

## **GENERAL SALES AND DELIVERY TERMS AND CONDITIONS**

of

**Avocado Tanzania B.V.**

### **Article 1 – Definitions**

The following definitions apply to these General Terms and Conditions:

*Avocado Tanzania BV:* (hereinafter: Avocado Tanzania), having its registered office at Kamille 3, 9302 BL, Roden, The Netherlands;

**Buyer:** a legal entity who, in the practice of its profession or conduct of business, enters into an agreement with Avocado Tanzania.

**Agreement:** the agreement entered into by the Buyer and Avocado Tanzania.

**Products:** all material products that are produced or acquired by Avocado Tanzania for Buyer, including but not limited to: avocados and exotic fruits.

### **Article 2 – Applicability**

2.1 These General Terms and Conditions apply to every offer, quotation and Agreement between Avocado Tanzania and the Buyer, unless otherwise agreed in writing.

2.2 The applicability of other general conditions including the conditions of the Buyer is expressly rejected.

2.3 Additions to and/or deviations from these Terms and Conditions are only binding if and to the extent that Avocado Tanzania has expressly accepted them in writing. Any additions and/or deviations agreed upon will only apply to the Agreement concerned.

2.4 For the purpose of these Terms and Conditions, 'in writing' is also defined as: by written message, e-mail, the Internet, or other electronic media.

2.5 Any specific stipulation included in the quotation and/or the Agreement formed between Avocado Tanzania and the Buyer will supersede the stipulations of these General Terms and Conditions.

2.6 Insofar as these General Terms and Conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

2.7 Avocado Tanzania is entitled to amend and/or supplement these General Terms and Conditions.

### **Article 3 – Offer**

3.1 Unless expressly

stated otherwise, all quotations issued by Avocado Tanzania shall be valid as an offer without any obligation, which may be revoked by Avocado Tanzania in writing within 7 days from having received a confirmation of acceptance from the Buyer.

3.2 The Buyer guarantees the accuracy, completeness and reliability of details and documents which are made available to Avocado Tanzania within the scope of an order, even if these details come from third parties.

3.3 Avocado Tanzania retains the right to refuse orders without giving any reason.

3.4 Avocado Tanzania is not obliged to keep to an offer and/or an Agreement for a specified price if this price is based on a misprint and/or a writing error.

### **Article 4 – Agreement**

4.1 An Agreement shall come into effect once Avocado Tanzania has confirmed the order in writing.

4.2 Any offer made or undertaking given by a representative of Avocado Tanzania shall only be binding insofar as the latter confirms this in writing.

## **Article 5 – Delivery**

5.1 The delivery time agreed upon is an indication of the estimated delivery time. In no case shall the delivery time be considered as a strict deadline, unless the parties have explicitly agreed otherwise.

5.2 A delivery delay will not give the Buyer the right to terminate the Agreement or give the Buyer any rights to any compensation.

5.3 Deliveries will be made based on the Incoterms 2020® unless the parties have agreed otherwise in writing hereto.

5.4 Avocado Tanzania reserves the right to effect a delivery in parts. Avocado Tanzania shall be entitled to demand (pre)payment for each partial delivery before proceeding with any other. Each partial delivery will be invoiced separately.

5.5 The Buyer shall be obliged to accept delivery of the Products at the moment at which they are presented for delivery by or on behalf of Avocado Tanzania. In case of refusal of the delivery, the Buyer shall be obliged to pay Avocado Tanzania for any costs arising therefrom, including storage costs in any case, if applicable.

## **Article 6 – Price**

6.1 The Products will be supplied at the prices mentioned in the quotation or the Agreement.

6.2 All prices mentioned by Avocado Tanzania in its quotation or the Agreement shall be exclusive of VAT, exclusive of any other charges imposed by government and are based on the Incoterms 2020® in force at the moment of conclusion of the Agreement unless otherwise agreed in writing.

6.3 After commencement of the Agreement but before delivery of the agreed Products, Avocado Tanzania will be entitled to increase the agreed prices if: the price increase is caused by changes in one or more of cost price components, e.g. VAT rates, labour costs, procurement prices or legal regulations or environmental contributions. This includes increasing cost prices because of governmental measures.

