

STANDARD TRADING CONDITIONS OF THE
DUTOIT GROUP 2019

Whereas it is desirable to have general conditions used for all agreements concerning buying, selling, commission and related contracts concluded by companies affiliated with it,

DUTOIT EUROPE HOLDING BV
Marconistraat 80
3029 AK ROTTERDAM

has laid down for the enterprises affiliated with it the following General Trading Conditions. In those General Trading Conditions "Dutoit" will mean every company that is affiliated with Dutoit Europe Holding B.V., including but not restricted to:

- Dutoit Europe B.V.; and
- Dutoit Services B.V., both established at the office of Dutoit Europe Holding B.V.

Part I: SALE

1 APPLICABILITY

1. Only the conditions of Parts I and III of these General Trading Conditions are applicable to all offers and/or contracts which Dutoit as seller enters into with a third party, hereafter named 'buyer', unless explicitly otherwise agreed upon in writing.
2. Agreements referred to in paragraph 1 include selling, sale on commission and related agreements.
3. Terms that differ from these conditions are only binding if they are agreed upon in writing.
4. A buyer who has once made a contract with Dutoit to which these standard conditions are applicable is deemed to have tacitly agreed to the applicability of these standard conditions to orders placed or agreements entered into later by him either orally, by fax or by telex.
5. The term 'consumer' used hereinafter refers exclusively to the counterparty of Dutoit, being a natural person not acting in pursuance of a profession or business.

2 OFFER, PRICES

1. All sales agreements are deemed to have been concluded in Dutoit's place of business, with regard to execution as well as payment.
2. Dutoit is not bound to honour an agreement for a quoted price if that price is clearly based on a printing or writing error.
3. All prices are quoted in euros, unless otherwise stated. Unless the parties expressly agree otherwise in writing, the prices quoted are exclusive of turnover tax and the costs of transport and/or dispatch, packaging, insurance and any duties or taxes levied by government authorities or other levies, which taxes, levies and costs shall be borne by the buyer.
4. Every offer by Dutoit is entirely free of engagement and revocable, unless and insofar parties have expressly agreed otherwise.

5. If the acceptance differs from the offer by Dutoit, this acceptance shall be treated by Dutoit as an invitation to make an offer. In such a case Dutoit will make a new offer to which articles 2.1 to 2.4 inclusive apply.
6. Furthermore, agreements shall be deemed to be concluded only when an order has been accepted by Dutoit. Dutoit has the right, without giving reasons, not to accept orders or commissions or to accept exclusively on condition of payment C.O.D. or cash in advance.
7. Fruit and other goods supplied by Dutoit shall at least be of quality class 2.
8. The price never includes transportation to the buyer's destination, unless this has been expressly agreed in writing.

3 PLACE AND MEANS OF DELIVERY

1. Delivery of the goods sold by Dutoit and the transfer of the risk take place ex works or ex warehouse or transit store where the goods are stored, in accordance with Incoterms 2010 of the International Chamber of Commerce in Paris, unless expressly agreed otherwise in writing.
2. When the goods are stored by or on behalf of Dutoit for the buyer at his expense at the premises of delivery shall be deemed to take place at the moment the stored goods are released and put at the buyer's disposal.
3. Delivery periods quoted by Dutoit are free of engagement and never to be considered binding deadlines. Dutoit shall never be in default simply through the expiry of the agreed delivery periods. This shall always require a written notice of default, in which Dutoit is allowed a period of at least 14 days to meet its obligations.
4. Failure to deliver within the delivery period shall never entitle the buyer to any compensation, dissolution of the contract or any other action against Dutoit. The only exception is whether there has been intent or gross negligence on the part of Dutoit or its management staff or if the delivery period has been exceeded by more than three months. In that case buyer has the right to terminate the agreement by a written statement, albeit without the right to claim any damages.
5. If the buyer fails for any reason whatever, beyond the will and control of Dutoit, to accept delivery of the goods supplied by Dutoit, he shall nevertheless be obliged to meet the agreed terms of payment as if he had accepted delivery of the goods.
6. If the buyer does not accept delivery of the goods supplied by Dutoit, Dutoit shall be entitled to store these goods at the buyer's expense and risk in a place chosen by Dutoit. Dutoit shall not be obliged to pay any damages – for example, but not limited to, as a result of deterioration in quality or weight – in connection with the non-acceptance of the goods delivered to the buyer.

