



## GENERAL TERMS AND CONDITIONS OF EUROPE RETAIL PACKING B.V. / VAREKAMP COLDSTORES HOLLAND B.V.

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## SECTION A: GENERAL PROVISIONS

### Article 1. Applicability

1. Unless expressly agreed otherwise in writing, these general terms and conditions (hereinafter also: **“ERP General Terms and Conditions”**) apply to all legal relationships entered into by Europe Retail Packing B.V., Varekamp Coldstores Holland B.V., an entity belonging to their group or any other party that declares these general terms and conditions applicable (the relevant party with whom the legal relationship is entered into, hereinafter: **“ERP”**).
2. If ERP and its contracting party (hereinafter: **“Contracting Party”**) enter into agreements with each other more than once, these general terms and conditions will also apply to those (future) agreements, even if they are not explicitly declared applicable again.
3. To the extent that the application of a provision of these general terms and conditions conflicts with a provision in a written agreement – not being general terms and conditions – between ERP and the Contracting Party, the application of that provision (insofar as it concerns the conflicting part) will be excluded, while the remaining provisions of these general terms and conditions will remain in full force and effect.
4. If one or more provisions of these general terms and conditions are or become null and void or are annulled, this will not affect the other provisions.
5. ERP is entitled to amend and re-adopt these general terms and conditions. The amended conditions will enter into force at the time the Contracting Party has had a reasonable opportunity to take note thereof (including the methods referred to in Section 230c of Book 6 of the Dutch Civil Code).
6. The applicability of general terms and conditions of the Contracting Party, explicitly including any clause regarding the transferability and/or pledging of ERP's claims against the Contracting Party contained therein, is expressly rejected.

### Article 2. Order of precedence

1. The provisions in this section apply to all agreements between ERP and the Contracting Party, and therefore also to the agreements specifically referred to/regulated in the other sections.
2. In the event of a conflict between a provision in Section A and a provision in another section (including a provision in general terms and conditions referred to in the relevant section), only the provision in the other section will apply (insofar as it concerns the conflicting part).

### Article 3. General provisions

1. Amendments to the agreement and deviations from these general terms and conditions will only be valid if agreed in writing (always understood to include email) between ERP and the Contracting Party.



2. Obligations of the Contracting Party which by their nature are intended to continue after termination of the agreement will remain in force. Termination of the agreement will expressly not release the Contracting Party from the provisions relating, inter alia, to intellectual property rights, confidentiality, applicable law and competent court.
3. In the event of discrepancies between different translations of the agreement and/or this text, the Dutch version will prevail.

#### **Article 4. Confidentiality**

1. The Contracting Party undertakes to observe the confidentiality of all business information that it has obtained from ERP or from another source in the context of the agreement, such as information regarding products and know-how in the broadest sense, unless it is subject to a statutory or professional obligation to disclose, ERP has released it from the confidentiality obligation in writing, the information is publicly accessible at the time of disclosure, the information becomes publicly known after disclosure without this being the result of a breach of the agreement by the Contracting Party, or the information was already known to and lawfully in the possession of the Contracting Party and at its free disposal prior to disclosure by ERP.
2. The Contracting Party will also impose the obligation referred to in this article on its personnel and/or third parties engaged by it in the performance of the agreement.
3. If the Contracting Party fails to comply with the obligation referred to in this article, it will owe ERP a penalty of €10,000.00 per breach, to be increased by €100.00 for each day during which such breach continues, without prejudice to ERP's right to additional compensation and the Contracting Party's obligation – insofar as possible – to remedy the breach immediately.

#### **Article 5. Intellectual Property**

1. ERP reserves all intellectual property rights with respect to the graphic designs, tools, packaging and items it uses, as well as with respect to items it provides to the Contracting Party.
2. The items referred to in paragraph 1 may not be used by third parties without ERP's written consent.
3. The Contracting Party warrants that the use of Products supplied by it or Deliveries provided by it, or tools purchased or manufactured by it for ERP, will not infringe any patent rights, trademark rights, design rights, copyrights or other intellectual property rights of third parties.
4. The Contracting Party indemnifies ERP against claims arising from any infringement of the rights referred to in the previous paragraph and will compensate ERP for all damage resulting from any such infringement.

#### **Article 6. Delivery in Pooling Packaging / other packaging**

1. ERP makes use of various Pooling Partners. If the parties agree that delivery will take place via a Pooling system, paragraphs 2 up to and including 6 of this article will apply. The Contracting Party acknowledges that general terms and conditions for use of the relevant Pooling Partner may apply



to the use of the Pooling Packaging made available to it and that it is obliged to comply with these terms and conditions.

