



### **General Terms of Sale Xenia Europa BV**

Xenia Europa B.V., located at Kantsingel 16, 5349 AJ Oss, and its legal successors and/or affiliates, hereinafter referred to as "Xenia Europa B.V.", has determined the following General Terms of Sale:

#### **Article 1 Definitions**

1. Other Party: Any (legal) entity that enters into an agreement with Xenia Europa B.V. or to whom Xenia Europa B.V. makes an offer and/or gives a quotation, as well as its agent(s), authorized representative(s), legal successor(s) and heirs;
2. Agreement: Any agreement between Xenia Europa B.V. and any Other Party, any amendment or addition, or any (legal) act in preparation or execution of that Agreement;

#### **Article 2 Applicability**

1. These General Terms of Sale apply to all bids, offers, and Agreements made by Xenia Europa B.V., as well as accepted assignments. These General Terms of Sale apply to all (legal) acts (including negligence) of Xenia Europa B.V. and the relevant Other Party.
2. Agreements such as those referred to in paragraph 1 of this article include sales, commission, consignment, framework and related agreements.
3. The Other Party allows Xenia Europa B.V. to make use of third parties that are not Xenia Europa B.V. employees for the purpose of the execution of the provisions of the Agreement. The General Terms of Sale also apply to acts performed by these third parties in the context of the execution of Xenia Europa B.V. obligations under the Agreement.
4. Deviation of and/or additions to any provision in these General Terms of Sale will be binding for Xenia Europa B.V. only if they were agreed expressly and without reservation in writing between Xenia Europa B.V. and the Other Party. Any agreed deviation and/or addition only has bearing on that particular Agreement.
5. If, upon acceptance of a bid or offer or conclusion of an Agreement, the Other Party refers to terms and conditions that are not the General Terms of Sale of Xenia Europa B.V. with the view to apply these terms and conditions to the Agreement, these terms and conditions apply only to the Agreement if Xenia Europa B.V. has expressly accepted these terms and conditions without reservation and in writing.
6. If any provision of these General Terms of Sale - after consultation of a judicial body - appears to be void, only the relevant provision shall be excluded. All remaining provisions will remain valid unchanged.

#### **Article 3 Offers and prices**

1. All agreements concluded by Xenia Europa B.V. both in terms of the execution of the agreement and the payment of the agreement are deemed to have been established in Uden, the seat of Xenia Europa B.V.
2. All amounts quoted in bids, offers, Agreements and orders are displayed in euros unless parties have



agreed otherwise in writing. In addition, all amounts mentioned are exclusive of transport costs and sales tax, unless parties have agreed otherwise in writing.

3. All offers made by Xenia Europa B.V. are non-binding.
4. Xenia Europa B.V. reserves the right to refuse an offer without giving reasons.
5. Xenia Europa B.V. is not required to fulfill an offer and/or a contract at a specified price if this price is based on a print error and/or write error.

#### **Article 4 Agreement**

1. If a bid contains a non-binding offer accepted by a third party (Other Party), Xenia Europa B.V. has the right to withdraw the offer within two working days of receipt of acceptance.
2. The Other Party will receive a written order confirmation or a written record of the Agreement from Xenia Europa B.V. This written commitment may consist of the invoice and/or order slip.
3. If, after the Agreement has been concluded, parties have agreed further and/or additional agreements or changes, they shall be binding only if and to the extent that these agreements have been recorded in writing. Here too, the written commitment may consist of the invoice and/or order slip.

#### **Article 5 Cancellation of the Agreement**

1. Cancellation of the Agreement by the Other Party is only possible if this is done in writing before the Agreement execution date. With due regard to the following, in case of cancellation, all preparation costs incurred by Xenia Europa B.V. will be charged to the Other Party.
2. If cancellation of the agreement takes place within 72 hours prior to the agreed delivery date, the Other Party is liable to pay damages in addition to the preparation costs set at 50% of the agreed price. If cancellation takes place later than 24 hours prior to the agreed delivery date, the Other Party shall owe the full agreed price.
3. In case of cancellation, the Other Party, regardless of the time of cancellation, is held to reimburse the costs incurred with third parties by Xenia Europa B.V. due to and in connection with the - canceled - Agreement to Xenia Europa B.V.

#### **Article 6 Delivery**

1. The agreed delivery time is not a deadline, unless parties have explicitly agreed otherwise.
2. A reasonable delay in delivery does not give the Other Party any right to cancel the Agreement or to any damages.
3. The quantity in terms of number and weight delivered by Xenia Europa B.V., as well as public and/or private legal requirements, must comply with what the parties have agreed upon, unless evidence to the contrary is provided by the Other Party. Thus, the parties agree on explicit evidence in this regard.
4. Delivery takes place at the customer, unless parties have agreed otherwise in writing. The delivery time



is the time when the goods are delivered to the customer.