4 RISK

The goods shall be at the buyer's risk from the time of delivery of the goods and, if the buyer does not cooperate in the delivery, from the moment that he has refused to accept delivery.

5 DELIVERED QUANTITY

The delivered quantity is assumed, with regard to quantity and weight, as well as requirements laid down in public and/or private law, to comply with that which has been agreed or prescribed, subject to proof to the contrary provided by the buyer.

6 RETENTION OF TITLE

1. Notwithstanding (actual) delivery of the goods, the ownership of the products belonging to Dutoit shall not pass to the buyer until the buyer has met all claims of Dutoit concerning the consideration to be provided for the products delivered or yet to be delivered by Dutoit or, pursuant to such a contract, work performed or yet to be performed for the buyer, and all claims of Dutoit for failure to perform such contracts.
2. The goods delivered by Dutoit of which title has been retained pursuant to paragraph 1 of this article may be resold only in the course of buyer's normal business practice.
3. If the counterparty fails to perform his obligations or there are reasonable grounds for believing that he will fail to do so, Dutoit shall be entitled to remove – or cause to be removed – the delivered goods that are subject to the retention of title referred to in paragraph 1 from the buyer or from third parties holding the goods for the buyer. The buyer shall be obliged to cooperate fully in this.
4. If third parties establish or assert any right to the goods to which title has been retained, the buyer shall be obliged to inform Dutoit of this as quickly as can reasonably be expected.
5. The buyer undertakes to cooperate, within reasonable limits, with all measures Dutoit wishes to take for protection of title with regard to the delivered goods.

7 FORCE MAJEURE

1. Force majeure affecting Dutoit shall be deemed to mean every circumstance beyond the control of Dutoit as a result of which the performance of its obligations towards the buyer are wholly or partly delayed or as a result of which Dutoit cannot reasonably be required to perform its obligations, regardless of whether the circumstance was foreseen or foreseeable at the time of the conclusion of the agreement.
2. Circumstances as referred to at 7.1 shall be deemed to include government measures, delays in supplies, bans on exports, civil disturbance, war, mobilization, impossibilities of transport, import restrictions, (imputable) breaches of contract by suppliers and/or manufacturers of Dutoit, as well as agents or subcontractors, illness of staff, defects in ancillary equipment or means of transport, lock-outs or other labour disturbances and events against which Dutoit cannot reasonably insure.
3. In the case of force majeure Dutoit shall have the right to suspend its delivery and other obligations. Dutoit shall also be entitled to dissolve the agreement in whole or in part, or to demand that the contents of the agreement be amended in such a way that execution remains possible. Dutoit shall under no circumstances be obliged to pay any penalty or damages.
4. Dutoit shall not have the right to suspend delivery if performance is permanently impossible or if the temporary impossibility lasts longer than six months. In these cases the agreement may be set aside by either party, without the buyer being entitled to compensation for damage suffered or yet to be suffered as a result of the dissolution of the contract.

5. If Dutoit has already partly performed obligations or is only partly able to perform its obligations when the force majeure occurs, Dutoit shall have the right to invoice the delivered goods or the goods available for delivery separately and the buyer shall be obliged to pay this invoice as if it concerned a separate contract.

