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**KOUTERS**  
AARDAPPELHANDEL B.V.

Expedië adres: Havenweg 35  
4671 BS Dinteloord  
IBAN: NL92 RABO 0141 1525 08  
BIC: RABONL2U  
K.v.K. Breda nr. 20086670  
B.T.W. nr. NL8188.18.864.801  
G.G. CoC/GLN 4063061828927

1 December 2022

**GENERAL TERMS AND CONDITIONS OF PURCHASING, SALE AND STORAGE OF KOUTERS AARDAPPELHANDEL B.V.**

These General Terms and Conditions of Purchase, Sale and Storage of Kouters Aardappelhandel B.V. are deposited at the court registry of the District Court of (●) and the Chamber of Commerce under number (●).

**I. GENERAL PROVISIONS**

**1. Definitions**

The terms used in these General Terms and Conditions that are written with a capital have the meaning as defined in this article:

- **"Kouters"**: The private limited company Kouters Aardappelhandel B.V., having its registered office in Noordhoek, municipality of Moerdijk, having its principal place of business in the municipality of Moerdijk at Witte Weideweg 30, 4759 AC Noordhoek, registered in the Business Register under Chamber of Commerce number 20086670, including all businesses affiliated with it.
- **"Seller"**: The person, being either a natural person or a legal entity, who, by means of a representative or otherwise, concludes a Contract with Kouters on the basis of which he sells Products to Kouters.
- **"Buyer"**: The person, being either a natural person or a legal entity, who, by means of a representative or otherwise, concludes a Contract with Kouters on the basis of which Kouters sells Products to the Buyer.
- **"Depositor"**: The person, being either a natural person or a legal entity, who, by means of a representative or otherwise, concludes a Contract with Kouters on the basis of which he instructs Kouters to store, Deposit, or deliver Products.
- **"General Terms and Conditions"**: These General Terms and Conditions of Purchase, Sale and Storage.
- **"Contract(s)"**: All contracts, i.e. legal relationships concerning, inter alia, purchase and sale, services and/or (other) work, between Kouters on the one part and the Seller and/or the Buyer and/or the Depositor and/or the other contracting party on the other, to which these General Terms and Conditions apply and therefore form an integral part thereof;
- **"Storage Facility"**: The storage location set out in the Contract in relation to Deposit, including every cold store and/or climate controlled room which is in use in the Storage Facility.
- **"Deposit"**: One or more of the following actions: (i) the entry of the Products in the Storage Facility, provided that and insofar as the entry is effected by Kouters; (ii) storage of the Products in the Storage Facility; (iii) other handling of the Products in the Storage Facility provided that and insofar as this is effected by Kouters; (iv) the discharge of the Products from the Storage Facility.
- **"Products"**: The Products are potatoes, potato products, vegetables, fruit and related products. The Products are characterised by the fact that they are (perishable) natural products, which are subject to natural processes, including, but not limited to, condensation, mould, rot, loss of moisture, weight loss, etc.
- **"Vienna Sales Convention"**: The United Nations Convention on Contracts for the International Sale of Goods, Vienna, 11-04-1980.
- **"Industry Conditions"**: In these General Terms and Conditions, the term "Industry Conditions" means the following sets of Industry Conditions:

- **"AHP Conditions"**: *Algemene Handelsvoorwaarden Pootaardappelen* (General Trade Conditions for Seed Potatoes), with related arbitration regulations (adopted by NAO, LTO, VAVI and NAV), version 2018. Source: <https://www.nao.nl/nl/markt/handelsvoorwaarden>.

- **"AVZ Conditions"**: *Algemene Voorwaarden voor de in- en verkoop van zaaiuien* (General Terms and Conditions for the Purchase and Sale of Onion Sets) with related inspection regulations and arbitration regulations (adopted by LTO and Groenten Fruit Huis), version 2019. Source: <https://groentenfruihuis.nl/nieuws/uien/nieuwe-algemene-handelsvoorwaarden-zaaiuien-avz-van-kracht>.

- **"VAVI Purchase Terms"**: *Algemene Voorwaarden voor de Koop en Contractteelt van Aardappelen in de Schakel Industrie/Teelt* (General Terms and Conditions for Purchase and Contract Cultivation of Potatoes in the Link Industry/Cultivation) (adopted by VAVI and LTO, version 2021). Source: <https://vavi.nl/nl/downloads/>.

- **"VAVI Sales Terms"**: *Algemene Voorwaarden voor de verkoop van aardappelproducten* (General Terms and Conditions for the Sale of Potato Products) and the related arbitration regulations (adopted by VAVI), version 2016. Source: <https://vavi.nl/nl/downloads/>.

- **"VBNA/VENEXA Terms"**: *Algemene Handelsvoorwaarden Groothandel in Aardappelen* (General Trading Terms and Conditions for Potato Wholesale with related arbitration regulations) (adopted by V.B.N.A. and VENEXA), version 1986.

- **"RUCIP Conditions"**: RUCIP Rules and Practice of the Inter-European Trade in Potatoes with related rules for expert assessment and rules for arbitration (adopted by NAO), version 2021. Source: <https://www.nao.nl/nl/markt/handelsvoorwaarden>.

- **"COFREUROP Conditions"**: the Common European Usages for the Domestic and International Sale of Edible Fruits and Vegetables with related expert assessment and arbitration rules (adopted by Union du Commerce de Gros en Fruits et Légumes des Etats membres de la CEE), version 2008. Source: <https://freshfel.org/what-we-do/arbitration/>.

- **"In Writing/Written"**: In addition to communications by (registered) letter, the term "In Writing/Written" also includes communications by email, fax or another electronic medium (with the exception of communications via social media, e.g. Whatsapp, Twitter, Facebook, Instagram, etc.).

**2. Applicability**

2.1 **Structure and applicability**. These General Terms and Conditions are divided into four (4) chapters:

- I. General provisions;
- II. Provisions concerning procurement;
- III. Provisions concerning sale;
- IV. Provisions concerning Storage.

2.2 The provisions as stated in Chapter I. *General provisions* apply to every Contract with Kouters, regardless of the nature thereof. The provisions as stated in Chapter II. *Provisions concerning procurement* apply to every Contract whereby the Seller concludes a Contract with Kouters on the basis of which he sells Products to Kouters. The provisions as stated in Chapter III. *Provisions concerning sale* apply to every Contract whereby the Buyer concludes a Contract with Kouters on the basis of which Kouters sells Products to the Buyer. The provisions as stated in Chapter IV. *Provisions concerning Deposit* apply to every Contract whereby Kouters concludes a Contract with the Depositor on the basis of which Kouters accepts an assignment for storage, or for Deposit, or discharge of Products. In any event, these General Terms and Conditions shall remain in effect after termination of the Contract.

2.3 **General terms and conditions of the other contracting party**. Any general terms and conditions to which the other contracting party refers in any way or which the other contracting party declares to apply shall expressly not apply to the Contracts with Kouters.

2.4 **Deviations**. Deviations from these General Terms and Conditions are hereby expressly rejected, unless Kouters confirms them to the other contracting party for each Contract anew expressly and In Writing.

**3. Industry Conditions**

3.1 **Additional applicability**. Depending on the nature of the relevant Contract, additional Industry Conditions apply to the Contract if these General Terms and Conditions stipulate such. All Industry Conditions that have been stated to apply in addition to these General Terms and Conditions per specified Contract can be viewed, downloaded and saved via our website <https://koutersaardappelhandel.nl/en/terms/>, as well as via all sources of the respective Industry Conditions as stated in Article 1, and shall be furnished free of charge upon request.

3.2 **Ranking**. In case of a conflict of provisions of the Contract and/or the annex(es) to the Contract and/or these General Terms and Conditions and/or the Industry Conditions which have been stated to apply in addition to these General Terms and Conditions, the following order of precedence shall apply:

- I. the Contract;
- II. any annex(es) to the Contract;
- III. these General Terms and Conditions;
- IV. the Industry Conditions.