5. If parties have agreed that Xenia Europa B.V. stores goods to be delivered to for the benefit of the Other Party at the own location or at a third party location, the delivery time is the time the goods are stored.
6. Xenia Europa B.V. is entitled to claim a security for the fulfillment of the Other Party's payment obligations before fulfilling the obligations under the Agreement.
7. If the Other Party has a previous payment obligation to Xenia Europa B.V., in particular if any invoices due to Xenia Europa B.V. have remained unpaid in whole or in part by the Other Party, Xenia Europa B.V. is entitled to suspend delivery obligations until the Other Party has fulfilled all its obligations.

### **Article 7 Acceptance and complaints**

1. The Other Party shall, immediately upon delivery by Xenia Europa B.V. inspect and check the agreed goods. This inspection and checking must take place in the presence of the driver. The Other Party must check whether the goods delivered comply with the provisions of the Agreement, namely:
  - a. Whether the right goods have been delivered;
  - b. Whether the goods delivered comply with the agreed quality requirements, requirements for normal use and/or for commercial purposes;
  - c. Whether the quantities delivered (number, quantity, weight) delivered correspond to what the parties have agreed on. If the deviation found by the Other Party is less than 10%, the Other Party is obliged to fully accept the goods delivered, against a proportional reduction of the agreed price.
2. If goods will be delivered ex depot, the Other Party shall inspect the goods delivered in the Xenia Europa B.V. store.
3. Any shortcomings and objections not referred to in paragraph 1 of this article under (c) shall be reported in written to Xenia Europa B.V. immediately after discovery, and no later than 8 hours after delivery. If Xenia Europa B.V. does not receive a complaint immediately after delivery of the goods, the goods are deemed to have been delivered in accordance with the provisions of the Agreement and without any shortcomings.
4. Complaints regarding non-visible defects must be reported to Xenia Europa B.V. in writing as soon as possible, so that Xenia Europa B.V. to be able to investigate the validity of the complaints. The Other Party must give Xenia Europa B.V. the opportunity to verify the Other Party's complaint. If Xenia Europa B.V. has not received a written complaint from the Other Party within eight hours of delivery, it is entitled to assume that the shortcoming and/or defect was not present at the time of delivery, and the parties agree that the shortcoming and/or defect has occurred after delivery.
5. The provisions of this article also apply in full if the goods for the Other Party delivered by Xenia Europa B.V. are delivered to a third party. Thus, the Other Party can never object that the goods delivered were not inspected as they were stored elsewhere, at a third party location.



6. The Other Party is obliged to act as a conscientious debtor and/or owner for the maintenance of goods at all times.

#### **Article 8 Payment**

1. The Other Party must pay the agreed price upon receipt of the delivery invoice without rebate or claim for compensation within 30 days after the invoice date, unless this arrangement has been waived.
2. Settlement by the Other Party of amounts invoiced by Xenia Europa B.V. with a claim by the Other Party, or suspension of payment by the Other Party in connection with a counterclaim is not allowed unless Xenia Europa B.V. has acknowledged explicitly and without reservation the validity of the counterclaim, or the liability of the counterclaim has been irrevocably determined by law.
3. If the payment period is exceeded, the Other Party owes an interest rate of 1% per month, without prejudice to other rights of Xenia Europa B.V. such as the right to compensation for extrajudicial costs, and legal interest.
4. If the payment period is exceeded, the Other Party owes the official commercial interest rate over the outstanding amount without prior notice. In so far as it is established in law that a buyer is not owed the official commercial interest rate, the Other Party owes Xenia Europa B.V. the official interest.
5. If the Other Party fails to pay the total amount to Xenia Europa B.V. consisting of the outstanding amounts plus interest, is also liable to reimburse extrajudicial collection costs. Extrajudicial collection costs is set at 15% of the principal amount.
6. Payments made by the Other Party will first cover the interest and costs due, and then the payment of the oldest outstanding invoiced amounts. The same applies if the Other Party states that the payment relates to a more recent invoice.

#### **Article 9 Retention of title**

1. Goods delivered by Xenia Europa B.V. remain owned by Xenia Europa B.V. until full payment is completed of all claims of Xenia Europa B.V. to the Other Party through Agreements concluded between them, including interest and costs.
2. The Other Party is only authorized to resell goods delivered by Xenia Europa B.V. that fall under the retention of title as set out in paragraph 1 of this article, if resale is part of normal business practice of the Other Party.
3. If the Other Party fails to fulfill its obligations or if Xenia Europa B.V. has grounds to believe that the Other Party is not able to fulfill its obligations, or there is a suspicion that the Other Party is not willing to fulfill the obligations under the Agreement, then Xenia Europa B.V. is entitled to recover the goods subject to the retention of title referred to in paragraph 1 of this article from the Other Party, or have them recovered by a third party. The Other Party is obliged to cooperate with Xenia Europa B.V. in such an event.