## **Article 7 – Payment**

7.1 Payment shall be made by deposit on the bank account number of Avocado Tanzania, unless agreed otherwise in writing. The agreed price must be paid within 30 days from the invoice date.

7.2 Payment must be made by the Buyer in EURO, unless Avocado Tanzania agrees otherwise.

7.3 Avocado Tanzania is entitled to demand a full or partial prepayment before delivering the Products.

7.4 In the event that the Buyer does not fulfill his obligation to pay in time, the Buyer will owe default interest of 2% without the need for any notice of default or judicial intervention, without prejudicing the other rights of Avocado Tanzania such as the right to compensation for extrajudicial costs, statutory interest or commercial interest.

7.5 The Buyer will in no case be entitled to set off the sums invoiced by Avocado Tanzania against a counterclaim put forward by the Buyer or postpone payment in case of a counterclaim invoked by the Buyer.

7.6 In the event the Buyer has any outstanding invoice that is past due, Avocado Tanzania has the right to stop shipments of Products until the Buyer makes the payment.

7.7 The date on which the amount payable is deposited into Avocado Tanzania's account shall be valid as the

date of payment.

#### **Article 8 – Retention of title**

8.1 All Products delivered to the Buyer will remain property of Avocado Tanzania. Avocado Tanzania will retain title to the Products, until the Buyer has fulfilled his obligations to pay according to the Agreement.

8.2 Avocado Tanzania is entitled to take back the Products that are subject to retention of title in the following cases:

- (a) In the event that the other party fails to fulfill its obligations according to the Agreement;
- (b) or in case of a well substantiated suspicion that the other party is not capable of fulfilling its obligations flowing from the Agreement;

The other party will be obliged to cooperate with bringing back the Products.

8.3 In the event that third parties wish to establish or assert a right on the Products under retention of title, the Buyer must notify Avocado Tanzania hereof. The Buyer must notify the third party that the Products in question were delivered under retention of title.

#### **Article 9 – Liability and risk**

9.1 In the event that the Buyer has Products in its possession delivered by Avocado Tanzania subject to retention of title as referred to in Article 8 of these General

Terms and Conditions, the Buyer will be liable for any loss suffered by Avocado Tanzania as a result of the damage, the loss or the destruction of these Products in the period between delivery of the Products and the time at which the Products were returned.

9.2 Avocado Tanzania will only to be held liable in case of a product recall if;

- (a) it is established that Avocado Tanzania is liable for the circumstances that have led to the recall and;
- (b) it has been established that the other party acted as a reasonable and reasonably competent professional and attempted to limit the costs incurred in connection with the recall as far as possible.

9.3 All liability of Avocado Tanzania will be limited to the sum paid out under the public liability insurance of Avocado Tanzania including the own risk under this insurance policy. If for any reason whatsoever no sum is paid out pursuant to this insurance, all liability will be limited to the sum of the invoice corresponding to the Agreement on which the other party's claim is based, on the understanding that all liability will be limited to a sum of EUR 20,000.

9.4 Avocado Tanzania shall not be liable for damage of any nature whatsoever, which is caused because Avocado Tanzania has used

incorrect and/or incomplete information supplied by or on behalf of the Buyer when the order was placed or at a later stage.

9.5 Avocado Tanzania shall under no circumstances be liable for damage of any nature whatsoever, which is caused by the negligent or injudicious use of the Products by the Buyer or a third party. Injudicious or negligent use shall be understood to mean in any event: the use and storing of the Products supplied in a manner other than that prescribed in the instructions.

#### **Article 10 – Force majeure**

10.1 In case of force majeure Avocado Tanzania will be entitled to suspend or to partly terminate the Agreement without the obligation to pay compensation to the Buyer or other parties.

10.2 Any failure in the performance of the Agreement for which Avocado Tanzania cannot be held accountable because it is beyond its control will be considered as a situation of Force Majeure.

10.3 The following situations should be considered as Force Majeure;

- (a) strikes held by the employees of Avocado Tanzania or third parties.
- (b) Illness of employees

of Avocado Tanzania or third parties in connection with the performance of the Agreement.