3.3 **Sale of consumption potatoes**. If Kouters concludes a Contract concerning the sale of consumption potatoes with a Buyer, the VBNA/VENEXA Conditions apply in addition to the General Terms and Conditions insofar as the Buyer is based in the Netherlands, and the RUCIP Conditions additionally apply, insofar as the Buyer is not based in the Netherlands.

3.4 **Sale of seed potatoes**. If Kouters concludes a Contract concerning the sale of seed potatoes with a Buyer, the AHP Conditions apply in addition to the General Terms and Conditions insofar as the Buyer is based in the Netherlands, and the RUCIP Conditions additionally apply, insofar as the Buyer is not based in the Netherlands.

3.5 **Sale of potato products**. If Kouters concludes a Contract relating to the sale of potato products with a Buyer, the VAVI Sales Conditions apply in addition to these General Terms and Conditions.

3.6 **Purchase of consumption potatoes intended for the processing industry**. If Kouters concludes a Contract relating to the purchase of consumption potatoes with a Seller, the VAVI Purchasing Conditions apply in addition to these General Terms and Conditions.

3.7 **Sale of vegetables and fruit**. If Kouters concludes a Contract relating to the sale of vegetables and fruit with a Buyer the COFREUROP Terms apply in addition to these General Terms and Conditions.

3.8 **Purchase and sale of onion (sets)**. If Kouters concludes a Contract relating to the purchase and/or sale of onion (sets) with a Seller or Buyer the AVZ Terms apply in addition to these General Terms and Conditions.

**4. Termination**

4.1 Kouters has the right to suspend the performance of any Contract in whole or in part or to terminate or cancel any Contract without prior notice of default or judicial intervention with immediate effect, without being bound to pay any compensation, in the event:

- the other contracting party defaults on the performance of one or more obligations under the Contract or related contracts,
- Kouters has good grounds for suspecting that the other contracting party is not able or will not be able to perform his obligations under the Contract,
- in Kouters' opinion important changes have occurred in the direct or indirect ownership or control relationships at the business of the other contracting party, or if the business of the other contracting party is terminated or sold.

4.2 In the event of termination or cancellation, Kouters is in no case liable for any compensation. The other contracting

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party is bound to indemnify Kouters against claims of third parties which are made by or in connection with the termination of cancellation of the Contract.

4.3 The other contracting party cannot extrajudicially terminate the Contract.

4.4 If and insofar as the other contracting party terminates the Contract(s) in whole or in part, as a result of whatever cause, the other contracting party must pay an indemnification which is at least equal to 25% of the invoice amount(s) of the terminated Contract(s), without prejudice to Kouters' right to additional compensation. In addition, Kouters is in such case entitled to charge all costs made up to that time.

#### 5. Miscellaneous

5.1 Entire contract. The Contract, including these General Terms and Conditions, encompasses the full Contract with Kouters and takes the place of every other previously concluded oral and Written contract in this respect.

5.2 Transfer. Without Kouters' prior Written consent, the other contracting party is not permitted to transfer his rights and/or obligations under the heading of the Contract, including these General Terms and Conditions. Kouters has the right to transfer the Contract(s) and all rights and obligations ensuing therefrom, as well as all its legal relationships relating to the other contracting party. The other contracting party hereby grants his irrevocable cooperation, by concluding a Contract with Kouters.

5.3 Validity. If one of the provisions (or a part thereof) of these General Terms and Conditions or any part of the underlying Contract were to be invalid or unenforceable, this shall not affect the content of the provision and the General Terms and Conditions for the rest, i.e. the underlying Contract shall remain in effect.

5.4 In such case the parties shall replace the invalid or unenforceable provision with a valid and enforceable provision which approximates the essential purpose of the invalid or unenforceable provision as much as possible.

5.5 Area of application of protective provisions. All subcontractors, agents, representatives, employees or others who have received an assignment from, or who have been appointed or employed by Kouters, shall each enjoy the same protection and are entitled to the same exclusions, exemptions and limitations of liability as apply with regard to Kouters itself on the basis of this Contract, including these General Terms and Conditions.

5.6 Confidentiality. The parties are subject to a duty of strict confidentiality with regard to each other in respect of all confidential information (about the business of) the other party, which becomes known to it and their employees under the heading of the Contract, both during the Contract and during a period of five (5) years after termination of the Contract, both with regard to third parties and with regard to employees of both parties.

5.7 Confidential information is broadly defined and encompasses all non-public information which upon disclosure could in some way be harmful for one of the parties or useful for its competitors and in any event encompasses data of customers and/or other business relations, prices, business models and volumes of both parties which comes to the knowledge of the parties and their employees under the heading of the Contract.

5.8 Confidential information which is requested on the basis of a statutory obligation or by a public authority is excepted from the above-defined confidential information. The parties shall inform each other in this respect.

5.9 Notification. All notifications or other correspondence to Kouters relating to this Contract, including these General Terms and Conditions, have effect as of receipt and shall be effected in Writing.

5.10 For this purpose, Kouters' address and contact details are set out below:

[PARTY]

Address: Attn. [NAME]  
[ADDRESS]  
[POST CODE] [CITY] [COUNTRY]

Fax: [NUMBER]

Email: [EMAIL ADDRESS]

#### 6. Applicable law

6.1 The Contract and all legal relationships and/or obligations ensuing from or connected with the Contract to which these General Terms and Conditions apply, including any matter concerning the existence, the validity or the termination of the Contract and of non-contractual disputes, shall only, unless otherwise stipulated elsewhere in these General Terms and Conditions, be governed by Dutch law.

6.2 The provisions of the Vienna Sales Convention are excluded.

#### 7. Dispute resolution

7.1 Arbitration. All disputes between the parties ensuing from or connected with the Contract and all legal relationships and/or obligations ensuing from or connected with the Contract, including every matter concerning the existence, the validity or the termination of the Contract and concerning non-contractual disputes, to which these General Terms and Conditions apply, shall exclusively be decided by arbitration in accordance with the arbitration regulations included in the additionally applicable Industry Conditions. The arbitration proceedings, including the oral arguments shall take place in the Netherlands. The proceedings shall be conducted in Dutch.

7.2 If no Industry Conditions apply or if the applicable Industry Conditions do not have a valid and effective arbitration clause and/or regulations, all disputes ensuing from or connected with the Contract and all legal relationships and/or obligations ensuing from or connected with the Contract, including every matter concerning the existence, the validity or the termination of the Contract and concerning non-contractual disputes, to which these General Terms and Conditions apply, shall exclusively be decided in accordance with the arbitration regulations of Stichting geschillen in de landbouw c.a. in Wageningen. The place of arbitration shall be Wageningen. The proceedings shall be conducted in Dutch.

7.3 Competent court. Notwithstanding the above, Kouters is free to present claims for due and owing monetary sums, which claim is not disputed in Writing within four (4) weeks after the invoice date, to the District Court of Zeeland-West-Brabant, Breda location (subdistrict court section).

7.4 Time-barring/lapsing of claim. Notwithstanding other provisions in these General Terms and Conditions concerning the time-barring and/or lapsing of claims, all claims on Kouters shall be time-barred one (1) year after they have arisen. The right to bring legal action against Kouters shall lapse one (1) year after this right has arisen, or as much earlier as is stipulated in these General Terms and Conditions or the Industry Conditions which apply in addition to these General Terms and Conditions.

### II. PROVISIONS CONCERNING PROCUREMENT

#### 8. Conclusion of Contract

8.1 All quotes, offers and other information furnished by the Seller, regardless of the form thereof, are irrevocable and binding. The foregoing applies in particular to price specifications.

8.2 A Contract shall only be concluded when Kouters has expressly confirmed the offer presented by the Seller in Writing.

8.3 Verbal commitments or agreements, partly encompassing changes and/or amendments to the Contracts, by or with personnel or representatives of Kouters are only binding if and insofar as these have been confirmed in Writing.

