



THE ONION GROUP

GENERAL TERMS AND CONDITIONS

The user of these General Terms and Conditions is:

TOP Onions B.V. with registered office and place of business in 's-Gravenpolder (Municipality of Borsele) at Baarlandsezandweg 5, registered with trade register of the Chamber of Commerce under registration number 23041338, Baarlandsezandweg 5, 4431 EH, 's-Gravenpolder, tel.: +31 (0)113 315 050, fax: +31 (0)113 315 060.

Article 1 – Scope, definitions

1. These General Terms and Conditions apply to purchase agreements in which TOP Onions B.V. is user of these General Terms and Conditions and acts as the seller and its other party as the buyer.
2. TOP Onions B.V. will hereinafter be referred to as the "seller" and its other party as the "buyer".
3. In these General Terms and Conditions, the word "written/ in writing" shall be understood to mean by letter, e-mail, fax or any other means of communication that may be considered equivalent in view of the state of the art and generally accepted practice.
4. If one or more provisions of these General Terms and Conditions are invalid, this shall not affect the validity of the remaining provisions of these General Terms and Conditions.
5. In case of any discrepancy or conflict between these General Terms and Conditions and any translation of these General Terms and Conditions, the interpretation of the Dutch version shall be prevalent.
6. In case of discrepancy or conflict between these General Terms and Conditions on the one hand and the offer, contract or order confirmation on the other hand, the wording of the offer, contract or order confirmation shall be prevalent. If there is no discrepancy or conflict, these General Terms and Conditions shall supplement the terms of the contract, offer or order confirmation and form an integral part of these.
7. Once the buyer has accepted these General Terms and Conditions and the parties enter into another purchase agreement within six months after the conclusion of the first purchase agreement, of which these General Terms and Conditions form part, these General Terms and Conditions shall also automatically apply to the subsequent purchase agreement(s), without the seller being required to provide the buyer with a copy of General Terms and Conditions again.



8. The Seller shall be free to amend the content of its General Terms and Conditions at any time on the basis of changing market circumstances, legislation or case law. In that situation, the buyer shall be entitled to terminate the agreement of which the General Terms and Conditions form part. This right of termination shall lapse two weeks after the seller has notified the buyer that the General Terms and Conditions have been amended. The amended General Terms and Conditions will automatically replace the most recently applicable General Terms and Conditions and will be sent free of charge at the buyer's request.

Article 2 – Offers and quotations

1. An offer or a quotation by the seller shall expire if the product to which the offer or the quotation relates is no longer available, even after the offer or the quotation has been accepted. In that case the seller shall be obliged to inform the buyer immediately. If the seller meets this requirement of immediacy, the seller shall not be liable towards the buyer for the damages suffered by the buyer.
2. Verbal offers made by the seller shall remain valid for seven days after the offer date, written offers are valid for fourteen days unless the seller withdraws the offer prior to acceptance.
3. The seller cannot be held to its offer if the buyer may reasonably understand that the offer, or any part thereof, contains an obvious mistake or clerical error.
4. The prices stated in the offer to the seller shall be exclusive of VAT, import duties, transportation costs, taxes and other government levies, any costs incurred in concluding the purchase contract including travel expenses, administrative costs and the costs of shipping unless otherwise agreed in writing. The weight of the product as indicated by the seller or the product itself as it leaves the premises of the seller shall be decisive for the calculation of quantities and the total price.
5. Although all specifications of dimensions, weights, compositions, and/or other details of the products are provided by the seller with due care, the seller cannot guarantee the absence of deviations in these matters. If the seller provides or shows documentation, an image, sample or a model relating to the product to be purchased to the buyer, this is only done by way of an indication without the product purchased having to conform to this, except if and in so far as the parties expressly agree otherwise. Deviations in weight may arise and shall be accepted by the buyer.
6. The product to be delivered complies with the purchase contract if it corresponds to the specifications agreed between the seller and the buyer. If no specifications have been agreed upon, the product to be delivered shall comply with the standards customary in the trade with regard to the product in question. This is the case if the



product meets the quality requirements applicable in the Netherlands at the time the purchase contract is concluded. In any case, the product meets these quality requirements if the product has been subject to the (approval) inspection of the impartial and independent Stichting Nederlandse Algemene Kwaliteitsdienst Tuinbouw (NAKtuinbouw), or the Kwaliteits Controle Bureau (KBC), or the NVWA or any other organisation operating under the supervision of the NVWA.