2. ERP provides no guarantee with regard to the delivery of the Pooling Packaging ordered.
3. The Pooling Packaging remains the inalienable property of the relevant Pooling Partner. The Contracting Party is not permitted to make the Pooling Packaging provided to it by ERP available to third parties in empty form, unless a contract for (re)use has been concluded with the Pooling Partner. The Contracting Party is also obliged to use the Pooling Packaging exclusively for the performance of the agreement.
4. A deposit will be charged as security for the Pooling Packaging issued by ERP to the Contracting Party. The amount of the deposit will be determined by ERP in a binding manner and communicated separately. The deposit is due and payable upon acceptance of the Pooling Packaging. If the Pooling Packaging is returned in good condition – as described in the following paragraph – the Contracting Party will receive the deposit back.
5. The Contracting Party is obliged to maintain and transport the Pooling Packaging in a proper manner. The Contracting Party is obliged to return the Pooling Packaging empty, clean and undamaged (damage also includes staples or non-removable stickers), sorted by type and on permitted pallets, to the Pooling Partner's depot. Foldable Pooling Packaging shall be returned in folded condition.
6. In the event of non-compliance, ERP will be entitled to deduct the costs of emptying, disposal, repair and removal of stickers, staples and the like from the deposit.

#### **Article 6a. Returning pallets**

1. If the Contracting Party arranges the transport of the goods delivered by ERP or has this arranged by a carrier or transporter engaged by the Contracting Party, the Contracting Party is obliged towards ERP to ensure (at its own expense and risk) that an equal number of pallets and pallets of comparable quality to the pallets used in the context of the delivery are returned to ERP, unless the pallets in question are charged to the Contracting Party in accordance with the agreement or ERP has indicated in writing in advance that they do not need to be returned (for example, because they concern single-use pallets).
2. The action referred to in paragraph 1 will be taken as soon as possible, but at the latest within a period (subsequently) set by ERP (which period will be regarded as a period within the meaning of Section 6:83, preamble and (a), of the Dutch Civil Code).
3. If the Contracting Party fails to comply with the obligation mentioned in this article within the period stipulated by ERP, the Contracting Party immediately owes a penalty of €12.50 per pallet - therefore without the need for a demand or notice of default - without prejudice to the obligation to deliver the (missing) pallets or to exchange the pallets of insufficient quality for pallets of sufficient quality, and without prejudice to the obligation to compensate for (additional) damage.



4. In determining the number of pallets that have been delivered in insufficient quantities or are of insufficient quality, ERP's records will be binding between the parties, subject to proof to the contrary by the Contracting Party.

#### **Article 7. Packaging materials**

If ERP purchases packaging materials from the Contracting Party or from a third party on behalf of or for the benefit of the Contracting Party, for example in connection with repacking and packaging activities for the Contracting Party, and the Contracting Party has not fully taken delivery of such packaging materials within six months after purchase, ERP will be entitled to charge the remaining packaging materials to the Contracting Party at the rates customary at ERP at that time, and the Contracting Party will be obliged to pay the relevant invoice to ERP within the period referred to in Article 16.

#### **Article 8. Applicable law and disputes**

1. All agreements between ERP and the Contracting Party or agreements arising therefrom, as well as all obligations arising from or related to such agreements, are governed exclusively by Dutch law.
2. All disputes arising from or related to agreements to which these general terms and conditions apply, or from subsequent agreements resulting therefrom, will be submitted exclusively to the District Court of The Hague, unless mandatory rules of jurisdiction dictate otherwise or ERP, in the relevant case, wishes to submit such disputes to the Netherlands Arbitration Institute (NAI) in accordance with its Arbitration Regulations. In such case, the place of arbitration will be Rotterdam.

#### **Article 9. Complaints**

1. All complaints by the Contracting Party shall be reported to ERP in writing within 24 hours after the Contracting Party has become aware thereof and in any event within 48 hours after the performance by ERP to which the complaint relates.
2. The written complaint shall include at least a detailed description of the complaint and supporting documents (such as accompanying photographic material).
3. If the provisions under 1 and 2 of this article have not been complied with, the Contracting Party may not invoke any failure by ERP to perform its obligations.

#### **Article 10. Liability**

1. ERP will never be liable for damage resulting from the failure to perform or improper performance of one or more obligations arising from the agreement or as a result of a wrongful act on the part of ERP, unless the Contracting Party demonstrates that there is intent or deliberate recklessness on the part of ERP or persons charged with the management of ERP's business.
2. Insofar as it is judicially determined that the exclusion of liability in the previous paragraph cannot



be applied, ERP's liability for damage suffered and/or to be suffered by the Contracting Party will be limited to the invoice amount excluding VAT, or at least to that part thereof attributable to the relevant damage.