#### 9. Delivery

9.1 The delivery of the Products and the provisions regarding the delivery costs and the transfer of the risk shall be effected in accordance with the conditions usual in commercial transactions (such as EXW, FCA, CPT, CIP, DAT, DAP and DDP as stated in the INCOTERMS, as published by the International Chamber of Commerce in Paris, France, at the time the Contract in question is concluded, as referred to in Article 8) as agreed between Kouters and the Seller. If no conditions have been agreed between Kouters and the Seller, delivery shall be effected Delivery Duty Paid (DDP) at the location of the Kouters premises in Noordhoek, municipality of Moerdijk, the Netherlands, or the receiving company to be designated by Kouters. In addition, the Seller waives any rights of retention and security.

9.2 The delivery of the purchased Products shall be effected on demand by Kouters.

9.3 The Seller must deliver upon Kouters' first request. If the contract of procurement/sale and/or the confirmation states that delivery shall not be delivery paid, but on buyer's truck or ex Seller's works, this only means that the transport costs are at Kouters' expense. Delivery shall always and only be effected at the location of the Kouters premises in Noordhoek, municipality of Moerdijk, the Netherlands, or the receiving company to be designated by Kouters.

9.4 The weighing costs and the scooping costs are always at the Seller's expense.

9.5 The Seller is obliged to use a soil cleaner when loading the product. Unless expressly otherwise agreed, the Seller must deliver unwashed Products. The Products must be completely free of soil. The Seller is obliged to pay Kouters a soil penalty of a minimum of €100 per ton of delivered soil.

9.6 The Seller is obliged to ensure that the temperature of the Products when loading and delivering from the land is a minimum of 6°C and a maximum of 25°C, and in case of delivery from storage a minimum of 6°C. Per shipment the temperature shall be taken for a minimum of 50 units of product. If the Seller acts in contravention of this obligation, Kouters has the right to reject the Products.

9.7 In the event of non-delivery and/or late delivery and/or improper delivery, Kouters has the right to cancel the Contract without further notice of default, or, at its election, has the right to demand performance; and in all cases Kouters is entitled to full compensation.

9.8 In the event of (partial) rejection and/or refusal of the Products offered for delivery, Kouters has the right at its election to demand replacement delivery or to deduct the rejected quantity from the remaining part of the Contract or to take out a buying hedge as referred to in Art. 7:37 of the Dutch Civil Code; all with full compensation of loss.

9.9 If after concluding the Contract the information on the Seller's financial position is such that performance of the delivery obligation must be deemed uncertain, Kouters has the right to demand that the Seller give security for the performance of his delivery obligations in the form stipulated by Kouters. If the Seller does not give that security in time, Kouters has the right to cancel the Contract and/or claim compensation.

9.10 If the Seller is behind on the delivery of the Products and the purchase price of Products already delivered by the Seller has become due and payable, Kouters has the right to suspend payment for the Products delivered earlier, until the Seller has effected the deliveries on which it is behind.

#### 10. Late delivery

10.1 Delivery of the Products must be effected in the manner and at the place and time stipulated in the Contract.

10.2 The delivery term starts as soon as the Contract has been concluded. The Seller shall be in default without the need for notice of default simply by exceeding the delivery term.

10.3 The Seller is obliged to notify Kouters in time and adequately in advance of the delivery and the possibility that delivery might be late.

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10.4 Unless otherwise agreed In Writing, the Seller is not entitled to deliver in part shipments. If delivery in part shipments has been agreed, for the application of these General Terms and Conditions delivery also means delivery in part shipments.

10.5 The delivery shall be completed when the Products have been taken into receipt by or on behalf of Kouters and Kouters has signed for the delivery. The fact that Kouters has signed for delivery is without prejudice to the fact that the delivery may later be rejected. Signing does not stand in the way of Kouters exercising any right, such as its rights ensuing from default of the Seller.

10.6 The Seller is not entitled to suspend his delivery obligation if Kouters defaults on the performance of one of its obligations.

10.7 In the event of late or short delivery of the Products, Kouters reserves the right to:

- refuse the Products,
- impose a fixed penalty of €500 (five hundred euros), and
- impose an additional penalty of 5% of the order value for each day that the delay continues, up to a maximum of 30% of the order value.

10.8 If a customer imposes a penalty as a result of late or short delivery on the part of Kouters, and such penalty is higher than the amount of the penalty which Kouters imposed on the Seller for such late or short delivery, Kouters is entitled to impose a penalty on the Seller which is equal to the amount of the penalty which the customer imposes on Kouters. A penalty which is imposed is without prejudice to the Seller's liability to compensate any damage and losses which Kouters suffers as a result of the late or short delivery if these losses exceed the amount of the penalty.

#### 11. Quality

11.1 All Products to be delivered by the Seller must: be healthy, dry, have good taste and smell, have a good appearance, be free of external and internal defects, rot and frost damage, free of soil and foreign matter.

11.2 All onions, including Class I and II as referred to in the UN/ECE standard FV-25, must be of good quality, full-grown, dry, healthy, pure, of good colouring, have sufficiently dry skin, must be hard, intact, free of internal and external shoots, root tufts, free from any foreign smell or taste, free from damage due to frost and hail, free from any visible foreign matter, bottlenecks, seed stems, deformed onions, soil, internal and external, visible and invisible defects and damage. The onions must comply with the statutory residue standards for crop protection products. The stem must have been twisted off or cut clean and may not be longer than 6 cm. The onions must be of such quality and in such condition that they can withstand transport and goods handling, including machine sorting and packing, as well as transport by sea to faraway destinations like Asia and New Zealand. They must be able to reach the final destination and consumer in good condition.

11.3 There shall be internal shoots in onions if the internal shoot of at least 5% of the onions has developed to 66% or more calculated as of the leaf base and/or at least 2% of the internal shoot has developed to 90% or more from the leaf base.

11.4 10% of the total quantity or weight may consist of onions which do not correspond with the requirements of Class I, but do correspond with the requirements of Class II. Of this 10%, no more than 2% may show the following defects: rot, internal defects, unpleasant smell and taste, internal and external shoots and deviations making them unsuitable for consumption.

11.5 If the onions are delivered from the field, they must be capable of being prepared into packed onions Class KCB II at the usual expense and in the usual manner. They must be Class KCB II worthy.

#### 12. Inspection upon delivery

12.1 The Products are tared upon arrival at the location. The Seller is invited to attend the taring and is itself responsible to report to the taring in time.

12.2 The Seller has the right up to one (1) hour after taring to lodge an objection In Writing, whereby in the event of failure to do so the result of the taring is binding on the parties. If the Seller objects to the taring result in time, an independent register and/or certified expert shall make a binding determination as to the tare percentage at the expense of the party held to be in the wrong.

12.3 Tare means, inter alia, the onions that do not correspond with the requirements of the agreed class, as well as diseased, green, rotten, damaged, pieces, soil, double, internal and external shoots, bottlenecks, seed stems, deformed, foreign matter, immature onions with a deviating colour and/or smell, frost and hail damage, skin not sufficiently dry, soft, abnormal amount of moisture, etc.

#### 13. Inspection after delivery

13.1 The goods to be delivered to Kouters must continue to comply with the agreed quality standards for a reasonable period of time after delivery. During a period of five working days after discovery of the defect, Kouters has the right to complain about the quality of the delivered goods. In case of an export designation Kouters is also permitted to complain about the quality within a specific period of time after the goods have been received by the end customer. Complaints can be lodged verbally or in writing.

13.2 If the Seller does not accept the complaint in writing within 24 hours, Kouters shall have an expert assessment carried out. The costs of this expert assessment are at the expense of the party held to be in the wrong. The outcome of this expert assessment is binding on both the Seller and Kouters. If the expert determines that the onions do not correspond with the Contract, it shall be established between the parties that the Seller is in breach and Kouters has the rights stated in, inter alia, Articles 9.7 and 9.8.

#### 14. Prices

14.1 Unless otherwise agreed in writing, all prices are fixed. The Seller is not entitled to increase the prices for any reason whatsoever without Kouters' prior Written consent.

14.2 If Kouters purchases Products for "sack price" or "sack price minus costs" or words of a similar purport, unless the Contract states otherwise, the purchase price is the same as the sales price *Ex Works* location of Kouters' premises in Noordhoek, municipality of Moerdijk, the Netherlands which is realised by Kouters, or the receiving company to be designated by Kouters minus all costs made by Kouters, such as transport, storage, labour, drying, sorting, selling and packing costs and a margin to be determined by Kouters.