8 OBLIGATIONS OF BUYER

1. The buyer shall inspect the goods delivered by Dutoit (as referred to in article 3 paragraph 2) at the time of delivery in the presence of the driver. During the inspection the buyer shall check whether the delivered goods comply with the agreement, namely:
 - whether the correct goods have been delivered;
 - whether the delivered goods fulfil the agreed quality requirements;
 - whether the delivered goods are of the agreed quantity (number, amount and weight).
2. If the shortfall is less than 10% of the total quantity, the buyer shall be obliged to accept the delivered goods completely in exchange for a proportionate reduction of the price. The delivered goods may be returned to Dutoit only if Dutoit has given written permission for this beforehand. If the delivered goods are returned without permission, the buyer shall be obliged to pay to Dutoit all the transport costs at its first demand.
3. If delivery takes place ex warehouse (as referred to in article 3, paragraph 1) the buyer shall examine the goods immediately in accordance with paragraph 1.
4. If the goods are delivered to a third party who holds them for the buyer, the buyer shall be obliged to carry out the inspection referred to in paragraph 1 – or have it carried out – on the day of delivery.
5. If the buyer wishes to complain, he shall be obliged to report this to Dutoit as soon as possible after the discovery of the shortfall or default or after he could reasonably have been expected to discover the shortfall or default, but no later than 8 hours after delivery. This reporting, if done orally, shall be confirmed immediately in writing (fax, letter or bailiff's notice) to Dutoit.
6. The consignment in question shall remain available in its entirety and the buyer shall give Dutoit the opportunity to inspect and examine the goods.
7. Complaints shall never entitle the buyer, not being a consumer, to suspend payment.
8. If Dutoit finds a complaint valid, Dutoit shall have the right to decide:
 - a. to revise the invoice and alter the invoice sum accordingly;
 - b. to replace the delivered goods, in which case the replaced goods will be handed over to Dutoit;
 - c. to take back the delivered goods and to dissolve the agreement unilaterally, in exchange for refund of the amount invoiced to buyer, without being liable to pay any compensation.
9. In such cases the buyer shall without delay give Dutoit the opportunity to correct any defects.
10. If the alleged damage or default is more than 10% of the invoice amount to which the damage relates, the buyer shall immediately have the damage assessed by a sworn claims adjuster and shall give Dutoit the opportunity to have its own assessment made.
11. The buyer shall at all times be obliged to take care of the goods as a prudent debtor.

9 LIABILITY

1. If the buyer is acting in the course of a profession or business, Dutoit's liability shall be restricted as follows:
 - a. Neither Dutoit nor third parties involved with the conclusion or execution of the agreement shall be liable for any damage resulting from or connected with the agreement which the buyer or any third party involved with the execution may suffer, directly or indirectly, irrespective of the cause.
 - b. Subject to the above, Dutoit shall in any event never be liable
 - for non-delivery or late delivery;
 - for information in brochures, catalogues, advertising material and the like;
 - in the case of non-imputable breaches of contract (force majeure), as referred to in article 7;
 - if the buyer himself or a third party repairs the delivered goods, makes changes to them, uses them for purposes other than those for which they are suitable or intended, overloads the delivered goods or uses them without due skill in some other way;
 - for goods owned by third parties that are on Dutoit's premises for storage or other reasons;
 - for loss of profit and/or consequential losses, arising from any cause whatever;
 - for damages caused by intent or gross negligence of subcontractors or auxiliary personnel.
 - c. If, notwithstanding the above, Dutoit is liable for any damage, it shall accept liability only in so far as such liability is covered by its insurance, up to the amount of the insurance payment. If the insurer decides not to pay in a particular case, or if the damage is not covered by the insurance, Dutoit shall never be liable for more than the amount of the invoice for the agreement concerned or, as the case may be, for the relevant part of the agreement or delivery.
 - d. The buyer shall indemnify Dutoit against all claims by third parties.
2. If the buyer is not acting in the course of a profession or business the liability shall be as follows. If Dutoit is legally liable for any damage in a particular case, it only accepts liability insofar this liability is covered by its insurance up to the amount of the insurance payment. If the insurer decides not to pay in a particular case, or if the damage is not covered by the insurance, Dutoit shall never be liable for more than the amount of the invoice for the agreement concerned, as the case may be, for the relevant part of the agreement or the delivery.
3. The exclusions or limitations of liability provided for in these conditions shall not apply insofar the damage is the result of intent or gross negligence of Dutoit or by its managerial staff.