3. Insofar as it is judicially determined that the exclusion and limitation of liability in the preceding paragraphs cannot be applied, ERP's liability will be limited to the amount paid out, where applicable, under the insurance policy taken out by ERP.
4. Liability for any auxiliary persons and subordinates engaged by ERP in connection with this agreement or its performance is fully excluded.
5. The Contracting Party indemnifies ERP, its employees and auxiliary persons engaged by it against all (damage) claims of third parties arising from or in any way related to the relevant agreement between ERP and the Contracting Party, including claims based on (an infringement of) intellectual property rights, such as plant breeders' rights, and liability arising from any defect in delivered Products.
6. Any legal claim for compensation for damage by ERP will lapse if the Contracting Party has not notified ERP thereof in writing within 10 calendar days after it arose and has not subsequently initiated legal proceedings against ERP by serving a writ of summons within 6 months after the Contracting Party became aware, or could have become aware, of both the damage and ERP's liability for that damage.

**Article 11. Offers, conclusion of the agreement and prices**

1. All quotations issued, requests made, orders placed or offers made by ERP, in whatever form, are always without obligation, unless expressly stated otherwise.
2. An agreement will be concluded when, after acceptance thereof has been sent by the Contracting Party, it is confirmed by ERP, or, if the offer originates from the Contracting Party, upon acceptance thereof by ERP.

**Article 12. Term of the agreement**

1. An agreement entered into for a definite period will terminate upon expiry of that period, unless the parties have agreed otherwise.
2. If the agreement has been entered into for an indefinite period, the parties will be entitled to terminate the agreement with due observance of a notice period of three months, unless the agreement – including multiple separate agreements with a maximum interval of no more than three months between them – has, at the time of termination, already been in force for more than two years, in which case a notice period of six months will apply. Notice of termination shall be given in writing.

**Article 13. Force majeure**

1. A shortcoming will not be attributable to ERP if it is not due to ERP's fault, nor for its account pursuant to law, legal act or generally accepted standards.



2. In the event of temporary force majeure, ERP will be entitled to suspend the agreement, and in the event of force majeure of a permanent nature (which will be deemed to exist in the case of a consecutive period of at least 2 months), ERP will be entitled to dissolve the agreement with immediate effect, without being liable to pay any compensation.
3. Force majeure on the part of ERP will in any event – but not exclusively – include all circumstances as a result of which ERP or third parties engaged by it is/are (temporarily) unable to perform its/their obligations or to do so in a timely manner.
4. Force majeure within the meaning of these general terms and conditions will in any event, but not exclusively, include:
  - natural disasters, including floods, earthquakes, heavy precipitation and snowfall;
  - war, threat of war, civil war, riots, terrorism, civil commotion;
  - fire and water damage;
  - damage caused by organisms, including mice, rats, worms, fungi and bacteria;
  - foreseeable quality changes over time;
  - a pandemic/epidemic, including (governmental) measures to combat a pandemic/epidemic (such as a (semi-)lockdown);
  - transport difficulties and traffic congestion;
  - unforeseen technical complications, operational breakdowns, cyber attacks, computer failures, cold storage failures;
  - power outages;
  - strikes;
  - non-delivery or defective delivery by third parties, as a result of which ERP is unable to perform its obligations towards the Contracting Party, which will be presumed to be the case unless the Contracting Party proves otherwise;
  - governmental impediments, including blockades, import and export bans, total or partial seizure or requisitioning of stocks by civil or military authorities;
  - all other circumstances that are reasonably unforeseeable for ERP.

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

1. For all agreements, ERP will be entitled, by means of a written statement and without prior notice of default or notification, to suspend the agreement in whole or in part or to terminate it with immediate effect (with the express exclusion of the 'unless' rule in Section 265(1) of Book 6 of the Dutch Civil Code):
  - a. if the Contracting Party fails to perform one or more of its obligations and/or performance thereof is impossible;
  - b. if it is plausible to ERP that the Contracting Party is not or will not be able or willing to perform its obligations, including where attachment is levied on the Contracting Party's assets in respect of substantial debts and such attachment is maintained for more than



two months;

- c. if the Contracting Party has applied for or has been granted a suspension of payments, if a petition for bankruptcy has been filed against the Contracting Party, the Contracting Party is declared bankrupt, a request has been submitted for the application of a debt restructuring scheme to the Contracting Party, the Contracting Party has been placed under guardianship or administration, and/or the Contracting Party liquidates its business or ceases its activities or otherwise appears to be insolvent;
  - d. if significant changes occur in the ownership or control structure of the Contracting Party or ERP itself, including mergers and acquisitions, as well as where permits have been amended or revoked;
  - e. in the event of permanent force majeure as described in Article 13 of these general terms and conditions.
2. In the event of suspension or termination, ERP will never be liable for any form of compensation.
  3. If ERP suspends performance of its obligations, it will retain its claims under the agreement and the law. If the agreement is terminated, all of ERP's claims against the Contracting Party will become immediately due and payable.
  4. In the event of termination of the agreement, the Contracting Party will be obliged to reimburse all costs already incurred by ERP immediately, without prejudice to ERP's right to claim full compensation.