14.3 If Kouters purchases Products at 'day price' or 'market price' or words of a similar purport, unless the Contract states otherwise, the purchase price is the same as the price which Kouters agrees with other sellers minus a margin to be determined by Kouters.

14.4 Prices are exclusive of VAT but inclusive of proper packing material, if applicable, and any other costs of the Seller with regard to the performance of his obligations, unless otherwise agreed In Writing.

#### 15. Invoicing

15.1 Kouters shall at all times see to invoicing with regard to the Products purchased by it. The Seller shall not provide any invoices to Kouters.

15.2 The Seller states that it shall accept the purchase invoices prepared by Kouters.

#### 16. Payment

16.1 Kouters shall pay for the delivered Products or services within thirty (30) days after delivery, unless otherwise agreed

In Writing and on condition that the delivered Products are approved and after receipt of all related documentation including the correctly addressed fully itemised invoice. In the event Kouters exceeds this payment term it shall owe interest for late payment of 2% per year, but it is not bound to pay further compensation (including but not limited to debt collection costs).

16.2 Payment by Kouters does not encompass waiver of any right under the heading of the Contract, the General Terms and Conditions, or the law. Even if the Products are approved, payment shall not be deemed acknowledgement by Kouters of the good quality of the delivered Products and shall not release the Seller from any liability in this respect.

16.3 If whole or partial advance payment is agreed, Kouters is entitled to demand of the Seller that the Seller give adequate security for the performance of his delivery obligations or his repayment obligations in case of cancellation of the order or termination of the Contract.

16.4 If the Seller does not give adequate security within the term specified by Kouters, Kouters is entitled to terminate the Contract and to recover its loss from the Seller. Adequate security shall in any event be a due and payable bank guarantee in the amount of 100% of the advanced amounts. The Seller bears the costs for the giving of the security.

16.5 Every payment by Kouters is deemed payment for the debt specified for that payment by Kouters.

16.6 Payment releases Kouters from all obligations under the heading of the Contract in question and the Seller cannot deem such payment as payment for any other alleged claim of the Seller on Kouters.

16.7 Kouters at all times has the right to set off what it owes to the Seller against claims that Kouters has on the Seller.

#### 17. Liability

17.1 Any shortcoming in the performance of the Seller's obligations under the heading of the Contract, including the General Terms and Conditions, gives Kouters the right to oblige the Seller to immediately reverse the shortcoming and the consequences thereof in whole or in part at the Seller's expense and risk.

17.2 The Seller is fully liable for all damage and loss suffered by Kouters and any subsequent customers or users, including – ultimately – the consumer of the delivered (processed or otherwise) goods as a result of a shortcoming of the Seller in the performance of his obligations under the heading of the Contract, including the General Terms and Conditions, and as a result of any act or omission of the Seller or of the Seller's personnel or third parties engaged by the Seller. The Seller is fully liable for both direct and indirect damage and loss.

17.3 The Seller indemnifies Kouters against all possible claims of third parties in connection with the Contract.

17.4 Kouters is not liable for any damage or loss suffered on the part of the Seller, unless the damage or loss has been caused by – proven by the Seller according to objective measures – intent or wilful misconduct of Kouters' staff charged with the management. All claims of the Seller on Kouters shall lapse one (1) year after said claims of the Seller have arisen.

17.5 The Seller must take out adequate insurance against the damage or loss referred to in Article 17.2. This insurance obligation also applies to all resources (including transport) which are used in the performance of the Contract in any way. Kouters reserves the right to demand proof of such insurance, or to demand that the policy state that insurance payouts be made directly to Kouters if Kouters is in the first instance bound to compensate the damage or loss.

#### 18. Recall

18.1 In case of complaints the Parties shall consult with each other in order to take the measures which are necessary under the given circumstances. The measures to be taken can consist of ceasing the deliveries, blocking stocks of Products (including at customers of Kouters) or a recall. Kouters is entitled to decide whether and if so, what measures shall be

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taken and how the implementation thereof shall take place. Insofar as applicable when taking such a decision Kouters shall take account of the fact that it puts Products on the market and must therefore protect its reputation. The Seller must provide all reasonable cooperation in the implementation of such measures. The Seller must take out adequate insurance against the risk of recall and shall bear all costs of the measures, without prejudice to the obligations of the Seller which are laid down elsewhere in these General Terms and Conditions.

18.2 The Seller is subject to a duty of confidentiality in respect of all information relating to measures which can or will be taken pursuant to this article. The non-performance of this obligation shall result in a penalty in the amount of €25,000.

### III. PROVISIONS CONCERNING SALE

#### 19. Conclusion of Contract

19.1 Unless expressly otherwise indicated, all quotes, offers and other information of Kouters, regardless of the form thereof, are without commitment (except for price changes) and only constitute an invitation to place an order.

19.2 The foregoing applies in particular to price specifications. Price specifications are without commitment and shall only be binding when Kouters has confirmed them In Writing.

19.3 A Contract shall only be concluded when Kouters has confirmed the order placed by the Buyer In Writing.

19.4 Every implicit or explicit explanation or act of the Buyer that confirms a Contract constitutes unconditional acceptance by the Buyer of the applicability of these General Terms and Conditions.

19.5 If the Buyer has not objected to the content of the order confirmation In Writing within 24 hours after receipt of the order confirmation, to which these General Terms and Conditions apply, the order confirmation is deemed to correctly represent the Contract and the parties are bound thereby.

#### 20. Delivery

20.1 Unless Kouters has expressly stated otherwise In Writing, all deliveries of Products shall be *Ex Works* storage facility of the Products in the Netherlands. The term *Ex Works* has the meaning as defined in the most recent version of the INCOTERMS, as published by the International Chamber of Commerce in Paris, France, at the time the Contract is concluded as referred to in Article 19.

20.2 The place of delivery is the place of delivery specified in the Contract. I.e. in case of delivery *Ex Works* delivery is deemed to have been effected at the location of the storage facility of the Products in the Netherlands.

20.3 The delivery times are estimates and are not binding on Kouters. Kouters shall take account of the delivery times to the extent possible.

20.4 Exceeding the delivery times does not give the Buyer the right to compensation or (partial) cancellation/termination of the Contract.

20.5 Kouters has the right to deliver the Products in part shipments.

20.6 The method of shipment is at Kouters' discretion. Requests of the Buyer shall be taken into account as much as possible; any extra costs are at the Buyer's expense.

20.7 If the Buyer does not take the Products (in time), the Buyer shall be in default without the need for further notice of default. In such case Kouters has the right to store the Products at the Buyer's expense and risk or to sell them to a third party. The Buyer shall in such case owe the purchase price increased by interest and costs by way of indemnification.

20.8 Any defects in the delivered Products or a part thereof do not give the Buyer the right to refuse all delivered Products.

#### 21. Harvesting reservation

21.1 Delivery of the (agricultural) Products is effected subject to reservations regarding harvesting and storage. If as a result of a disappointing harvest or storage relating to the quantity and/or quality of the Products, fewer Products are available, including due to rejection by the competent bodies, than could reasonably be expected when concluding the Contract, Kouters has the right to reduce the quantities sold accordingly. By delivering this reduced quantity, Kouters shall be fully in compliance with its delivery obligations. Kouters is in such case not bound to deliver replacement agricultural Products, nor is it liable for any damage or loss whatsoever.

#### 22. Quality

22.1 Kouters has no responsibility whatsoever for the Products with regard to compliance with other quality standards than those which have been expressly specified in the Contract with Kouters. The Buyer takes on all risks and liability in connection with all further handling, processing and use of the Products after the transfer of the risk relating to the Products in accordance with the delivery conditions laid down in the Contract, regardless of whether the Products have been handled, processed or used independently or in combination with other Products.

22.2 Kouters does not guarantee or assert that the Products are suitable for any processing purpose and/or use, of whatever nature, by the Buyer, unless Kouters has expressly stated such In Writing.

22.3 The Products to be delivered are subject to spoilage and the shelf life and quality after delivery is to a great extent dependent on the method of transport and/or storage, over which Kouters no longer has any influence after the delivery.

