fruitmasters Holland so demand or simultaneously with the Products to be delivered to Fruitmasters Holland.
4. All the auxiliary materials referred to in the first paragraph of this article are exclusively intended to be used by the Supplier and the Supplier is not allowed to use, reproduce, disclose them or make known to third parties without prior express permission In Writing of Fruitmasters Holland. Consent granted by Fruitmasters Holland does not release the Supplier from any guarantee or liability under the Purchase Agreement concluded with Fruitmasters Holland or pursuant to these General Terms and Conditions.
5. Changes to or deviations from the auxiliary materials referred to in the first paragraph of this article as well as the use of these auxiliary materials for or in connection with any other purpose apart from the performance of the Purchase Agreement is only allowed after prior express permission In Writing of Fruitmasters Holland. Consent granted by Fruitmasters Holland does not release the Supplier from any guarantee or liability under the Purchase Agreement or pursuant to these General Terms and Conditions.
6. The Supplier is obliged to send or return the auxiliary materials referred to in the first paragraph of this article no later than with the last (partial) delivery to Fruitmasters Holland.

### **Article 23 General payment conditions**

1. Unless otherwise agreed, payment of the invoices by Fruitmasters Holland will be made within sixty days of receipt of the invoice as well as all the corresponding documents in the Dutch language, and after full approval by Fruitmasters Holland of the Products to be delivered by the Supplier.
2. The Supplier must specify the order number on its invoice, clearly and conveniently arranged. If an invoice does not state an order number, Fruitmasters Holland is entitled to return the invoice to the Supplier.
3. Fruitmasters Holland is entitled, before payment is made, to require the Supplier, in addition to or instead of transfer of ownership, to issue an unconditional and irrevocable bank guarantee by a banking institution acceptable to Fruitmasters Holland, at the Supplier's expense, serving to secure performance of the obligations of the Supplier.
4. Payment by Fruitmasters Holland does not in any way entail relinquishment of rights, this applies in particular to rights issuing from an attributable failure on the part of the Supplier.
5. Fruitmasters Holland is entitled to set amounts due by the Supplier for whatever reason off against the amounts Fruitmasters Holland is payable to the Supplier.
6. Fruitmasters Holland is entitled to suspend (part of the) the payment if it discovers a defect in the Products delivered by the Supplier.



**Article 24 Warranty and remedy**

1. The Supplier warrants that the Products delivered by it:
  - a) conform to the Purchase Agreement;
  - b) have the characteristics promised by the Supplier;
  - c) are free from defects;
  - d) are suited for their intended purpose;
- e) meet the highest statutory requirements and other government regulations, including, but not limited to European laws and regulations and all rules concerning food safety and the Maximum Residue Limit (MRL), as well as the highest quality and safety standards applied by the sector or certification requirements applicable at the time of delivery and/or at the time services are rendered.
2. If, in view of the results of any inspection, check and/or test as referred to in Article 25 herein, it turns out that the Products delivered by the Supplier do not comply with the provisions of paragraph 1 of this article, the Supplier will be obliged to remedy the shortcoming/defect within the time limited stipulated by Fruitmasters Holland.
3. In urgent cases and in addition to this, if after holding consultations with the Supplier it must reasonably be assumed that the Supplier will not be able to remedy the shortcoming/defect within the time limit stipulated by Fruitmasters Holland, Fruitmasters Holland is entitled to perform the Purchase Agreement itself or to arrange for a third party to perform the Purchase Agreement, wholly or in part, at the expense of the Supplier, without prejudice to the obligation of the Supplier to pay compensation to Fruitmasters Holland for all Loss/Damage Fruitmasters Holland suffered or may suffer and without prejudice to the right of Fruitmasters Holland to terminate the Purchase Agreement.
4. In connection with the provisions of the first paragraph under e), the Supplier is obliged to sign a supplier's declaration.

**Article 25 Inspections, checks and tests**

1. Fruitmasters Holland has at all times, prior to, during or after delivery, the right to submit the Products to be delivered by the Supplier to inspection, a check or a test carried out by Fruitmasters Holland itself or by persons or bodies designated for that purpose by Fruitmasters Holland. The Supplier grants access for that purpose to the places where the Products are grown and/or stored and renders its cooperation in the required inspections, checks and/or tests and provides to that end Fruitmasters Holland with the necessary documentation and information at its own expense .
2. Fruitmasters Holland is entitled to appoint an independent expert to establish attributable failures on the part of the Supplier and will inform the Supplier in this respect and allow the Supplier to appoint a loss assessor. If the Supplier fails to appoint a loss assessor, the findings of the expert engaged by Fruitmasters Holland will have binding force.
3. Fruitmasters Holland will inform the Supplier in good time beforehand of the time at which an inspection, check and/or test may take place. The Supplier has the right to be present at the inspection, check and/or test.
4. The costs involved in an inspection, check and/or test will be borne by the Supplier.
5. If upon inspection, a check and/or a test before, during or after the delivery, the provision of services or the performance of work, (part of) the Products to delivered

by the Supplier are rejected, Fruitmasters Holland will notify the Supplier thereof In Writing.