4. If third parties want to claim any right to the goods delivered by Xenia Europa B.V. under retention of title, the Other Party must inform Xenia Europa B.V. of this immediately. In addition, the Other Party must make clear to the third party the fact that the goods have been delivered under retention of title. The Other Party must present to the third party the agreement concluded between the parties, which shows that retention of title applies with respect to the goods delivered.
5. The Other Party is obliged to cooperate with all measures that Xenia Europa B.V. takes in order to protect its ownership rights of the goods delivered.

#### **Article 10 Liability and risk**

1. If the Other Party holds goods that have been delivered by Xenia Europa B.V. that are owned by Xenia Europa B.V. (including packaging) and/or that are subject to the retention of title as referred to in article 9 of these General Terms of Sale, the Other Party, from the moment that the goods are delivered until the time of return or transfer of ownership of these goods, is liable for damages caused by and/or to these goods.
2. Furthermore, the Other Party, if it holds goods that are owned by Xenia Europa B.V. (including packaging) and/or are subject to retention of title as referred to in article 9 of these General Terms of Sale, is liable for damages suffered by Xenia Europa B.V. as a result of damage, loss, or spoilage of these goods that arises during the period between the moment Xenia Europa B.V. delivers the goods and the time of return of these goods or the time of the transfer of ownership of these goods.
3. If Xenia Europa B.V. as a result of circumstances resulting from acts to be attributed to the Other Party is forced to use its retention of title rights, and suffers damages nevertheless, the Other Party is liable for damages suffered by Xenia Europa B.V.
4. If the Other Party holds goods that Xenia Europa B.V. has delivered and which are owned by Xenia Europa B.V. under the Agreement (including packaging) and/or goods subject to the retention of title as referred to in article 9 of these General Terms of Sale, the Other Party will report to Xenia Europa B.V. immediately in the event of theft, loss or damage to those goods. In case of theft or willful damage, the Other Party will report immediately to the police of the municipality where the theft has taken place or where the damage has been done. The Other Party will provide Xenia Europa B.V. with a copy of this report.
5. If Xenia Europa B.V. has delivered goods to the Other Party that are owned by a third party, then the Other Party indemnifies Xenia Europa B.V. for all claims by this third party that are related to damage caused by and/or to the goods which Xenia Europa B.V. has delivered to the Other Party, as well as damage to goods that Xenia Europa B.V. has delivered to the Other Party.
6. If the Other Party, or a third party to whom the Other Party has delivered goods delivered by Xenia Europa B.V., performs a recall, Xenia Europa B.V. is liable only for (part) of the associated costs if (i) it is established that Xenia Europa B.V. is responsible for the circumstances that led to the recall, and ii)



Xenia Europa B.V. has been consulted and had a say in the recall decision before the recall was carried out, and (iii) it is established that the Other Party has acted reasonably, competently, and professionally, and has attempted to minimize the costs associated with the recall.

7. If Xenia Europa B.V. is liable for any damages, any liability amount is limited to the amount paid out under the corporate liability insurance of Xenia Europa B.V., increased with the own risk under this insurance. If for any reason no payout is made under this insurance, a liability is be limited to the amount of the invoice of the Agreement on the basis of which the Other Party is claiming, with a maximum of EUR 40,000.

### **Article 11 Force majeure**

1. In case of force majeure, Xenia Europa B.V. is entitled to suspend the execution of the Agreement or to dissolve the Agreement completely or partly, without the Other Party being entitled to any claim for damages against Xenia Europa B.V.
2. The following events are considered force majeure on the part of Xenia Europa B.V.:
  - A strike by workers of Xenia Europa B.V. or third party engaged in the execution of the Agreement;
  - An illness of an employee of Xenia Europa B.V. or of a third party engaged in the execution of the Agreement;
  - Policy measures and/or rules by Dutch and/or foreign authorities by which Xenia Europa B.V. is bound;
  - Unpredictable traffic barriers;
  - Accident(s) or unforeseen technical defects with a means of transport used for the execution of the Agreement;
  - Failure to comply with an agreement with Xenia Europa B.V. on the part of a supplier, either attributable or not;
  - Theft of items necessary for the execution of the Agreement;
  - All other unforeseen circumstances that prevent Xenia Europa B.V. from living up to the Agreement properly and on time, that are not already at the expense and risk of Xenia Europa B.V.
3. If Xenia Europa B.V. on the occurrence of force majeure has already partially fulfilled its obligations, or is only partially able to meet its obligations, Xenia Europa B.V. is entitled to invoice the delivered part or goods separately. The Other Party is obliged to pay this invoice as if it were a separate agreement.
4. All agreements concerning agricultural products are made under harvest provision. If, due to a bad harvest in terms of quantity and/or quality of agricultural products, considerably less product is available, including as a result of disapproval of product by competent authorities than could reasonably be expected at the time of the signing of the agreement, Xenia Europa B.V. has the right to reduce quantities sold accordingly. By delivery of this reduced quantity, Xenia Europa B.V. fulfills its delivery obligations completely. Xenia Europa B.V. is not obligated to supply substitute agricultural products and is not liable for any damage whatsoever.