10 PACKAGING

1. Packaging delivered through Dutoit, including pallets, crates and boxes, for which a deposit has been charged, shall be taken back at the current invoice price, possibly increased by a fixed payment for packaging in accordance with the applicable rules. The returned container shall be sufficiently clean and fresh to be suitable for fresh edible market garden produce.
2. If packaging is to be returned by Dutoit's own means of transport, the packaging shall be sorted and ready for transport.
3. Packaging which is not delivered through Dutoit shall be taken back only insofar Dutoit carries the products in question in its own range.

11 PAYMENT

1. Payment for the delivered goods shall be made within three weeks of the date of the invoice relating to the delivery, unless this arrangement has been changed by written agreement.
2. Payments made by the buyer shall always serve as payment of interest and costs and thereafter of invoices that have been outstanding for the longest period, even if the buyer states that payment is meant for an invoice of a later date.
3. Set-off against another claim that buyer has or alleges he has is not allowed, unless Dutoit has sent the buyer a credit note or is ordered by a judgment of a court to pay the buyer a sum of money.
4. If the period referred to in paragraph 1 is exceeded, the buyer shall, without prior notice of default, owe penalty interest of 1% a month, for which purpose a month that has already started counts as a full month, without prejudice to the other rights of Dutoit such as the right to claim performance of the contract or to claim compensation in addition or as a supplement to penalty interest.
5. Dutoit shall at all times be entitled to demand that the buyer provide sufficient security for payment of whatever is to be performed by Dutoit, the security being provided in such manner as Dutoit may determine.
6. Complaints and/or warranty claims that are under consideration shall never give a right to suspend payment or to partial payment.

12 DISSOLUTION AND LIABILITY OF BUYER

1. If the buyer does not perform his obligations to Dutoit or does not perform them properly or in time, or if a petition for his bankruptcy is or will be filed, if he is declared bankrupt, if he applies for a moratorium or is under moratorium, if he offers his creditors or a number of them a composition, if his assets or part of his assets are seized, if he decides to sell or liquidate his business, or if he dies, is made the subject of a guardianship order or loses the management or control of his business, assets or part thereof in some other way, the buyer shall be deemed by law to be in default and every claim which Dutoit has or obtains against him shall become due fully and immediately without the requirement of notice of default.
2. In the cases mentioned at 12.1 Dutoit shall be entitled, in accordance with the present contract and/or other agreements, to suspend its obligations to the buyer and wholly or partly to dissolve all agreements not yet completed with the buyer, without recourse to the courts, by means of a written declaration. In that case the buyer shall be liable for all damage suffered by Dutoit, including loss of profit, losses suffered, damage to goods, costs and interest, transportation costs, commission, judicial and extrajudicial costs, as well as all other costs directly or indirectly related to the transaction.
3. If the buyer wishes to dissolve the agreement, he shall always first give Dutoit written notice of default and allow it a reasonable period to perform its obligations or remedy the breaches of contract, which breaches must be accurately specified by the buyer in writing.
4. The buyer shall not be entitled wholly or partly to dissolve the agreement or suspend performance of his obligations if he himself is already in default.
5. In the case of partial dissolution the buyer cannot claim dissolution of the obligations already performed by Dutoit, and Dutoit shall be entitled in full to payment for the obligations already performed.

6. In the case of the buyer's non-performance or late or inadequate performance, all extrajudicial costs incurred by Dutoit shall be fully borne by the buyer. The extrajudicial costs incurred by Dutoit shall be 15% of the total sum owed by the buyer to Dutoit, subject to a minimum of EUR 250 per invoice.