#### **Article 15. Penalty clause**

1. If the Contracting Party fails to perform one or more obligations under the agreement, or fails to do so in a timely or proper manner, it will, without any notice of default being required, owe ERP an immediately due and payable penalty of €100 per breach, increased by €100 for each day during which the breach continues, without prejudice to ERP's right to additional compensation. The penalty will not affect the Contracting Party's obligation to perform the relevant obligation. ERP may therefore – in deviation from Section 92(1) of Book 6 of the Dutch Civil Code – claim both performance of the obligation in question and payment of the penalty.
2. If the non-performance, late performance or improper performance concerns one or more obligations for which another penalty is provided elsewhere in these general terms and conditions, that other penalty will apply instead of the penalty referred to in the previous paragraph.

#### **Article 16. Invoicing and payment**

1. Payment shall be made within 30 days of the invoice date, unless this arrangement has been deviated from in writing.
2. ERP is entitled to issue invoices periodically.
3. Costs associated with payment in a currency other than that in which the invoice is issued, such as bank charges and exchange rate differences, will be borne entirely by the Contracting Party.



4. Complaints and/or objections to the invoice amount do not suspend the payment obligation.
5. Upon expiry of the payment term, the Contracting Party will be in default by operation of law without any notice of default being required and will also owe the statutory commercial interest within the meaning of Section 119a of Book 6 of the Dutch Civil Code, without prejudice to ERP's right to further compensation.
6. Payments made by the Contracting Party will always be applied first to all interest and costs due and subsequently to the principal sum that has been outstanding the longest.

**Article 17. Set-off, security and due and payable claims**

1. ERP will be entitled to set off what it owes or will owe to the Contracting Party under an existing legal relationship against outstanding and future claims arising from an existing legal relationship of the Contracting Party and companies directly or indirectly affiliated with the Contracting Party.
2. The Contracting Party is not entitled to set off ERP's claims against any claims it has or alleges to have against ERP.
3. ERP may assign a credit limit to the Contracting Party. A credit limit is the maximum balance of all outstanding claims and orders combined at any given time.
4. ERP may require an advance payment or other form of security from the Contracting Party, in which case the Contracting Party will be obliged to make the advance payment to ERP or provide the other form of security, if the parties have not previously entered into an agreement with each other or if the payment behaviour in respect of ERP and/or the volume of the Contracting Party's transactions or special circumstances give cause to do so, at ERP's discretion.
5. In the event of liquidation, bankruptcy or suspension of payments of the Contracting Party, all of ERP's claims will become immediately due and payable. The Contracting Party will then be in default without any notice of default being required.
6. In the event of attachment by third parties on the goods of the Contracting Party, all of ERP's claims will become immediately due and payable. The Contracting Party will then be in default without any notice of default being required.
7. Payment by ERP does not constitute any acknowledgement that the Contracting Party has properly and/or fully performed the obligation(s) to which the payment relates in respect of ERP.

**Article 18. Right of retention and right of pledge**

1. As security for payment of everything the Contracting Party owes or will owe to ERP on whatever grounds, ERP will have both a right of retention and a right of pledge on all monies and goods of the Contracting Party that ERP has in its possession at any time. The right of pledge is established by the mere conclusion of the service agreement (including transport) and the placing of the goods under ERP's control, for example because they are located on its premises.
2. In the event that damage occurs to ERP's goods, the Contracting Party will be obliged, within 2 days of a request to that effect, to pledge the claim arising under the insurance agreement.



3. If there are multiple goods on which the right of pledge or right of retention may be established, ERP will determine the order in which it exercises its rights.
4. If the Contracting Party fails to satisfy ERP's claim, the security will be sold in the manner prescribed by law or, if agreed, by private sale. If the goods are sold publicly, all costs incurred by ERP in connection with the sale, including the engagement of third parties, valuation costs and legal assistance costs, will be deemed enforcement costs. ERP may recover these enforcement costs from the proceeds.