6. Inspections, checks and/or tests carried out by Fruitmasters Holland will under no circumstance release the Supplier from any warranty obligation or liability under the Purchase Agreement concluded with Fruitmasters Holland or these General Terms and Conditions.
7. Inspections, checks and/or tests carried out by Fruitmasters Holland do not prejudice the obligations of the Supplier and the rights of Fruitmasters Holland.

#### **Article 26 Product Recall**

1. In the event that the Supplier finds a potential defect in the Products delivered by the Supplier (packaging included therein), the Supplier will be obliged to inform Fruitmasters Holland thereof by telephone or In Writing without delay, stating:
  - a) the type of product defect;
  - b) the Products affected; and
  - c) any other information that may be relevant.
 Furthermore, the Supplier is obliged to hold consultations with Fruitmasters Holland about any possible product recall and limitation of loss.
2. All the costs involved in the product recall will be borne by the Supplier.
3. The provisions of this article do not prejudice the rights of Fruitmasters Holland.

#### **Article 27 Ownership**

1. Unless expressly otherwise agreed in Writing, the ownership of the Products is transferred to Fruitmasters Holland at the time the Products are delivered.
2. The Supplier guarantees that Fruitmasters Holland will acquire the full and unencumbered ownership of the delivered Products.
3. Fruitmasters has the right to require that the transfer of ownership of the Products will take place at an earlier time. In that case the Supplier will mark the Products as recognizable property of Fruitmasters Holland and will indemnify Fruitmasters Holland against loss, damage and the exercise of rights by third parties.

#### **Article 28 Staff and third parties**

1. All staff members and third parties deployed by the Supplier in the performance of the Purchase Agreement fall under the direct supervision and responsibility of the Supplier.
2. Staff members and third parties engaged by the Supplier in the performance of the Purchase Agreement must comply with the specific requirements set by Fruitmasters Holland. If no specific requirements are set, these staff members and third parties must meet the general standards of professional competence and expertise.
3. If Fruitmasters Holland is of the opinion that there are staff members and third parties whose vocational qualifications are not up to standard, Fruitmasters Holland has the right to direct the removal of the persons in question and the Supplier is obliged to replace them forthwith, with due observance of the provisions of the first paragraph of this article.
4. Fruitmasters Holland has the right to verify the identification of all the staff members and third parties engaged by the Supplier in the performance of the Purchase Agreement.
5. The Supplier indemnifies Fruitmasters Holland against any and all claims the staff members and third parties engaged by the Supplier may enforce against

Fruitmasters Holland relating to any Loss these staff members and third parties suffered or may suffer during the execution of the work assigned to them.

**Article 29 Equipment and tools**

1. The Supplier provides for all the equipment necessary for the performance of the Purchase Agreement. This equipment must meet the safety requirements in force. It is not allowed to use equipment which fails to meet these requirements.
2. The equipment made available by Fruitmasters Holland to the Supplier remains the property of Fruitmasters Holland at all times. The Supplier is obliged to use and maintain the equipment made available by Fruitmasters Holland properly. As long as the Supplier is in possession of equipment of Fruitmasters Holland, the Supplier will be liable for any loss of damage ensuing from improper use and maintenance.
3. Fruitmasters Holland has the right to examine and inspect all the equipment used by the Supplier in the performance of the Purchase Agreement.

**Article 30 Premises and buildings**

1. Prior to commencing the performance of the Purchase Agreement, the Supplier must acquaint itself with the circumstances on the premises and in the buildings of Fruitmasters Holland where the Products are delivered. Furthermore, the Supplier must acquaint itself with the rules and regulations applying to the premises and buildings of Fruitmasters Holland, such as those pertaining to safety, health, privacy and the environment. The Supplier and the staff members and third parties engaged by it must act according to these rules and regulations.
2. The costs involved in delays in the performance of the Purchase Agreement caused by circumstances referred to hereinabove or in connection with unfamiliarity with the rules and regulations applying at Fruitmasters Holland are at the risk and expense of the Supplier.
3. The Supplier will see to it that its presence and the presence of the staff members and third parties engaged by it on the premises and in the buildings of Fruitmasters Holland do not form an obstacle to the unhindered continuation of the activities of Fruitmasters Holland and third parties.