7. The seller shall have the right to supply a product from a different source if the quality is equal or better than the agreed quality.
8. If (cost) price-increasing circumstances arise as a result of legislation and regulations, currency fluctuations, changes in the prices charged by the third parties or suppliers engaged by the seller or changes in the prices of the required materials and raw commodities etc. between the date of concluding the purchase contract and the delivery of the products purchased, the seller shall be entitled to increase the agreed price and charge the other party accordingly. If the buyer does not agree to this, the buyer shall have the right to terminate the contract with immediate effect.
9. All quotations, offers and agreements pertaining to the supply of agricultural products and/or end products using agricultural products for their manufacture (hereinafter: "*Products*") shall be subject to harvest. If as a result of a disappointing harvest fewer Product(s) are available in respect of the quantity and/or quality of Product(s) than could have been reasonably expected at the time when the contract was concluded, including Product(s) declared unfit by the competent authorities, the seller shall be entitled to reduce the volumes sold accordingly. This shall be the case, though not exclusively, if the seller has an insufficient supply of Product(s) based on contract farming to distribute between all of its customers. By adjusting the supply of this reduced quantity proportionally, the seller shall fully comply with its obligations to supply. In that case, the seller shall not be obliged to supply additional and substitute Product(s) and shall not be liable for any damage whatsoever.

Article 3 – Offer refusal

1. The seller shall have the right to refuse orders from (potential) buyers without stating any reason. Such refusal shall never give rise to any form of compensation.

Article 4 – Engaging third parties

1. In case the proper performance of the purchase contract so requires, the seller shall be allowed to have certain activities and/or deliveries carried out by third parties.



Article 5 – Confidentiality

1. The buyer shall be obliged to maintain confidentiality towards third parties that are not involved in the performance of the purchase contract. This confidentiality shall apply to all information that the buyer has obtained in connection with the conclusion and implementation of the purchase contract either from or regarding the seller. The buyer shall not be entitled to use the information that is made available by the seller for any purpose other than that for which it was provided.
2. Violation of this duty of confidentiality by the buyer will result in an immediately payable penalty of €15,000.00, which he owes to the seller from the day of the violation.

Article 6 – Delivery

1. A time of delivery or a term of delivery agreed between the seller and the buyer shall not be final for the seller. The seller shall only be in default after having been given notice of default, with due observance of the provisions below. This notice of default must state a reasonable time within which the seller can fulfil its obligation as yet.
2. Actual and legal delivery takes place Ex Works (EXW Incoterms 2020).
3. The seller shall, however, be obliged to load the product sold onto the vehicle used to transport the product to their own premises. Once the goods are in the vehicle, legal delivery is complete. Transport is then at the buyer's expense and risk. Even if the seller has engaged the transporter or the buyer has assisted in the choice of transporter, the above continues to apply.
4. If and in so far as transport of the sold products takes place over water from a port in the Netherlands and/or Belgium, then, contrary to the provisions of the second paragraph of this article, delivery shall take place at the time that the goods have arrived at the Dutch or Belgian port of departure and have been stored or deposited for further transport. If the goods are transported from a port other than in the Netherlands or Belgium, paragraphs 2 and 3 apply.
5. The legal delivery of the product sold takes place when the goods have either arrived in the vehicle (paragraphs 2 and 3) or when the goods have actually been placed in a Dutch or Belgian port to be brought on board of the vessel from there (paragraph 4). If the sold products are stored at the premises of the seller or of a third party at the request of the buyer, such storage shall be at the risk and expense of the buyer.
6. The risk of the products sold shall be for the account of the buyer as of the moment of delivery. If the buyer fails to perform any act necessary for such delivery, the buyer shall be considered to be in default from that moment on and the risk of the products shall be for the account of the buyer from that moment on.