## **SECTION B: CONCERNING THE PROVISION OF LOGISTICS SERVICES**

### **Article 19. Offering and provision of logistics services**

1. This section relates to agreements from which one or more of the following obligations arise:
  - a. The inbound handling of goods by ERP;
  - b. The storage of goods by ERP;
  - c. The handling or processing of goods by ERP;
  - d. The outbound handling of goods by ERP.
2. 'Processing of goods' will in any event, but not exclusively, mean:
  - a. Repacking;
  - b. Packing;
  - c. Inspecting;
  - d. Weighing;
  - e. Order picking;
  - f. Pricing;
  - g. Cutting;
  - h. Marking;
  - i. Labelling;
  - j. Ripening;
  - k. Drying.
3. ERP will perform the work to the best of its ability and exercise the care customary in the sector. Subject to Article 10 of these general terms and conditions, ERP will not be liable to the Contracting Party or to third parties for damage caused during or in connection with the aforementioned work.
4. Dates and deadlines are approximate only. If a period for performance is agreed, ERP will make efforts to observe it as accurately as possible. If for whatever reason the period is exceeded, this will not entitle the Contracting Party to compensation or termination of the agreement.
5. ERP is permitted to transfer its rights and obligations under the agreement to a third party, provided that the continuity of the agreement is guaranteed.
6. ERP will be entitled to terminate the agreement prematurely without notice of default if there is an urgent reason, to be assessed according to standards of reasonableness and fairness.



**Article 20. Applicability of the NEKOVRI conditions**

1. If custody and storage services are performed by ERP, the General Conditions of the Association of Dutch Cold Stores and Freezing Warehouses, 2022 version (hereinafter: NEKOVRI Conditions 2022), attached to these ERP General Terms and Conditions and filed with the registry of the District Court of Rotterdam, will also apply, with due observance of these ERP General Terms and Conditions and insofar as they have not been deviated from in these ERP General Terms and Conditions.
2. If a provision of the NEKOVRI Conditions 2022 conflicts with a provision of the ERP General Terms and Conditions, the latter will prevail (insofar as it concerns the conflicting part).

**Article 21. New product**

Insofar as the performance of work by ERP may result in a 'new' product within the meaning of product liability legislation, the Contracting Party, and not ERP, will always be regarded as the producer. The Contracting Party shall apply, or arrange for the application of, its own brand identifier to the 'processed' goods. If the Contracting Party fails to do so, ERP will be entitled to apply an indication to the goods stating the name, address and location of the Contracting Party. All associated costs will be borne by the Contracting Party. If mandatory official marks must also be applied and the Contracting Party refuses to do so, ERP will be entitled to terminate the agreement.

**Article 22. Prices/rates**

1. Unless a price/rate has expressly been agreed, the Contracting Party will owe the prices/rates normally charged by ERP and customary in the sector.
2. The agreed prices/rates relate only to the work of ERP set out in the agreement.
3. If the Contracting Party cancels all or part of an order placed, ERP will be entitled to charge the Contracting Party, in whole or in part, for the costs incurred in preparation for the order, including the ordering or preparation of a space.
4. ERP may pass on price increases if price changes occur in relation to, for example, energy costs, exchange rates, wages (both employees on the payroll and temporary agency workers), raw materials, and packaging materials. Such price changes will be communicated to the Contracting Party as soon as possible.

**Article 23. Delivery, storage and collection of goods**

1. Goods shall be delivered to ERP in good condition and, if packaged, in properly packaged condition.
2. The Contracting Party will ensure that the delivered goods are delivered by it or on its behalf to the storage area free of charge.
3. Upon arrival of the goods at its premises, ERP will provide the Contracting Party with a receipt. This receipt is the sole acknowledgement that the goods described therein have been received by ERP for the Contracting Party's account for custody/processing.



4. If it is agreed that the goods will be received at a place other than that referred to in paragraph 1 and transported to ERP's premises, the customary rates for this will be charged to the Contracting Party.
5. ERP is free to choose the place of storage, unless expressly agreed otherwise. ERP will at all times be entitled to move the goods to another place of storage.
6. Goods will be delivered and collected during the working hours applicable to ERP's personnel.
7. When entering into the agreement, the Contracting Party shall provide ERP with a proper, detailed written description of the goods, with statement of the types, qualities, weights, values and quantities, as well as any special characteristics that are relevant to proper performance of the agreement. ERP is not obliged, but is entitled, to verify the information. In the event of incorrect, incomplete or misleading information, ERP will not be liable for any damage resulting therefrom.
8. If before being received by ERP, goods must be accompanied by documents required by the authorities or are subject to any other requirement (for example coding), the Contracting Party shall arrange this itself. ERP will never be liable for damage suffered by the Contracting Party as a result of the Contracting Party's failure to comply with any governmental requirement.
9. The Contracting Party indemnifies ERP against all financial and other consequences that may result from failure to comply with this obligation.
10. Delivery to and receipt by the Contracting Party take place by release of the goods by ERP and receipt thereof by the Contracting Party at the place of storage. The Contracting Party is obliged to take back its goods no later than on the final day of the agreed period.

#### **Article 24. Refusal of goods**

1. ERP will be entitled to refuse goods offered for logistics services if:
  - a. The goods do not meet statutory requirements;
  - b. The goods do not comply with the agreed size, weight and/or quantity;
  - c. Owing to their nature, condition or otherwise, the goods may cause damage;
  - d. The goods are not correctly and/or properly packaged;
  - e. The goods appear not to be in order;
  - f. The goods are not delivered at the prescribed temperature;
  - g. The origin of the goods cannot be stated and demonstrated.
2. The Contracting Party has its own responsibility to inspect the goods carefully and regularly, particularly where a critical temperature limit applies.