**Article 31 Confidentiality**

1. The Supplier undertakes to maintain strict confidentiality with respect to third parties regarding all business or other information originating from Fruitmasters Holland which has been communicated or made known to it. This confidentiality must be observed both during the term of the Purchase Agreement and after its termination.
2. Without prior express permission In Writing of Fruitmasters Holland, the Supplier is not allowed to reproduce documents relating to the Purchase Agreement or to submit these for inspection to third parties. Without prior express permission In Writing of Fruitmasters Holland, the Supplier is not allowed either to publicize the performance of the Purchase Agreement in any form whatsoever.
3. Furthermore, the Supplier undertakes to impose the confidentiality referred to in this article on the staff members and third parties engaged by it.
4. The Supplier is obliged to compensate any Loss and costs Fruitmasters Holland suffers or may suffer as a result of any act contrary to the provisions of the preceding paragraphs of this article.

**Article 32 Industrial and intellectual property**

1. The Supplier warrants that the use, including resale, of the Products or the auxiliary materials purchased or manufactured for the benefit of Fruitmasters Holland will not constitute any infringement of any industrial or intellectual property right, such as patent rights, trademark rights, design rights, copyrights and/or other rights of third parties.
2. The Supplier is obliged to inform Fruitmasters Holland of industrial and intellectual property rights of third parties vested in the Products or of the auxiliary materials purchased or manufactured by the Supplier for the benefit of Fruitmasters Holland.
3. The Supplier indemnifies Fruitmasters Holland against any and all claims arising from any infringement of the rights referred to in the preceding paragraph of this article. The Supplier will compensate Fruitmasters Holland for any Loss, costs and interest arising from any infringement of the rights referred to in the preceding paragraph of this article.

**Article 33 Transfer and performance by third parties**

1. Without prior express permission In Writing of Fruitmasters Holland, the Supplier is not allowed to transfer the Purchase Agreement, wholly or in part, to a third party or to have the Purchase Agreement performed by a third party.
2. Fruitmasters Holland has the right to attach conditions to its permission.
3. Permission granted by Fruitmasters Holland as referred to hereinabove does not release the Supplier from any obligation arising from the Purchase Agreement. The Supplier remains at all times fully responsible and liable for the performance of the Purchase Agreement, even if the Purchase Agreement is carried out by a third party with the permission of Fruitmasters Holland.
4. If Fruitmasters Holland grants express permission In Writing for the transfer or contracting out of the Purchase Agreement, it will do so under the condition that, with regard to the performance of the Purchase Agreement, the Supplier stipulates the same conditions with respect to the a third party as Fruitmasters Holland has stipulated with respect to the Supplier, and therefore including these General Terms and Conditions.
5. The Supplier indemnifies Fruitmasters Holland against any and all claims which the third parties engaged by the Supplier may enforce against Fruitmasters Holland relating to any Loss third parties have suffered or may suffer during the execution of the work assigned to them.

**Article 34 Liability and insurance**

1. The Supplier is liable to Fruitmasters Holland or third parties with which Fruitmasters Holland enters into a contract for any Loss resulting from a defect in the Products delivered by the Supplier or resulting from a failure in the performance of the Purchase Agreement on the part of the Supplier and/or others involved by the Supplier in the performance of the Purchase Agreement.
2. The Supplier indemnifies Fruitmasters Holland against any and all claims made by third parties against Fruitmasters Holland for compensation of Loss based on liability as referred to in the preceding paragraph of this article. Claims made by third parties against Fruitmasters Holland also include claims made by third parties based on product liability ensuing from defects in the Products delivered by the Supplier as well as claims related to delivery shortage, a different composition of the delivered Product or late delivery. This indemnification applies in particular if Fruitmasters Holland is unable to comply with its obligations to third parties, such

as a contracting party of Fruitmasters Holland, due to a failure in the performance of the Purchase Agreement on the part of the Supplier and/or others involved by the Supplier in the performance of the Purchase Agreement.

3. For the application of this article, staff and employees of Fruitmasters Holland are also considered as third parties.
4. If Loss/Damage arises during the performance of the Purchase Agreement, the Supplier will be obliged on an ongoing basis to take the necessary measures in order to limit the Loss, or make reparation for the damage, or cause to do so.
5. The Supplier will take out insurance providing sufficient cover in respect of its liability to Fruitmasters Holland pursuant to the law and/or Purchase Agreements and will continue to do so, and furthermore will take out insurance providing cover for all insurable risks associated with his business operations on normal conditions and will continue to do so. At the request of Fruitmasters Holland, the Supplier will provide a certified copy of the insurance policy and the policy conditions, as well as documentary evidence that the insurance premium is paid in good time. The Supplier will refrain from any acts or omissions as a result of which insurance cover is lacking. The obligation to take out insurance referred to in this article includes in any case taking out a product liability insurance.