#### 23. Inspection

23.1 Prior to delivery, the Buyer must weigh and inspect the Products himself or have the Products weighed and inspected by an expert at the Buyer's expense, including random dissection of the Products, measuring the size of the Products, the temperature thereof and residues of, inter alia, pesticides, to determine whether in the Buyer's opinion they satisfy the agreed requirements and quality. In addition, the Buyer must determine at his expense whether there are contaminants among the delivered Products and remove said contaminants.

#### 24. Obligation to lodge complaint

24.1 The Buyer can only lodge a complaint about the quality, size and quantity of the delivered Products before the delivery of the Products or if the parties agree such In Writing – before the unloading of the Products.

24.2 The Buyer shall have lost the right to lodge a complaint when the Products have been delivered, or – if the parties have agreed inspection prior to unloading In Writing – have been unloaded at the place specified by the Buyer.

24.3 A Buyer who refuses to take receipt of the Products on the basis of alleged non-conformity, is – with non-compliance subject to loss of rights – obliged to notify Kouters In Writing immediately and in any event within two (2) hours after refusal.

#### 25. Visible defects

25.1 The Buyer must immediately notify Kouters In Writing of any defects in the delivered products and/or the packing which are present prior to delivery, as referred to in Article 24.3. In the event of failure to make such notification the Buyer shall be deemed to have approved what has been delivered, his right to lodge a complaint shall have lapsed and it shall be established between Kouters and the Buyer that the Products delivered correspond with the Contract. Thereafter complaints regarding these Products shall no longer be taken into consideration and Kouters cannot be held liable for these defects to the delivered Products and/or the packing and/or the (harmful) consequences thereof.

25.2 With regard to the quantity, weight and quality, the delivered quantity shall be deemed to correspond with what

has been agreed and to be in compliance with the applicable laws and regulations, subject to counter-proof to be provided by our contracting party.

#### 26. Hidden defects

26.1 Notwithstanding the preceding articles, hidden defects are deemed to have been accepted unless Kouters immediately, i.e. at most within two (2) hours, is notified of such defects upon their discovery In Writing, but at latest within 24 hours after the date of delivery of the Products. In the event of failure to make such notification, the Buyer shall be deemed to have approved what was delivered, shall have lost his right to lodge a complaint and it shall be established between Kouters and the Buyer that the Products delivered correspond with the Contract. Thereafter complaints regarding these Products shall no longer be taken into consideration and Kouters cannot be held liable for these defects to the delivered Products and/or the packing and/or the (harmful) consequences thereof.

#### 27. Expert assessment

27.1 If Kouters rejects the complaint or does not accept the complaint within one (1) hour In Writing, the Buyer must – whereby non-compliance is subject to loss of his right to complain about the delivered product or the product offered for delivery – immediately, i.e. within 2 x 24 hours after presenting the complaint, – in Kouters' presence –, have an expert assessment carried out by an independent register and/or certified expert.

27.2 Kouters has the right to have a counter-expert assessment carried out. The outcome of this counter-expert assessment is binding on both the Buyer and Kouters. Subject to loss of the right to lodge a complaint about the quality, the Buyer is obliged to condition the Products properly. If the Buyer lodges a complaint too late and/or requests an expert assessment too late and/or the expert assessment or the counter-expert assessment does not demonstrate that the Products did not correspond with the Contract at the time of delivery, it shall be established between the Buyer and Kouters that the Products comply with the Contract.

27.3 If the (counter-)expert assessment shows that the Buyer's complaint is valid, the costs of the inspection shall be borne by the Parties in equal half shares. Kouters is furthermore entitled to replace Products that have justifiably been refused, but it is not bound to do so, and Kouters shall owe no further compensation.

27.4 If the (counter-)expert assessment shows that the Buyer's complaint is invalid, the costs of the inspection, as well as all other costs of Kouters connected with the complaint, shall be reimbursed by the Buyer upon first request. In addition, Kouters is entitled, including when a part shipment is concerned, to cancel the Contract in its entirety insofar as it has not been performed, and to claim compensation.

#### 28. Prices

28.1 Kouters' prices are exclusive of VAT and other taxes, charges or levies. The costs of packing, transport, import and export duties, excise and other levies and taxes shall be paid by the Buyer, unless otherwise agreed In Writing. The Buyer indemnifies Kouters against these costs.

28.2 Kouters is entitled, as a result of changes in circumstances which are beyond its control, to alter the agreed prices/rates accordingly.

#### 29. Payment

29.1 Payment of Kouters' invoices shall be effected within fourteen (14) days after the invoice date, unless otherwise indicated In Writing, in the agreed currency on a bank account to be designated by Kouters.

29.2 Payments must be made directly to Kouters; payments to representatives or agents shall never release the Buyer from his payment obligations.

29.3 All taxes, levies and other costs connected with payments shall be paid by the Buyer.

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29.4 The place where payment is to be made is Noordhoek, municipality of Moerdijk, the Netherlands.

29.5 Complaints about invoices must be presented to Kouters In Writing, within eight (8) days after the invoice date. After that term, the Buyer is deemed to have agreed to the invoice.

30. **Breach**

30.1 In case of exceeding of the payment term, the Buyer shall be in default without the need for any further notice of default.

30.2 In case of any reasonable groups to doubt the solvency or creditworthiness of the Buyer, Kouters is entitled to demand advance payment, or security, for outstanding deliveries and immediate payment, or security, for all other claims ensuing from any other Agreements between Kouters and the Buyer.

30.3 All obligations of Kouters, including but not limited to obligations to deliver or ship ordered Products, shall be suspended as long as the Buyer is in default on the payment of any amount owed to Kouters.

30.4 In case of exceeding payment terms, the Buyer shall owe Kouters interest of 1% per month, whereby a part of a month is counted as a full month.

30.5 Lodging a complaint under the heading of defective quality or other complaints, shall not suspend the payment obligation of the Buyer and other obligations of the Buyer, nor shall said obligations, regardless of whether the complaint will be honoured, be altered or set aside.

30.6 Kouters is furthermore entitled to present claims for compensation for late payment.

30.7 In case of extrajudicial or judicial collection for late payment, the amount of the claim shall be increased by 10% administration costs calculated over the invoice amount, with a minimum of €250, increased by the actual judicial and extrajudicial costs which are made by Kouters.

31. **Set-off**

31.1 The Buyer is not entitled to set off its claims on Kouters against any payments or other obligations that the Buyer owes Kouters. Nor is the Buyer in such cases entitled to suspend his obligations.

31.2 Kouters and all businesses affiliated with it are at all times entitled to set off their claims on the Buyer against any payments and/or obligations which are owed to the Buyer and/or businesses and/or persons affiliated with the Buyer.

31.3 The Buyer is not entitled to exercise any pledge and/or similar rights to goods, documents with a monetary value and/or other Products or monies which the Buyer must provide to Kouters.

32. **Retention of title**

32.1 All Products delivered for the performance of this Contract remain Kouters' property until the purchase price and all related costs have been paid in full and Kouters has no further claim on the Buyer under another heading, including future claims on the Buyer, including interest and costs (and in case delivery is based on payment by bank transfer, until the time of settlement of the amount to be charged to the Buyer's account).

32.2 In case of late payment, moratorium on payment or bankruptcy, Kouters has the right to take possession of the Products and toward this end to enter the sites and buildings of the Buyer. By concluding the Contract the Buyer authorises Kouters to do so.

33. **Retention of title Germany**

33.1 With regard to a Buyer based in Germany, instead of the retention of title laid down in Article 32, the retention of title laid down in this article shall apply.