#### **Article 25. Risks and insurance**

1. The Contracting Party shall at all times take out adequate insurance against all risks to which the goods stored and/or provided for processing may be subject during the term of the agreement.



2. All custody and/or processing of goods will take place at the expense and risk of the Contracting Party. ERP will never be obliged to take out insurance for the goods entrusted to ERP, unless this has been expressly agreed with the Contracting Party.
3. If ERP insures the relevant goods at the express request of the Contracting Party, the insurance will continue from month to month. Upon delivery of all or part of the goods, the Contracting Party will state the amount for which the remaining goods must be insured. In the absence of such a statement, ERP will be entitled to reduce the insured amount. ERP will never be liable for incorrect insured amounts.
4. If in the event of damage to or loss of goods entrusted to ERP, ERP's cooperation is requested in establishing such loss or damage, ERP will be entitled to require that the costs it incurs for its cooperation be borne by the Contracting Party. ERP is entitled to require an advance payment and/or security for this purpose.

**Article 26. Temperature**

1. If the Contracting Party and ERP have not agreed a storage temperature at which the goods must be stored or processed, ERP will determine the storage temperature to the best of its knowledge and experience. ERP will not be liable for damage resulting from the chosen storage temperature. Objections to the storage temperature shall be reported to ERP in writing immediately after they are identified.
2. If ERP finds that the product temperature deviates from the desired temperature, ERP may first bring the goods to the correct temperature before they are stored or processed. ERP will inform the Contracting Party thereof. All associated costs will be charged to the Contracting Party at the customary rates.
3. Minor fluctuations, including those arising when goods are placed into or removed from storage or when doors are opened, will not be regarded as deviations.
4. All instructions from the Contracting Party to ERP shall be provided to ERP in writing. If the Contracting Party offers goods to ERP for storage that are sensitive to CO<sub>2</sub> damage, require a critical storage temperature or otherwise require special attention, the Contracting Party shall explicitly notify ERP of this in writing well in advance. In the absence of such notification, ERP will not be liable for damage resulting from the aforementioned circumstances.
5. If a special method of storing or processing the goods is necessary, all related additional costs will be borne by the Contracting Party.

**Article 27. Repairs and cleaning of cold storage and freezing rooms**

1. In order to guarantee the proper condition of the storage areas, ERP will at all times be entitled to have repair and renovation work carried out on the storage areas without delay if this is reasonably necessary.



2. In the event of such work, ERP will be entitled to move the Contracting Party's goods, whether or not to the premises of third parties.
3. Unless expressly agreed otherwise in writing, at the end of the storage period the Contracting Party will bear the costs associated with cleaning and/or repairing the storage areas insofar as those costs have arisen due to the Contracting Party and/or its goods.

**Article 28. Liability**

1. In addition to the provisions of Article 10, if the exclusion and limitations of liability in that article cannot be applied, liability will be limited to a maximum amount equal to 4 times the storage fee calculated over one month for the relevant batch of goods and, in the case of processing, 2 times the processing fee charged for the relevant batches of goods, or at least the part thereof that can be attributed to the damage in the case in question.
2. The Contracting Party indemnifies ERP, ERP's employees and third parties engaged by ERP against all third-party claims for damage arising from, or in any way connected with, the storage or processing of goods by ERP, including claims based on an infringement of intellectual property rights and liability arising from any defect in stored or processed goods, including product liability.

**SECTION C: CONCERNING SALES**

**Article 29. Purchase agreement**

1. This section relates to the agreement under which ERP undertakes to provide one or more goods to the Contracting Party and the Contracting Party pays ERP a price in money for them.
2. In the absence of mutual written confirmation, payment for the actual delivery of goods will be regarded as acceptance of the offer made by ERP.
3. The person acting and corresponding on behalf of the Contracting Party thereby declares that, with due observance of all necessary formalities, they are authorised to represent the Contracting Party.
4. ERP may pass on price increases of more than 10% if between the time of acceptance and delivery, price changes have occurred in relation to, for example, prices of the product to be delivered, exchange rates, wages, raw materials, and packaging materials.