Part II: PURCHASE

13 APPLICABILITY

1. The conditions of Part II and III of these General Trading Conditions shall apply to all agreements whereby Dutoit acts as buyer, whether or not on a consignment basis, and to all inquiries and orders by Dutoit, for which purpose an order is also deemed to constitute an offer.
2. In these conditions supplier shall mean every (legal) person with which Dutoit, as buyer (on a consignment basis) has concluded or wishes to conclude a (consignment) purchase agreement, and also its representative(s), successor(s) in title, heir(s) and proxies.
3. The present conditions shall also apply if Dutoit expressly accepts an offer of a supplier by referring to these conditions and expressly rejecting the applicability of conditions of sale.
4. Derogations from these conditions shall in each case be agreed with the supplier; the supplier may not invoke departures previously made in a contractual relationship with Dutoit.

14 OFFERS, AGREEMENTS

1. All inquiries, orders or offers by Dutoit or its staff in any form whatsoever shall always be free of engagement, unless stated otherwise in writing.
2. An agreement shall be deemed to be concluded only if it is confirmed by Dutoit within 48 hours after supplier has sent its acceptance, or if the supplier's offer has been accepted.
3. Even after the agreement has been concluded, the supplier shall be obliged to make all non-fundamental changes desired by Dutoit.

15 PRICES

An agreed price may not be increased by the supplier, even as a result of any (cost) price increase due to any cause whatever, unless Dutoit expressly agrees to the price increase.

16 DELIVERY

1. The delivery times quoted by the supplier shall be binding deadlines, unless the parties have agreed otherwise. In the case of late delivery the supplier shall be deemed to be in default without notice of

default and Dutoit shall be entitled, among other things, to dissolve the agreement and/or claim damages.

2. If the supplier suspects that the delivery date to which he has committed himself cannot be met, he shall be obliged immediately to inform Dutoit and state the relevant circumstances. If the supplier fails to do so he may not later invoke a right to exceed the delivery period, even in a case of force majeure.
3. In the case of cancellation for late delivery Dutoit shall be entitled to return delivered goods delivered at the expense and risk of the supplier.
4. Without prejudice to its right to statutory damages, Dutoit shall be entitled, in the event of late delivery and cancellation, to demand payment of extra expenditure incurred in reasonable replacement of goods not received.
5. The delivery of the goods and the transfer of the risk shall take place on the basis of the terms of delivery: Delivery Duty Paid (Rotterdam) as referred to in the Incoterms 2000 of the International Chamber of Commerce in Paris, unless expressly agreed otherwise in writing.

17 TRANSFER OF TITLE

1. The risk in relation to the goods shall be transferred only at delivery.
2. If the goods are subject to other rights besides the right of ownership of the supplier, the supplier shall be obliged to notify Dutoit about this immediately.

18 TERMINATION OF THE AGREEMENT

1. Dutoit shall be entitled to terminate the agreement unilaterally without notice of default or dissolve it extrajudicially in the following cases:
 - if the supplier fails to perform its obligations under a contract or contracts connected thereto or fails to do so properly or in good time;
 - if the supplier is declared bankrupt or applies for or has been granted a moratorium or if his business has been shut down or liquidated.
2. If a situation as referred to in paragraph 1 occurs, the supplier shall be deemed to be in default by law. All claims which Dutoit may have against the supplier shall thereby become due and payable immediately.
3. In the above-mentioned circumstances Dutoit may choose to have all or part of the ordered goods delivered by a third party at the supplier's expense and risk, after a written notice to the supplier. All costs and higher prices incurred in relation to this delivery shall be reimbursed to Dutoit by the supplier.

19 PAYMENT

1. The invoice shall be paid within 30 days of the date on which the goods are received and found to be completely in order, unless otherwise agreed. Payment shall not discharge the supplier from any warranty and/or obligation to pay compensation to which he is subject under the agreement or by law.
2. Dutoit shall at all times be entitled to set off outstanding invoices against its own claims against the supplier.