33.2 *Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die Kouters aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zusteht.*

33.3 *Das Eigentum von Kouters erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentums erwerbs für Kouters her und verwahrt sie für Kouters. Hieraus erwachsen ihm keine Ansprüche gegen Kouters.*

33.4 *Bei einer Verarbeitung die Vorbehaltsware von Kouters mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwirbt Kouters zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentums erwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei der Miteigentumsanteil von Kouters dem Verhältnis des Rechnungswertes der Vorbehaltsware von Kouters zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren entspricht.*

33.5 *Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus den gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang des Eigentumsanteils zur Sicherung an Kouters ab.*

33.6 *Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages der Rechnung von Kouters für die mitverarbeitete Vorbehaltsware schon jetzt an Kouters abgetreten. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an Kouters ordnungsgemäß nachkommt, darf er über die Kouters gehörenden Ware im ordentlichen Geschäftsgang zu verfügen und die an Kouters abgetretenen Forderungen selbst einziehen.*

33.7 *Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.*

33.8 *Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.*

33.9 *Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschließlich deutsches Recht.*

34. **Security**

34.1 By concluding the Contract, a (future) pledge is granted on the crops in the field and crops to be harvested/that have been harvested that the Buyer cultivates and/or purchases after concluding the aforementioned Contract as security for payment of everything the Buyer owes and/or will owe Kouters, including the purchase price and commercial interest for monetary loans and credit facilities provided or to be provided for delivered Products, compensation for (future) (imputable) shortcomings, e.g. due to non-delivery or incomplete delivery by the Buyer. By concluding the Contract with Kouters, the Buyer states that he is authorised to grant a pledge on the Products referred to in the preceding sentence and that no qualified rights are attached thereto.

35. **Security Germany**

35.1 With regard to a Buyer based in Germany, instead of the security laid down in Article 34, the security laid down in this article shall apply.

35.2 *Der Abnehmer wird darauf hingewiesen, dass Kouters nach dem Gesetz zur Sicherung der Düngemittel- und Saatgutversorgung vom 19.1.1949 (DüngM/SaatG) wegen aller Ansprüche aus der Lieferung von Düngemitteln und anerkanntem Saatgut oder zugelassenem Handelssaatgut ein gesetzliches Fruchtepandrecht an den in der Ernte anfallenden Früchten zusteht.*

35.3 *Der Abnehmer räumt Kouters wegen aller Ansprüche aus dem Verkauf von Saat- und Pflanzgut, insbesondere Pflanzkartoffeln, hiermit vertraglich ein Pfandrecht im Umfang des gesetzlichen Fruchtepandrechtes entsprechend dem DüngM/SaatG an den in der Ernte anfallenden Früchten auf den zu bezeichnenden Grundstücken, auch wenn die Früchte noch*

*nicht vom Grundstück getrennt worden sind. Das Pfandrecht erstreckt sich nicht auf die der Pfändung nicht unterworfenen Früchte.*

35.4 Kouters behält sich wegen aller Ansprüche aus dem Verkauf von Saat- und Pflanzgut, insbesondere Pflanzkartoffeln, das Eigentum an das Saat- und Pflanzgut vor und der Abnehmer tritt bereits jetzt alle ihm zustehenden Fruchtziehungsrechte auf die Ernteeerzeugnisse auf den zu bezeichnenden Grundstücken, nebst allen insoweit bestehenden Nebenrechten, insbesondere auch Ansprüche aus Versicherungsverträge, an Kouters ab und überträgt bereits heute, so weit zulässig, seine (zukünftige) Eigentumsrechte, nebst Anwartsrechte hierauf auf Kouters.

35.5 Der Abnehmer ist dazu verpflichtet um seine Anmeldung zur Pflanzkartoffel-Vermehrung bei der zuständigen Anerkennungsstelle gleichzeitig Kouters schriftlich zu melden, damit pro Lieferung die einzelnen bepflanzten Grundstücke mit genauer Angabe der Lage und Grundstückgröße festgelegt werden.

35.6 Die Gegenseite erklärt, dass sie zur Übertragung der genannten Sicherheiten berechtigt ist und diese Sicherheiten frei von Rechten Dritter sind.

35.7 Ansprüche von Kouters umfassen Ansprüche aller zur Kouters gehörende Unternehmen aus dem Vertrag, insbesondere für die Kaufsumme, Zinsen, aus Darlehen und für Schadensersatz für zum Beispiel nicht- oder nicht vollständige Lieferung oder Lieferung mangelhafter und/oder nicht vertragsgemäßer Produkten.

35.8 Auf Verlangen des Abnehmers werden die Kouters zustehenden Sicherheiten freigegeben, soweit ihr Wert die zu sichernden Forderungen um mehr als 20 % übersteigt.

35.9 Hinsichtlich die Kouters zustehenden Sicherheiten gilt ausschließlich deutsches Recht.

36. **Liability**

36.1 Kouters is never liable for damage or loss suffered by third parties (not being the Buyer or its employees) connected with the Products delivered by Kouters, the use or otherwise. The Buyer shall indemnify, defend and protect Kouters and the business affiliated with it, as well as their respective officers, directors, employees, shareholders, agents and authorised contractors against such claims and/or demands, damage, loss, liability, costs and expenditure.

36.2 Under no circumstance shall Kouters be liable to the Buyer or any other person for special, additional or consequential loss or punitive damages, costs or expenditure including but not limited to damage or loss in the form of loss of goodwill, loss of revenue, loss of profit, work interruption, disruption of the production, non-specified fixed claims, sanctions, penalties, damage to other goods or otherwise, regardless of whether the loss or the damage in question ensues from or is connected with a breach of a guarantee, shortcoming, inaccurate representation of affairs, negligence or otherwise.

36.3 Kouters' liability per incident or series of related incidents, insofar as these are the result of one and the same cause, shall at all times, regardless of the basis of the claim (be such contract, negligence, wrongful act or otherwise), be limited to the net invoice amount of the relevant delivery up to a maximum of €5000 or the equivalent thereof in another currency as of the date of payment.

36.4 Kouters shall only not be able to invoke the above-mentioned liability exclusions and limitations in the case of – to be demonstrated by the Buyer according to objective measures – intent or wilful misconduct of the officers charged with the management of the company.

36.5 Every right of claim with regard to Kouters shall lapse after one year to be counted as of the time that said claim arose.

36.6 The Buyer must provide complete and correct information, in particular with regard to the collection of VAT in connection with intra-community transactions. In the case of non-performance by the Buyer, the Buyer shall indemnify, defend and protect Kouters against all claims in this respect

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and shall waive the right to file a claim or complaint against Kouters in this respect.

#### 37. **Force majeure**

37.1 In the case of force majeure Kouters is entitled to suspend the performance of the Contracts for the duration of the force majeure. If the duration or the seriousness of the force majeure necessitates such – which is exclusively at Kouters' discretion – Kouters is entitled to deem the Contracts as cancelled insofar as they have not yet been performed. In any event, Kouters can cancel the Contracts without being bound to pay any compensation.

37.2 Unless otherwise stipulated below, force majeure means any exceptional circumstance which makes the performance of the obligations impossible or so cumbersome, that this cannot be reasonably demanded of Kouters, such as war, mobilisation, strike, labour unrest, revolution, riot, affrays, storm, ice conditions, flooding, power or water outages, company fire, defects in the cooling, business standstill due to machine breakdown or difficulties in the power supply, traffic obstructions, whole or partial crop failure, abnormal drought or continuing rain, diseases in the crop, vermin plagues, default of suppliers, etc. Force majeure of Kouters' suppliers, including installers and producers, and its customers is deemed force majeure of Kouters.

37.3 Government measures which impede import, throughput or export of sold or purchased Products or make them financially disadvantageous, give Kouters the right to cancel the Contract, insofar as it has not yet been performed, without it owing any compensation.

37.4 Force majeure of Kouters' suppliers, including growers, is deemed force majeure of Kouters.

#### 38. **Intellectual property rights**

38.1 The intellectual and/or industrial property rights relating to the products delivered by Kouters shall (continue to) be held by it, unless the parties expressly agree otherwise In Writing.

38.2 The Buyer may only sow the sowing seeds and plants within his own agricultural company. Resale and redelivery is not permitted.

#### 39. **Breeders' rights**

39.1 By purchasing sowing seeds from Kouters, the Buyer grants Kouters, the holder of the breeders' rights and inspection agencies, the right to inspect and test all plots on which said seeds have been sown/planted, and to inspect and test the storage location. Upon first request the Buyer must designate the relevant storage place and plots and hand over relevant records, including invoices, to Kouters.