**Article 30. Delivery**

1. Delivery will take place from one of ERP's locations, unless agreed otherwise in writing.
2. The Contracting Party is obliged to take receipt of the goods purchased by it at the agreed place(s) and at the agreed delivery time. If the Contracting Party does not take receipt of the goods there and at that time, ERP will be entitled to move, sell or destroy the goods. The associated costs will be borne by the Contracting Party.
3. From the agreed time of delivery, the Contracting Party will bear the risk of loss of and direct and indirect damage to the goods, even if the Contracting Party does not cooperate in the delivery.
4. Delivery periods are indicative. If an order confirmation covers several delivery days, efforts will be made to achieve an even distribution across the various delivery days. Delay in delivery will not



entitle the Contracting Party to termination of the agreement or to compensation (subject to the provisions of Articles 10 and 28).

5. Goods delivered from the business premises of a supplier/grower will only give entitlement to delivery of the quantity and quality of the product available from the relevant grower on the day determined for that purpose. The Contracting Party is obliged to sign, or arrange for the signing of, a delivery note for receipt on site. If the supplier/grower has insufficient goods available for delivery on the relevant day, ERP may, in consultation with the Contracting Party, supplement the order with goods of the same type, price and quality available elsewhere from ERP.

#### **Article 31. Goods to be delivered**

1. The Contracting Party shall inspect the goods and packaging immediately upon delivery and check whether the delivery conforms to the agreement, namely:
  - a. whether the correct goods have been delivered;
  - b. whether the delivered goods meet the agreed quality requirements for normal use and/or commercial purposes;
  - c. whether the delivered goods correspond in terms of quantity (number, amount, weight) to what has been agreed.
2. Except for proof to the contrary provided by the Contracting Party, the delivery will be deemed to conform to the agreement, with due observance of the agreed numbers, weight class and statutory requirements.
3. In the case of minor deviations in characteristics such as size, quality and colour, the product will conform to the agreement.

#### **Article 32. Complaints and/or defects**

1. If the Contracting Party claims that the goods do not conform to the agreement, it shall report this immediately on the delivery note, supported by a detailed description of the defects and accompanying photographs clearly showing the defects. If the Contracting Party states and demonstrates that immediate identification of any defects is impossible, the Contracting Party will report the defects to ERP within 24 hours after delivery, likewise supported by a detailed description of the defects and accompanying photographs clearly showing the defects.
2. In the absence of timely notification, the Contracting Party may not rely on any failure by ERP to perform its obligations.
3. The relevant defective goods shall be retained in their entirety, and ERP shall be given the opportunity to view and inspect the goods. During the period of retention, the Contracting Party shall take all measures necessary to ensure careful storage.
4. The Contracting Party may only return the goods after written confirmation from ERP. All returns will be at the expense and risk of the Contracting Party, unless agreed otherwise.
5. If the Contracting Party wrongly rejects the goods, it will bear all associated costs and damage,



including but not limited to:

- a. Costs of reinspection;
  - b. Storage costs;
  - c. Legal costs.
6. If the Contracting Party rightly rejects the goods, ERP may replace or credit the goods. ERP will only be liable within the limits set in these general terms and conditions.

**Article 33. Reduced quantities of products**

1. In the event of a deviation of less than 10% of the total, the Contracting Party will be obliged to accept the delivery in full against a proportionate reduction in the price.
2. All agreements relating to the sale of agricultural products are concluded subject to harvest and processing reservations. If as a result of a disappointing harvest in terms of the quantity and/or quality of agricultural products fewer products are available than could reasonably have been expected when the agreement was concluded, including rejection by the competent authorities, ERP will be entitled to reduce the quantities sold by it accordingly. By delivering this reduced quantity, ERP will fully fulfil its delivery obligations. ERP will then not be obliged to deliver replacement products and will also not be liable for any damage whatsoever.

**SECTION D: CONCERNING CONTRACTS FOR SERVICES AND PURCHASES**

**Article 34. Contract for services and purchases**

1. This section relates to an agreement in which ERP instructs the Contracting Party to perform work and/or provide services for its benefit, and to an agreement under which the Contracting Party undertakes to provide one or more goods to ERP and ERP undertakes to pay a price in money for that delivery.
2. The agreed price includes costs for packaging, transport, insurance, and delivery. Unless expressly agreed otherwise in writing, the agreed price may not be unilaterally increased by the Contracting Party.

**Article 35. Quality and inspection of purchases**

1. The Contracting Party warrants that the delivered goods comply with the composition, quality, statutory requirements, specifications, quantity and weight class as agreed.
2. The Contracting Party warrants that the delivered goods comply in all respects with all applicable requirements in this regard imposed by relevant laws and/or other governmental regulations that are in force at the time the agreement is concluded.
3. Before, during and after delivery, ERP will be entitled to inspect and examine the goods, whether or not through a third party. Inspection and acceptance of the goods will take place at one of its locations, or at another location designated by it. The Contracting Party shall cooperate in this,



including by granting access to the storage location of the goods and allowing inspection of all documents that ERP considers necessary for that purpose.