Article 7 – Payment and debt collection

1. Payment of the invoice by the buyer must be made within 30 days of the invoice date.
2. Payments made by or on behalf of the buyer shall first be deducted from claims than those on which the seller can exercise its retention of title. Thereafter payments shall be deducted from all costs and interests due and, finally, from the (oldest) principal amount due.
3. The buyer shall not be entitled to set off the amount due to the seller against counterclaims. The buyer shall also not be entitled to suspend its payment(s).
4. Once the buyer has allowed the payment term as set out in paragraph 1 of this article to lapse, they shall be in default by operation of law and shall owe to the seller interest on the outstanding amount of 1% per month, whereby part of a month will be regarded as a full month, until the date of payment. If the seller dissolves the purchase contract, the buyer shall also owe this contractual interest on the buyer's cancellation obligation as well as on the damage suffered by the seller as a result of this dissolution, counting from the moment of dissolution until such time as this damage has been fully compensated.
5. If the seller instructs a debt collector, the buyer shall owe the seller the actual amount of extrajudicial costs incurred, with a minimum of 10% on the outstanding amount.

Article 8 – Retention of title

1. All deliveries shall be subject to retention of title. The seller shall retain ownership of the goods sold until the price and any accrued interest and extrajudicial costs have been paid.
2. The buyer may not dispose of goods under retention of title or have them serve as security for claims other than those of the seller.
3. The buyer shall be obliged to insure the goods delivered under retention of title and to keep them insured against calamities such as fire, explosion and water damage, contamination with pathogens, etc. and upon first request allow the seller to inspect such insurance policy. In the event that the insurance is paid out, the seller shall be entitled to these insurance payments and the buyer shall ensure that, at the seller's first request, the insurer shall pay these directly to the seller.
4. In the event the seller wishes to exercise their property rights as outlined in this article outside the Netherlands, the other party will render all reasonable assistance, including possibly performing further formal (legal) acts necessary to realize this



retention of title. Hereby, the buyer irrevocably authorises the seller to fulfil these formalities.

5. The buyer hereby grants the seller an irrevocable authorisation to enter the buyer's business premises and storage facilities in order to enable the seller to exercise their retention of title.
6. Without prejudice to the stipulations of article 14 paragraph 1, if the buyer is based in Belgium then Belgian law shall apply solely to this retention of title. In case of non-payment on the due date, without further warning or notice, the purchase contract shall then be dissolved, and the delivered goods shall remain the property of the seller. The risks, however, shall remain for the account of the buyer. Any advance payment made may be set off against the damage the seller suffers as a result of the default of the buyer.
7. Without prejudice to the stipulations of article 14 paragraph 1, if the buyer is based in Germany then German law shall apply solely to this retention of title. The contents and effect of that retention of title shall be determined by the provisions of **Annex 1** which is to be considered as repeated and inserted here.

Article 9 – Not taking delivery of products

1. If, for whatever reason, the buyer does not take delivery of the purchased products or takes delivery of fewer products than the agreed quantity, the buyer will be in default after having been summoned by the seller to fulfil the contract within a period of at least seven days and (therefore) to take delivery of the purchased products. In that event, (i) the Seller will no longer be obliged to deliver the uncollected products to the buyer and (ii) the buyer will remain obliged to perform in the sense that they will still have to pay the full purchase price of the uncollected products to the seller. In that case, the buyer will not be entitled to claim a reduction of the purchase price, even if the seller has saved costs or has been able to sell those products to a third party. Any additional damage as a result of not taking delivery of these products – such as, for example, the costs of storage, destruction, etc. – shall be borne by the buyer.

Article 10 – Force majeure; Act of God, etc.

1. In addition to what constitutes force majeure under Dutch law, the seller may invoke this if one or more of the following circumstances occur as a consequence of which a timely and/or correct delivery by the seller is not possible: government measures, unfavourable cultivation and harvesting conditions, business interruptions due to fire, theft, sabotage, failure of power, internet or telephone connections or hacker activities, production breakdown, force majeure of a seller's supplier, bankruptcy/dissolution of a seller's supplier, an epidemic, a pandemic or illness, strikes, crop failure, Act of God, not or insufficiently being able to harvest due to



weather conditions, natural phenomena, (natural) disasters, road blocks, accidents as well as import and export restrictive measures.

2. In addition to the above and what constitutes force majeure under Dutch law and case law, all external causes, foreseen or unforeseen, which the seller cannot influence preventing the seller from fulfilling their obligations shall constitute such force majeure.
3. The buyer cannot invoke force majeure or unforeseen circumstances if market conditions deteriorate as a result of the Covid-19 virus or any other disease, epidemic or pandemic. The consequences of government measures taken to combat this virus and/or any other disease, epidemic or pandemic do not justify the buyer invoking force majeure or unforeseen circumstances.