- (c) war and threat of war;
- (d) terrorist attacks;
- (e) riot, revolution;
- (f) natural disasters, including, without limitation, floods, earthquakes, storms, fire;
- (g) non- or late delivery of Products by (part) suppliers or other third parties engaged by Avocado Tanzania;
- (h) statutory regulations and measures issued by the Dutch government, which interfere with the fulfilment (within the time-limit) of the Agreement on Avocado Tanzania's part, including bans on imports and exports;
- (i) statutory regulations and government measures issued by foreign governments or by organs of the European Union, which interfere with the fulfilment (within the time-limit) of the Agreement on Avocado Tanzania's part, including import and export bans;

#### **Article 11 – Intellectual property rights and confidential information**

11.1 All rights of intellectual property on all Products supplied or made available pursuant to the Agreement, such as;

tradenames, working methods, contracts, materials, drafts, documentation, reports, quotations, pamphlets and any related preparatory material, all in the broadest sense of the word, shall rest and continue to rest exclusively with Avocado Tanzania.

11.2 The Buyer is not permitted to modify any Products supplied, their packaging or labelling without the prior written consent of Avocado Tanzania.

11.3 The Buyer is aware that the Products supplied under the Agreement (may) contain confidential information and trade secrets of Avocado Tanzania or its suppliers. The Buyer undertakes to keep this information confidential, to not disclose or give the use of it to third parties other than for the purpose for which it was made available.

#### **Article 12 – Acceptance and complaints**

12.1 Avocado Tanzania guarantees that the Products meet all the quality requirements including the requirements for food safety and all Products will be delivered with a quality assurance certificate.

12.2 Immediately following the delivery of the Products, they must be inspected and verified by the Buyer. The

Buyer must verify whether the Products delivered comply with that stipulated in the Agreement, namely:

- a. whether the correct Products have been delivered;
- b. whether the Products delivered comply with the quality requirements made;
- c. whether the Products delivered comply with that agreed on by the parties in terms of quantity (number, amount, weight). If a difference is established by the other party that is less than 10%, the other party will be obliged to fully accept the Products delivered, such for a pro rata reduction of the price agreed.

12.3 Any visible defects or visible decreased quality and visible (transport) damage in the Products must be noted by the Buyer, immediately on delivery, on the delivery note and reported to Avocado Tanzania within 24 hours from delivery, in writing, with a clear and detailed description of the complaint(s), stating the order number, in the absence whereof the Buyer will be considered to have received the agreed quantity of Products without any visible defects or visible (transport) damage.

12.4 Return shipments are only possible if the Buyer provides Avocado Tanzania with a written statement stating the reason of returning the Products including date and invoice number. Avocado Tanzania must confirm the return shipment.

12.5 In case of a successful return shipment, Buyer is entitled to receive new Products or entitled to receive the sum that was paid according to the invoice.

### **Article 13 – Suspension and termination**

13.1 Avocado Tanzania will be entitled to suspend or terminate the Agreement with immediate effect without any notice of action or default being required and without being obliged to pay damages or compensation, if:

- (a) the Buyer has applied for or has been granted (temporary) suspension of payment;
- (b) the Buyer has instituted bankruptcy proceedings or a Court has declared that the Buyer is bankrupt;
- (c) the Buyer dies or is

placed under legal control;  
(d) the Buyers' business is liquidated;  
(e) the Buyer fails to comply with his obligations pursuant to an Agreement into which he has entered, or fails to do so properly or on time or if there are grounds to fear that this will occur.

### **Article 14 – Applicable law**

14.1 These General Terms and Conditions and all agreements formed between the Buyer and Avocado Tanzania shall be exclusively subject to Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG].

### **Article 15 – Jurisdiction**

15.1 All disputes arising from an Agreement between

the Buyer and Avocado Tanzania shall be submitted exclusively to the competent Court North-Holland, location Groningen, the Netherlands, unless Avocado Tanzania would elect to submit the dispute to the competent court in the place where the Buyer has its registered offices.

15.2 Disputes between Avocado Tanzania and Buyers who are established outside the European Union will be settled by means of arbitration of the International Chamber of Commerce under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator. The arbitral procedure shall be conducted in the English language.