4. Defects that become apparent during inspection will be deemed to have already existed at the time of delivery, subject to proof to the contrary provided by the Contracting Party.
5. If the goods do not conform to the agreement and are therefore rejected, ERP will inform the Contracting Party. The Contracting Party shall then take all measures necessary to ensure that the goods conform to the agreement.
6. If the goods are rejected in whole or in part, the Contracting Party will be liable for all costs connected with the rejected products, including but not limited to the costs of inspection and transport and disposal costs.
7. In addition to Article 14 of these general terms and conditions, in the event of rejected goods ERP will be entitled, in addition to the other statutory remedies, to:
  - a. a price reduction;
  - b. return of the goods;
  - c. replacement goods that conform to the agreement; and/or
  - d. compensation for direct and indirect damage and consequential loss,
 all at ERP's discretion.
8. If the goods have been approved, the Contracting Party will remain liable for any hidden defects.

#### **Article 36. Payment**

1. Payment shall be made within 30 days of the invoice date.
2. ERP will at all times be entitled to set off claims of ERP and/or companies directly or indirectly affiliated with it against the Contracting Party against outstanding invoices from the Contracting Party addressed to ERP and/or companies directly or indirectly affiliated with ERP.
3. Payment by ERP does not constitute acknowledgement that the Contracting Party has properly and/or fully performed the obligations towards ERP to which the payment relates.

#### **Article 37. Liability**

1. If the Contracting Party fails to perform its obligations under the agreement with ERP and/or commits a wrongful act, the Contracting Party will be liable for all damage, of whatever nature, suffered and/or to be suffered by ERP and/or third parties as a result of that failure and/or wrongful act.
2. The Contracting Party indemnifies ERP against claims by third parties for compensation for damage as referred to in paragraph 1.
3. The Contracting Party will take out adequate insurance against liability as referred to in this article, excluding recourse against ERP or its clients. The Contracting Party will, if requested, make the policy available to ERP for inspection.

**Article 38. Transfer**

The Contracting Party will not outsource the performance of its obligations under the agreement, in whole or in part, to third parties without ERP's prior written consent.

**Article 39. Exclusion of the Vienna Sales Convention**

The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, also known as the Vienna Sales Convention, will not apply to the contract for services or the purchase agreement.

**SECTION E: CONCERNING TRANSPORT****Article 40. AVC 2002**

1. If transport activities are performed, the General Conditions of Transport 2002, attached to these ERP General Terms and Conditions and filed with the registry of the District Court of Amsterdam under number 81/2014 and with the registry of the District Court of Rotterdam under number 2/2015 (AVC 2002), will apply, subject to these ERP General Terms and Conditions and insofar as they have not been deviated from in these ERP General Terms and Conditions.
2. If a provision of the AVC 2002 conflicts with a provision of these ERP General Terms and Conditions, the latter will prevail (insofar as it concerns the conflicting part).
3. The CMR Convention applies to cross-border carriage, with the provision set out in the preceding clause applying in addition to that Convention.
4. In deviation from the AVC 2002, in the case of combined storage and transport, the general storage conditions from the AVC 2002 will not apply. With regard to the storage component, only Sections A and B of these ERP General Terms and Conditions and – insofar as applicable and not deviated from – the NEKOVRI Conditions 2022 will apply. With regard to the transport component, Sections A and E of these ERP General Terms and Conditions, the AVC 2002 and, where applicable, the CMR Convention will apply.
5. In the event of doubt as to which conditions apply and where combined agreements or services are involved, the determining factor will be which performance(s) must be regarded as characteristic in light of the agreement as a whole. If this cannot be clearly established, ERP will be entitled, with due observance of reasonableness and fairness, to determine which activities and therefore which conditions are characteristic.

**SECTION F: CONCERNING FORWARDING ACTIVITIES****Article 41. Fenex Conditions**

1. If forwarding activities relating to the customs clearance of goods/products, such as vegetables and fruit, are performed, including customs formalities and/or fiscal representation, the Dutch Forwarding Conditions of the Federation of Dutch Forwarders' Organisations of 1 May 2018,



attached to these ERP General Terms and Conditions and filed with the registry of the District Court of Amsterdam under number 23/2018 and with the registry of the District Court of Rotterdam under number 16/2018 (hereinafter: Fenex Conditions 2018), will apply, subject to these ERP General Terms and Conditions and insofar as they have not been deviated from in these ERP General Terms and Conditions.

2. If a provision of the Fenex Conditions 2018 conflicts with a provision of these ERP General Terms and Conditions, the latter will prevail (insofar as it concerns the conflicting part).
3. In the event of doubt as to which conditions apply and where combined agreements or services are involved, the determining factor will be which performance(s) must be regarded as characteristic in light of the agreement as a whole. If this cannot be clearly established, ERP will be entitled, with due observance of reasonableness and fairness, to determine which activities and therefore which conditions are characteristic.