#### **Article 35 Termination, suspension and setoff**

1. Fruitmasters Holland is entitled, without prejudice to its right to compensation, without notice of default and without judicial intervention being required, with immediate effect to (a) suspend the performance of the Purchase Agreement and all related agreements and/or (b) terminate the relevant Purchase Agreement and all related agreements, wholly or in part, if:
  - a) the Supplier fails to perform any obligation under the Purchase Agreement, or fails to perform by the stipulated date, or in a proper manner;
  - b) in respect of the Supplier a petition for bankruptcy or an application for a moratorium has been filed;
  - c) the business of the Supplier is dissolved, liquidated or discontinued;
  - d) execution is levied on a substantial part of the Supplier's assets;
  - e) Fruitmasters Holland has well-founded reasons to fear that the Supplier is not or will not be able to comply with its obligations arising from the agreements concluded with Fruitmasters Holland and the Supplier fails to provide security or sufficient security at the request to that effect of Fruitmasters Holland for the performance of the Supplier's obligations;
  - f) Fruitmasters Holland has rejected the delivered Products in accordance with the provisions of Article 24 of these General Terms and Conditions. In the aforementioned cases, Fruitmasters Holland is equally entitled to suspend the obligations to pay and/or to transfer the performance of the Purchase Agreement, wholly or in part, to third parties, without Fruitmasters Holland being liable to pay any compensation.
2. Any and all claims which Fruitmasters Holland may have or obtain in the aforementioned cases against the Supplier, including any claims for compensation, will be immediately due and payable in full.
3. If the Supplier invokes a non-attributable failure, Fruitmasters Holland will have the right to terminate the Purchase Agreement in accordance with the provisions of this article.
4. The Supplier is not entitled to rely on any right of suspension or setoff with respect to Fruitmasters Holland.

5. The Supplier is not entitled to terminate the Purchase Agreement, wholly or in part, if the Supplier itself already failed to comply with its obligations.

## **PART C.II VICARIOUS TAX LIABILITY AND RECIPIENTS' LIABILITY**

### **Article 36 Applicability**

If the Purchase Agreement (also) refers to (a) the contracting of work by the Supplier to which the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act and/or the hiring in of personnel to whom the Dutch Recipients' Liability Act applies/apply, the following stipulations will apply in addition to the aforementioned provisions.

### **Article 37 Obligations of the Supplier**

1. Immediately on request of Fruitmasters Holland, the Supplier must submit to Fruitmasters Holland:
  - a) a list specifying the name and address details of all the persons engaged by the Supplier, direct or indirect, in the execution of the work.
  - b) the wage statements of the persons referred to at a) hereinabove;
  - c) the name and address details of the party by which the persons referred to at a) hereinabove are employed;
  - d) if and in so far as self-employed workers without employees are engaged, directly or indirectly, the Declaration of Independent Contractor Status of these persons;
  - e) if and in so far as the persons referred to at a) hereinabove are hired in, directly or indirectly, from a temporary employment agency, a copy of the certificate as referred to in Article 7:692(2) of the Dutch Civil Code;
  - f) if and in so far as the persons referred to at a) hereinabove originate from countries outside the Netherlands, information on the social insurance position of the persons in question and, if a person has remained covered by social insurance in his country of residence, a copy of a valid E101 certificate;
  - g) if and in so far as persons from outside the EU or from countries which joined the EU after 1 May 2004 have been deployed, a copy of a valid work permit for non-EU nationals as well as a copy of a valid residence permit;
2. The Supplier needs to ensure that all the persons engaged by the Supplier, directly or indirectly, in the execution of the work are able to provide proof of identity at all times.
3. The Supplier is not allowed to hire in persons from a temporary employment agency lacking the certificate as referred to in Article 7:692(2) of the Dutch Civil Code. If and in so far as, with the permission of Fruitmasters Holland, the Supplier engages third parties, directly or indirectly, in the performance of the Agreement, the Supplier warrants that every third party will observe the prohibition referred to in the first sentence.
4. At the first request of Fruitmasters Holland, the Supplier must provide Fruitmasters Holland with an up-to-date payment history report of the Supplier issued by the Tax and Customs Administration.
5. The Supplier must have a G account (a blocked account).
6. The Supplier is obliged to comply with all administrative regulations which apply pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act, the Dutch Recipients' Liability Act and with all

the regulations provided for in specific legislation, if any. In so far as a failure to comply with the regulations referred to hereinabove leads to Fruitmasters Holland being held liable by third parties, the Supplier hereby indemnifies Fruitmasters Holland against any and all consequences of such liability.