20 INSPECTION

1. The delivered goods shall meet the agreed requirements, specifications and all conditions which Dutoit may expect the goods to meet, with regard to both quality and quantity, and the goods shall also meet the statutory requirements and other government provisions, which are expressly deemed to include the Dutch and European regulations governing pesticides, and the supplier warrants that the delivered products do not contain any substances that are on the list of banned pesticides.
2. After delivery of the goods Dutoit shall have the right to inspect the goods at its own expense before approval.
3. If the supplier has heard nothing about this within 8 days after delivery, he may conclude that the goods have been approved.
4. If Dutoit rejects the goods, it shall inform the supplier of this in writing within 8 days of delivery, stating the choice it is allowed to make in the following paragraph.
5. If it rejects the delivered goods Dutoit may choose between the following possibilities:
 - returning the delivered goods at the supplier's expense with a demand for correct performance of the contract, possibly in combination with compensation;
 - dissolution in accordance with article 16 of these conditions;
 - partial dissolution/partial performance, possibly in combination with compensation;
 - price reduction as proposed by Dutoit;
 - delivery of the goods by a third party in accordance with article 16, paragraph 4.

21 LIABILITY

1. Notwithstanding the other relevant provisions of these conditions, Dutoit shall always be entitled to claim damages, for example – but not exclusively – for loss of profit and reimbursement of expenses if the supplier has not delivered the goods or not delivered them properly or in time.
2. If, as a consequence of claims of third parties/customers, Dutoit suffers damage because the supplier does not deliver the goods or does not deliver them properly or in time, the supplier shall be liable for this damage and shall indemnify Dutoit against such damage. If, as a result of the presence of undesirable residues, non-compliance with standards or excesses of certain substances in the product (e.g. chemicals, pesticides, herbicides and minerals) Dutoit suffers damage as a result of fines imposed by government authorities or claims by third parties/customers, the supplier shall be liable for such damage.
3. The supplier can never be held liable for further compensation than provided for by law.

PART III: GENERAL (BOTH FOR SALE AND FOR PURCHASE)

22 INDUSTRIAL AND INTELLECTUAL PROPERTY

1. Dutoit expressly reserves any intellectual and/or industrial property rights (brand names) in connection with the delivered goods.
2. Goods delivered to Dutoit may not infringe any patent, licence, copyright, registered drawing or design, trademark or trade name or any other intellectual or industrial property right. The supplier shall indemnify Dutoit and its customers and principals against all claims of this kind and shall compensate all damage suffered as a result.

23 APPLICABLE LAW

1. All offers and agreements, including both sale and other agreements, concluded with Dutoit and all the resulting obligations shall be governed by Dutch law, irrespective of the question where these obligations have to be performed.
2. The Dutch text of these conditions shall prevail.

24 DISPUTES

1. All disputes that should arise as a result of or in connection with the agreements concluded with Dutoit or their infringements, their dissolution or validity, will be settled exclusively by the District Court of Rotterdam unless the other party of Dutoit is not established in a member state of the European Union or in a state with which the Netherlands has a convention on enforcement. In that last-mentioned case the dispute will be settled by means of arbitration in accordance with the UNCITRAL Arbitration Rules as they apply on the date when the arbitration proceedings are brought. The arbitrator will be appointed by the Secretary General of the Permanent Court of Arbitration in The Hague. The international office of the Permanent Court of Arbitration will act as secretary.
 - a) The number of arbitrators will be: one
 - b) The place of arbitration will be The Hague, the Netherlands
 - c) The arbitration will be conducted in the English language
 - d) Dutch law will apply to the arbitration proceedings.
2. Subject to the provisions under 24,1 Dutoit will be at liberty to submit claims of claimable amounts of money whose dueeness has not been contested by the other party in writing within four weeks after the invoice date, to the competent national court in the place of establishment of the other party .
3. If the buyer is a consumer and is notified by Dutoit in writing that it is invoking the provisions of paragraph 1, first sentence, the buyer shall have a period of one month from the date of such notice to choose a court that has jurisdiction by law to hear the dispute.