39.2 If Kouters becomes involved in proceedings on breeders' rights or other intellectual and/or industrial rights, the Buyer is obliged to provide all cooperation desired by Kouters, including the gathering of evidence. In addition, the Buyer must indemnify Kouters in said proceedings.

### IV. CONDITIONS CONCERNING DEPOSIT

#### 40. **Description of the Products**

40.1 Five (5) days before Kouters takes receipt of the Products, the Depositor shall present a proper and adequate detailed written description of the Products to Kouters, specifying the different varieties, conditions, weights, values, quantities, the requisite storage conditions, as well as all other particulars and/or specific characteristics which Kouters should know for the proper performance of the Contract.

40.2 The Depositor shall see to it that the delivered Products are delivered to the Storage Facility by or on behalf of the Depositor free of costs.

40.3 The Depositor shall himself provide (government) prescribed accompanying documents, safety regulations and/or documentation on behalf of the Products, before the Products can be taken into receipt by Kouters. Kouters is never liable for damage or loss which the Depositor suffers as a result

of failure by the Depositor to comply with any (government) regulation. The Depositor indemnifies Kouters against all (financial) consequences which might be the result of the failure to perform the above-described obligations.

#### 41. **Liability of the Depositor**

41.1 The Depositor is liable to Kouters for damage or loss resulting from incorrect and/or deceitful and/or incomplete descriptions as referred to in Article 40.1, as well for damage or loss resulting from the Products, even if such damage or loss arose due to matters beyond his control. If the weight is not described or is described incorrectly, the Depositor is liable for all damage or loss ensuing therefrom.

41.2 If damage to and/or loss of the Products has arisen, the Depositor shall pay the destruction, removal, cleaning and/or clean-up costs. If Kouters has borne these costs, the Depositor is liable to Kouters for these costs and is bound to compensate these costs.

41.3 Without prejudice to the provisions above, the Depositor shall indemnify Kouters against liability of third parties, or indemnify Kouters against damage or loss paid by or to third parties, including subordinates of both Kouters and the Depositor, ensuing from the nature or condition of the Products deposited, unless the damage or loss is the result of intent or wilful reckless of Kouters' managerial staff according to objective criteria.

#### 42. **Refusal of Products**

42.1 Kouters has the right (but not the obligation; i.e. the Depositor himself remains responsible) to refuse the Products offered for Deposit. When making the assessment Kouters shall act in accordance with the criteria of reasonableness and fairness.

42.2 Without being exhaustive, the Products can in any case be refused if

- the Products deviate from the description as referred to in Article 40.1, or if the description as referred to in Article 40.1 does not satisfy the requirements which may be set therefore;
- the Products are not in accordance with (relevant) laws, regulations, guidelines and/or rules and instructions issued by a public authority;
- the Products can result in danger and/or damage to other products stored in the Storage Facility;
- the Products are not correctly and/or properly packed;
- the Products perceptively and/or visibly do not appear to be in order;
- the Products are not delivered at the appropriate and/or prescribed and/or agreed temperature;
- upon a request to this effect the origin of the Products cannot be disclosed and demonstrated.

In such case Kouters is entitled to full compensation.

42.3 Kouters has the right to refuse the Deposit of the Products which in its opinion, due to their nature, condition or otherwise, constitute danger or damage to other products and/or persons or for the Storage Facility and/or one of the cold stores.

42.4 If Kouters nevertheless takes receipt of the Products, all damage and loss, necessary extra work (e.g. preparation, cleaning, changing the space made available) and the related costs shall be charged to the Depositor at the rates common in the industry.

#### 43. **Inspection of the Products**

43.1 Without an assignment Kouters is not obliged to weigh or measure the Products entrusted as Deposit, regardless of the method of packing or storage, or to carry out any other inspection as to the nature, the condition and the temperature of the Products, including inspections as to moisture content.

43.2 Opening packages, including containers, to inspect the content, shall only be effected on the request of the Depositor, but Kouters is at all times authorised but not obliged to do so, if it suspects that the content has not been correctly described.

#### 44. **Period of the Deposit of the Products**

44.1 A start has been made with the Deposit of the Products by Kouters ("Start of the Deposit"):

- if upon entry the Products are unloaded under Kouters' responsibility: as soon as a package of the party has been taken on;
- if upon entry the Products are not unloaded under Kouters' responsibility: as soon as a package of the party has been placed in the Storage Facility at the designated location;

44.2 The Deposit of the Products at Kouters has come to an end ("End of the Deposit"):

- if upon discharge the Products are loaded under Kouters' responsibility: as soon as a package of the party has been set down for discharge at the designated location, i.e. either in the vehicle, or at another location;
- if upon discharge the Products are not loaded under Kouters' responsibility: as soon as a package of the party carrying out the discharge has been taken on.

#### 45. **Condition of the Products**

45.1 Subject to moving the Products as referred to in Article 46, in which case Kouters' liability is regulated by the conditions and limitations of liability set out in said article, Kouters is not liable for damage to the Products resulting from or caused by an incident or process that took place or started prior to the Start of the Deposit.

45.2 If the Products which have been entrusted to Kouters by way of Deposit are in a damaged or defective condition at the Start of the Deposit, which is externally visible, Kouters shall in such case be entitled but not bound to act in the Depositor's interests, at the Depositor's expense and risk, with regard to the transporter and/or others and take care of the evidence relating to the condition, without the Depositor being able to derive any right with regard to Kouters in relation to the way in which Kouters has discharged this task. After Kouters has discovered such, Kouters shall notify the Depositor if upon arrival the Products are in an externally visible damaged or defective condition, without the Depositor being able to enforce any claim against Kouters in the event no such notification is made or with regard to the content of such notification.

45.3 Products received by way of Deposit which a careful depositee, if it had known that after receipt such could constitute a danger, with an eye to such danger would not have accepted the Products for Deposit, may at any time be removed, destroyed or made harmless in some other way by Kouters, at the Depositor's expense and risk.

45.4 Kouters shall owe no compensation whatsoever in this respect and the Depositor is liable for all costs and loss for Kouters resulting from delivery for Deposit, from the Deposit itself or from the measures, unless said costs and loss or the need to take such measures are exclusively the result of intent or wilful misconduct on the part of Kouters' managerial staff according to objective standards.

#### 46. **Moving of the Products**

46.1 Kouters is at all times entitled to move the Products (or instruct them to be moved) to other cold stores if it is of the opinion that such will benefit the storage conditions or in Kouters' opinion such is necessary for urgent reasons.

46.2 The costs of moving the Products and insuring the transport risk in the usual manner are at Kouters' expense, unless the transfer must be effected:

- in the interests of the Depositor, or
- as a result of circumstances for which Kouters is not liable, or

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**G.G. CoC/GLN 4063061828927**

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- as a result of circumstances which cannot reasonably be at Kouters' expense and risk, or

- as a result of regulations or instruction on the part of a public authority.

46.3 The transport connected with moving the Products which is at Kouters' expense, shall take place subject to the AVC 2002 with regard to domestic transport, and subject to the CMR, supplemented by AVC 2002, with regard to cross-border transport. Kouters shall see to moving of Products, which shall be at the Depositor's expense, in its capacity of forwarding agent subject to the Dutch Forwarding Conditions 2018 (FENEX) and which shall take place at the Depositor's risk.

#### 47. Liability

47.1 In case of damage to and/or loss of the Products, the Depositor waives recovery from third parties and can only hold Kouters liable, even if Kouters made use of the services of a third party in the execution of the instruction, subject to the following limitation.

47.2 Notwithstanding what has been determined elsewhere in the Contract with regard to exclusion of liability, Kouters is never liable to the Depositor and/or third parties for damage, loss, claims of third parties, penalties and/or costs, arising in any manner whatsoever, unless the Depositor demonstrates that said damage, loss, claims of third parties or said costs were caused by intent of wilful misconduct of Kouters' managerial staff according to objective measures.