7. If Fruitmasters Holland is held liable pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act and/or the Dutch Recipients' Liability Act and, as a result thereof is obliged to pay unpaid (advance) premiums, payroll tax, income-related contributions under the Dutch Healthcare Insurance Act and/or turnover tax, Fruitmasters Holland will have recourse against the Supplier for the full amount, to be increased by the statutory interest from the date on which payment has been made by Fruitmasters Holland.
8. If the Supplier and/or the third parties engaged by it is/are no longer able to pay the (advance) premiums, payroll tax, income-related contributions under the Dutch Healthcare Insurance Act and/or the turnover tax, which are all payable, for which Fruitmasters Holland is or may be jointly and severally liable pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act and/or the Dutch Recipients' Liability Act, the Supplier must inform Fruitmasters Holland thereof within five working days of the day on which the inability to pay arose, failing which the Supplier will be in default to Fruitmasters Holland by operation of law. In that case Fruitmasters Holland is entitled to terminate the Agreement, wholly or in part, without any notice of default or judicial intervention being required, without prejudice to its right to compensation.
9. The Supplier must always provide sufficient security forthwith and on demand to Fruitmasters Holland for any and all deferred liabilities which may arise in the framework of the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act for Fruitmasters in the performance of the agreements concluded with the Supplier, or any further Loss Fruitmasters is likely to suffer.

### **Article 38 Invoicing by the Supplier**

1. The Supplier must specify the following on its invoices, clearly and conveniently arranged:
  - a) the amount of the invoice pertaining to the wage sum;
  - b) the tax withholding number of the Supplier;
  - c) the registration number of the Supplier with the Employee Insurance Agency *UWV*;
  - d) the number of the G account (blocked account) or the number of the deposit account held by the Supplier with the Tax and Customs Administration; and
  - e) whether or not the reverse charge mechanism with regard to the turnover tax applies and if the reverse charge mechanism does not apply, the amount of the turnover tax.
2. If one or more of the persons referred to in Article 36(1)(a) hereinabove are hired, directly or indirectly, from a temporary employment agency, the Supplier must also specify the following on its invoice:
  - a) the amount in turnover tax relating to hiring;
  - b) the tax withholding number of the temporary employment agency; and
  - c) the registration number of the temporary employment agency with the Employment Insurance Agency *UWV*.



3. Fruitmasters Holland is entitled to return invoices to the Supplier which do not comply with the provisions of this article.

#### **Article 39 Payment**

1. Fruitmasters Holland is entitled to suspend payment of an invoice of the Supplier if the Supplier has failed to prove that it has paid to all the persons who are involved by the Supplier in the execution of the work the salary to which they are entitled and/or has failed to prove that the (advance) premiums, payroll tax, income related contributions under the Dutch Healthcare Insurance Act and/or turnover tax, which are all payable, have been paid for these persons, or that, in the opinion of Fruitmasters Holland, the Supplier has failed to make sufficiently plausible that it will do so.
2. Fruitmasters Holland is entitled to deduct the (advance) premiums, payroll tax, income related insurance contributions under the Dutch Health Care Insurance Act and/or turnover tax payable by the Supplier for which Fruitmasters Holland is or may be jointly and severally liable pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act or the Dutch Recipients' Act and to pay these on behalf of the Supplier directly to the authorities concerned or to pay the (advance) premiums, payroll tax, income related insurance contributions under the Dutch Health Care Insurance Act and/or turnover tax to the Supplier by depositing in the Supplier's G account (blocked account) or in the deposit account held by the Supplier with the Tax and Customs Administration.
3. Fruitmasters Holland is entitled to adjust the amount in (advance) premiums, payroll tax, income related insurance contributions under the Dutch Health Care Insurance Act and/or turnover tax to be withheld or to be paid, for which it is or may be jointly and severally liable pursuant to the Dutch Wages and Salaries Tax and National Insurance Contributions (Liability of Subcontractors) Act and/or the Dutch Recipients' Liability Act if, on the basis of the information available to it, Fruitmasters Holland may reasonably arrive at the opinion that the Supplier is payable a higher amount in premiums, payroll tax, income related insurance contributions under the Dutch Health Care Insurance Act and/or turnover tax than has been indicated by the Supplier. Fruitmasters Holland will inform the Supplier of this adjustment.