## **Article 12 Default and dissolution**

1. If the Other Party fails to comply fully or in time with any obligation in the Agreement with Xenia Europa B.V. or any legal obligation that applies to it, including the obligation to pay in time as set out in article 8 of these General Terms of Sale, the Other Party is in default, and Xenia Europa B.V. is entitled to suspend the execution of the Agreement and/or terminate the Agreement and directly related agreements in whole or in part without being liable for damages and without prejudice to future entitlements of Xenia Europa B.V.
2. If the Other Party is in default, it owes Xenia Europa B.V. the official commercial interest as well as all (extra)judicial costs borne by Xenia Europa B.V. in order to determine the liability of the Other Party and/or to obtain compliance as referred to under Article 6:96 (2) of the Dutch Civil Code.
3. In the event of (provisional) suspension of payment or bankruptcy of the Other Party, or termination or liquidation of the Other Party's business, all Agreements with the Other Party shall be terminated by law unless Xenia Europa B.V. indicates within a reasonable time that it requires compliance with (part) of the Agreement(s), in which case Xenia Europa B.V. is entitled to suspend without notice execution of the relevant Agreement(s) until sufficient payment has been secured, and without prejudice to future entitlements of Xenia Europa B.V.
4. Xenia Europa B.V. has the right to terminate the Agreement if there is permanent force majeure on the part of the Other Party. In that case, the Other Party will reimburse all costs made and costs to be made to Xenia Europa B.V.
5. In each of the cases mentioned in paragraphs 1, 2, 3 and 4 of this article, all claims by Xenia Europa B.V. on the Other Party are due immediately, and the Other Party must return immediate all leased or unpaid goods.
6. Other Party will notify Xenia Europa B.V. without delay if any movable or immovable property owned by Xenia Europa B.V. which Other Party holds for the execution of the Agreement has been seized.
7. In case of bankruptcy or suspension of payment, the Other Party will inform Xenia Europa B.V. immediately, and present the Agreement referring to the property rights of Xenia Europa B.V. to the bailiff, curator, or administrator.

## **Article 13 Packaging**

1. Xenia Europa B.V. makes use of packaging for the delivery of its goods, including pallets and crates. If Xenia Europa B.V. charges a deposit for packaging, the deposit will be charged back at the invoiced price at the time of return, and in case of foreign currency transactions, the chargeback is done at the exchange rate at the time of delivery. For the receipt of returned packaging, a fixed fee may be charged in accordance with the applicable rules. The Other Party will receive a copy of these rules upon request.
2. The packaging that the Other Party returns will be clean and fresh such that it can, without further action



on the part of Xenia Europa B.V., be re-used for fresh edible horticultural products.

3. If the return of packaging takes place using Xenia Europa B.V. transport means, the Other Party will ensure that the packaging is sorted and ready for transport.
4. Packaging not delivered by Xenia Europa B.V. is taken in by Xenia Europa B.V. only if Xenia Europa B.V. carries the relevant products in its assortment, and the packaging is in good condition.

#### **Article 14 Industrial and intellectual property rights**

1. Xenia Europa B.V. expressly reserves any intellectual and/or industrial property rights (trademarks) of products supplied.
2. The Other Party is not permitted to use products delivered by Xenia Europa B.V. to infringe on intellectual and/or industrial property rights of a third party. The Other Party indemnifies Xenia Europa B.V. for any third party claims arising from an infringement of intellectual and/or industrial property rights created with the use of goods delivered by Xenia Europa B.V. that take place after Xenia Europa B.V. has delivered the goods to the Other Party.

#### **Article 15 Applicable law**

1. The legal relationship between Xenia Europa B.V. and the Other Party is governed by Dutch law.

#### **Article 16 Disputes**

1. Disputes arising out of an offer, bid, or Agreement to which these General Terms of Sale apply, including conflicts that result from these General Terms of Sale, will be settled by a competent court in the judicial district where Xenia Europa B.V. is located. Xenia Europa B.V. can choose to settle a dispute through arbitration or on the basis of a binding advice.
2. By way of derogation from paragraph 1 of this article, the parties may agree to hand over a dispute to a competent court in another judicial district.