Article 11 – Liability

1. The seller shall only be liable for direct damage. Any liability of the seller for consequential or indirect damages such as loss of profits, loss of earnings and/or losses, delays and/or personal or bodily injury shall be explicitly excluded.
2. If the seller is liable for damages suffered by the buyer, the obligation of the seller to pay damages shall always be limited to a maximum of the purchase price of the product sold or to the amount paid out by the seller's insurer in the case in question. The lowest maximum applies.
3. The buyer shall indemnify the seller for any claims by third parties arising in connection with the performance of the contract.
4. Without prejudice to the provisions of article 12.1, the buyer shall inform the seller no later than one month after they became aware or could have become aware of the damage suffered by the buyer and claim payment from the seller of such damage before the court, under penalty of forfeiture of the claim.

Article 12 – Inspection and claims

1. The buyer shall be obliged to inspect the delivered goods (or have them inspected) immediately upon receipt. The buyer must examine whether the quality and/or quantity of the delivered product corresponds with what was agreed and whether the delivered product complies with the other requirements agreed between the seller and the buyer. The buyer must report possible defects to the seller in writing within 24 hours of receipt as referred to above. If the buyer fails to inspect and report defects (in time), the buyer shall no longer be entitled to lodge a claim and their rights shall lapse.



2. If the buyer discovers a defect in the products, the buyer shall no longer be entitled, on pain of forfeiture of their rights, to (re)mix with other products, to resell, convert or process the products. The buyer will then provide the seller with the opportunity to inspect the products complained about or have them inspected immediately. In the event of a dispute about (the presence, nature and extent of) the defect, both parties shall be obliged to immediately cooperate in instructing an independent expert with a mandate to examine the consignment in question and to draw up a survey report. The party that is deemed (mainly) at fault by the expert shall bear the costs of such an expert. If the buyer refuses to cooperate with an immediate inspection, the right to lodge a complaint shall be forfeited.
3. Timely complaint shall not relieve the buyer from the payment obligations to the seller. The buyer loses their right to lodge a complaint about the quality of the delivered product if – contrary to article 7 paragraph 3 – they suspend their payment obligation or proceed to set off.
4. If (i) a complaint has been lodged on a correct basis and in a timely manner and (ii) it has been established after investigation that the products are defective, the seller, at their discretion, may arrange for replacement, repair or payment of replacement damages to the buyer. In that case, the buyer shall return the defective products to the seller at the seller's expense, unless the Seller indicates that they do not wish to do so. In that case, ownership of the defective product shall pass to the buyer.
5. If it is established that the complaint/claim lodged by the buyer is unfounded, the buyer will reimburse the seller for all costs incurred by the seller in this respect and for all other damage the seller has suffered and will suffer as a result.
6. If the buyer does not comply with the aforementioned obligations as to lodging a complaint, and/or loses their right to claim, the seller shall no longer be liable for defects.
7. If the seller has sent a temperature recorder (a recorder that records the temperature throughout transport) with the product sold in a container and the buyer wishes to complain about the quality of the product upon arrival, the buyer shall be obliged, on pain of forfeiture of all their rights, to hand that temperature recorder over to the independent expert referred to in paragraph 2.



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Article 13 Bankruptcy, etc.

The seller shall always have the right to terminate the purchase contract without further written notice to the buyer at the time the buyer:

- a) is declared bankrupt or has filed an application for bankruptcy;
- b) requests a (temporary) suspension of payments;
- c) is subject to attachment;
- d) is placed in receivership or under guardianship;
- e) otherwise loses the power or capacity to act with regard to its assets or parts thereof.

Article 14 Applicable law/jurisdiction

14.1 The purchase contract concluded between the seller and the buyer shall exclusively be subject to Dutch law. The Vienna Convention on Contracts for the International Sale of Goods is excluded.

14.2 Any disputes shall be submitted to the District Court Zeeland West-Brabant, location Middelburg, although the seller always has the right to submit a dispute to the competent court in the place where the buyer is established if the buyer is located outside the Netherlands.

Date: 23 November 2020