47.3 If, taking account of the preceding paragraphs, Kouters is nevertheless liable, such liability of Kouters is limited to the amount that Kouters' insurance pays out, increased by the excess. If the damage or loss is not insured and the liability is not otherwise excluded, Kouters' liability is limited to an amount of the daily market price of the Products entrusted for Deposit, with an absolute maximum of €5000 per calendar year. Liability for damage other than damage to the Products themselves, such as, but not limited to, intangible damage, loss of profit or any other indirect or consequential loss is expressly excluded.

#### 48. Force majeure

48.1 Force majeure as referred to in this Contract means, without this being an exhaustive list, all external causes, direct or indirect, foreseeable or unforeseeable in consequence of which Kouters cannot perform its obligations under the heading of the Contract, work strikes in the own business and the loss of one of the cold stores.

48.2 Force majeure within the meaning of this Contract must also be understood to mean:

- natural condition of the Products;
- quality changes due to passage of time;
- mould and internal spoilage;
- fermentation, rust, sprouting, freezing, melting, hardening;
- gasification, moisture loss, weight loss, leakage and spoilage;
- damage caused by rats, mice, insects, worms and other vermin;
- damage caused by other products;
- hidden defects of the Storage Facility;
- war, (natural) disasters, fire, lightning strike, strikes, etc.;
- breakdown of or defect in the refrigeration system and/or power supply;
- All other circumstances which Kouters was not reasonably able to prevent.

48.3 Kouters is not bound to perform its obligations during and after the period in which the force majeure or the consequences thereof impede or hinder the performance of its obligations.

#### 49. Access to the Storage Facility

49.1 Kouters can grant the Depositor and the persons designated by the Depositor access to the Storage Facility where its Products are stored, if it is not likely that this will cause damage to stored Products, subject to customs and other formalities prescribed by a public authority.

49.2 The following conditions apply to parties to whom Kouters grants access:

- all persons visiting the Deposit Facility, as well as the personnel of the vehicles coming to the Storage Facility must comply with Kouters' rules;
- access shall only be granted during ordinary working hours and under supervision;
- the Depositor must pay Kouters the costs of such supervision connected with the visit;
- the Depositor is liable for all damage or loss caused by visiting persons, directly or indirectly.

#### 50. Execution of actions

50.1 Actions desired by the Depositor, such as sampling, handling, care, repacking, restacking, division into batches, weighing, etc., as well as delivery must be assigned to Kouters for execution at the applicable fees and on the applicable conditions.

50.2 Actions which Kouters does not wish to take on can, after having obtained Kouters' consent, be executed by or on behalf of the Depositor, subject to conditions set by Kouters, under Kouters' supervision and for payment of the related costs, however, without any responsibility on the part of Kouters. Moreover, Kouters may have the Contract performed by a third party in whole or in part.

50.3 If in the Depositor's opinion a special method of Deposit is required, the Depositor shall notify Kouters thereof in time. In Writing to give Kouters the opportunity to take the necessary preparatory measures. In the event of failure to do so Kouters shall store the Products according to its own insight and in a manner common in the industry. In such case Kouters shall not be liable for the consequences, however these have arisen, during the Deposit of the relevant Products.

#### 51. Special method of handling

51.1 Kouters is not obliged to take any measure with regard to the Products entrusted by way of Deposit or the packing thereof other than that which normally applies with regard to the Deposit of the relevant Products.

51.2 Kouters is only obliged to take special measures if such special measures have been agreed.

51.3 Kouters is, however, entitled to take a measure immediately, at the Depositor's expense and risk, including the cleaning up, the removal, the destruction or in any other way making harmless thereof, if due to the failure to do so loss and/or damage is caused to the Products themselves or to other products, or to the Storage Facility, or if the taking of measures under another heading is required or indicated, at Kouters' discretion.

#### 52. Insurance

52.1 All storage of the Products in the Storage Facility shall be effected at the Depositor's expense and risk. The Depositor must always be adequately insured against all risks which can affect the stored Products during the duration of the Contract.

52.2 Unless such has been explicitly agreed with the Depositor, Kouters shall never be obliged to take out insurance on behalf of the Products which have been entrusted to it.

52.3 In all cases in which the Products which have been entrusted to Kouters are insured, in the event a damage-causing incident occurs, the Depositor is obliged upon first request to pledge its claim on the insurer to Kouters, as security for all amounts the Depositor owes Kouters.

#### 53. Storage fee

53.1 The Depositor undertakes with regard to Kouters, to pay the rates determined by Kouters as storage fee, including, inter alia, the storage price, costs of entry and discharge, treatment, handling, cleaning and repairs, and any special work necessary for the performance of the Contract. Other costs, such as gas, sprout inhibitors and equipment, labour, heating, insurance, etc. are at the Depositor's expense and shall be charged to the Depositor.

53.2 Unless otherwise agreed in writing, the storage fee owed by the Customer shall be invoiced monthly. If no rate has been determined, the most recent rates shall apply.

53.3 Kouters is entitled, as a result of changes in circumstances which are beyond its control, to alter the agreed prices/rates accordingly.

53.4 The amount in storage fee owed under the heading of the Contract and all other amounts which might ensue from the Contract, must be paid within thirty (30) days after the date of the invoice and without discount and/or set-off.

53.5 If payment has not been made within the aforementioned period, the Customer shall be legally in breach. As of that time the Customer shall owe interest for late payment of 1% per month or part thereof, increased by 15% extrajudicial costs and the actual costs of the judicial proceedings.

53.6 In the case of destruction of the Products deposited with Kouters by fire, ammonia leakage or otherwise, the day of destruction is deemed the day of discharge and the storage fee and costs counted in full months, shall be owing up to and including that day.

#### 54. Lapsing of claims against Kouters

54.1 All claims against Kouters shall lapse if the damage, the loss, claims of third parties, penalties or costs have not been brought to its attention in writing at latest within 48 hours after the Products cease to be Deposited at Kouters unless the Depositor demonstrates not to have been able to report the damage, the loss, the claims of third parties, the penalties or the costs earlier, in which case they must be reported within 24 hours after the aforementioned facts have become known to the Depositor.

54.2 In case of alleged damage to and/or loss of the Products entrusted for Deposit, the Depositor, in addition to Article 54.1, must have his alleged damage and/or loss determined by an independent expert, within 48 hours after the Depositor discovered or could have discovered the alleged damage and/or loss; in the event of failure to do so it shall be established that the Deposit corresponds with the Contract. Kouters has the right to have a counter-expert assessment carried out. The Depositor is bound to fully cooperate in this respect and to properly condition the goods. If the aforementioned time periods have been observed and the experts differ in opinion, they shall together appoint a third expert who shall make an opinion which is binding on the parties.

54.3 Every right of action of the Depositor against Kouters shall lapse six (6) months after the end of the day when any damage to or loss of the Products has been brought to the Depositor's knowledge, or the Depositor has informed Kouters of any damage or loss in accordance with paragraph 1 of this article, unless legal action was brought within the aforementioned period.

54.4 The term for lodging complaints relating to invoices sent by Kouters is eight (8) days. If no complaint has been lodged within that term, the invoice shall be deemed to have properly represented the storage costs charged on the invoice.

#### 55. Right of retention and pledge

55.1 Kouters has a right of pledge and a right of retention against any party who demands the issue thereof, in respect of all goods, documents and monies which come into Kouters' possession under whatever heading and with whatever use, for all claims which it has or might acquire in respect of the Depositor. Kouters can also exercise the rights granted in this

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respect for what the Depositor still owes in connection with the above instructions.

55.2 The Depositor cannot claim immediate return of the Products if this cannot reasonably be demand of Kouters, e.g. because the Products cannot be removed from the storage, because other goods have been moved or because the cooling has become disrupted.

55.3 Kouters is not bound to return the Products in the same condition as that in which Kouters received them. For example, the weight and the freshness/quality of agricultural products decreases due to the passing of time and storage. (Hidden) Diseases can also affect agricultural products. This includes, inter alia, rot and mould, loss of moisture and decay.

55.4 Kouters shall deem any party who entrusts goods to Kouters on behalf of the Depositor for the carrying out of work as authorised by the Depositor to grant a pledge on these goods on behalf of Kouters.