

General Terms and Conditions of Purchase of the Port International Group

§ 1 Scope, Form

(1) The following General Terms and Conditions of Purchase (hereinafter: "GCP") apply to all business relations of Port International GmbH and all its affiliate companies (hereinafter: Port), e.g. Port International Fruit GmbH, Port International European Sourcing GmbH, Port International Organics GmbH, Port International Bananas GmbH, Port International Ecuadorian Growers GmbH and Port International Dutch Growers B.V. with their respective business partners and suppliers ("Sellers") for the purchase of goods by Port and all services availed by Port as well as other services. The GCP only apply if the Seller is an entrepreneur (section 14 German Civil Code - BGB -), a legal entity under public law or a special fund under public law.

(2) These GCP shall apply in particular to contracts governing the sale and/or delivery of movable things which are to be manufactured or produced ("goods") to Port, irrespective of whether the Seller manufactures the goods himself or purchases them from suppliers (sections 433, 631, 650 BGB) and irrespective of whether the contract fulfills the legal characteristics of a contract for purchase, for works or for labor and materials or is only comparable to one of these contracts. In addition, these GCP shall also apply to services provided for Port; these are also referred to hereinafter by the term "purchase", the contracting party by the term "Seller". Unless otherwise agreed, the GCP shall be deemed applicable in the version valid at the time of the order of Port, at least however, in the version most recently communicated to the Seller in text form (section 126b BGB) or published on the website <http://www.port-international.de> under the heading "Geschäftsbedingungen" in the footer, as a framework agreement also for comparable future contracts, without Port having to indicate their applicability in each individual case.

(3) These GCP shall apply exclusively. Divergent, conflicting or supplementary General Terms and Conditions of the Seller shall only become part of the contract if and to the extent that Port has agreed to their validity at least in writing and unambiguously. This requirement of approval shall always apply, viz. even if Port accepts the deliveries of the Seller without reserva-

tion in awareness of the General Terms and Conditions of the Seller. Approval by Port shall only be effectively granted by a person authorized by law to represent Port. Supplementing the present GCP the respective General German Forwarder Conditions (AdSp) valid at the time shall apply for forwarding services, however only to the extent that they do not conflict with the present conditions.

(4) Individual agreements with the Seller in individual cases (including ancillary agreements, amendments and changes) shall always take precedence over these GCP. Subject to proof of the contrary, only a written contract or written confirmation by Port shall be relevant as evidence for the content of such agreements. Insofar as the written form requirement is mentioned in the following, compliance shall be exclusively governed by section 127 BGB.

(5) Legally relevant statements and notifications of the Seller regarding the contract (e.g. setting a deadline, a reminder or withdrawal) shall be issued in writing, viz. in terms of these GCP in writing or in text form (e.g. letter, email, fax), at all time. Statutory requirements on form and additional requirements, in particular in case of doubt regarding the legitimacy of the declarant, shall remain unaffected.

(6) Indications regarding the applicability of statutory provisions shall only have significance for clarification. Even without such clarification, the statutory provisions therefore apply, unless they are directly amended or excluded in these GCP.

§ 2 Conclusion of Contract

(1) An order of Port shall become legally binding at the earliest upon written submission or written confirmation. The failure of Port to respond to offers or other statements of the seller shall only demonstrate approval, if this consequence has been unambiguously agreed upon. The Seller shall notify Port of obvious errors (such as typing errors and miscalculations) and obvious incompleteness of an order, including the order documentation, for the purpose of correction or completion prior to approval; otherwise it shall be deemed that the contract was not concluded.

(2) The Seller is obligated to confirm orders of Port without delay, at the latest within a period of 2 working days in writing, or to execute such orders without reservation, in particular by means of dispatch of the goods (acceptance). A belated or altering acceptance shall be considered a new offer and shall require the acceptance

of Port in accordance with sub-section (1).

(3) If the seller has negotiated with Port verbally or by e-mail, commercial letters of confirmation of the Seller, which do not only deviate from such negotiations insignificantly, shall not constitute a part of the contract and shall not bindingly establish the regime between the parties. If this case, the content of what has been negotiated verbally or by e-mail shall apply, if such negotiations (as an exception) already constitute the conclusion of a contract (contrary to sub-section (1)). The party which relies on the content of such a letter of confirmation shall carry the burden of proof that the letter of confirmation essentially reproduces verbal agreements (or agreements in text form, such as e-mail communication). As long as Port has not yet agreed upon all contractual terms with the Seller, Port shall not be liable under the contract, in particular regarding the payment of "cancellation fees", if the contract is not executed due to the provision of additional details by Port causing the inability of the Seller to provide the performance owed, although a contract may have already been closed.

§ 3 Delivery Time and Delay of Delivery

(1) The delivery time specified by Port in the order is binding. In particular, but not exclusively, shipment orders are deemed to be forward orders. If the delivery time has not been specified in the order and has not been agreed otherwise, delivery shall be effected immediately. The Seller is obligated to notify Port in writing without delay if he - for whatever reason - predicts not be unable to meet agreed delivery times. Prior to the agreed delivery time, (partial) deliveries may only be effected upon prior written approval of Port.

(2) If the Seller fails to perform or does not perform within the agreed delivery time or if he is in default, Port's rights - in particular for withdrawal and compensation for damages - are determined by the statutory provisions. The provisions in the following sub-sec. 3 remain unaffected. Damages of Port may include, but are not limited to, sorting costs, contractual penalties of purchasers, disposal costs, additional costs of coverage purchases and loss of profit.

(3) If the Seller is in default, Port may demand - in addition to further statutory claims - liquidated delay damages in the amount of 1% of the net price per completed working day, yet, in total no more than 5% of the net price of the delayed goods. The objection of con-

tinuation shall be waived in these cases. Port reserves the right to prove that a higher damage has occurred. The Seller reserves the right to prove that no or only a significantly lower damage has occurred. If Port accepts the late performance, Port will claim the contractual penalty at the latest with the final payment.

(4) The claim of Port for performance shall not already lapse upon the assertion of damages instead of performance, but only upon actual payment of damages by the Seller.

§ 4 Performance, Delivery, Transfer of Risk, Default in Acceptance

(1) The Seller is not entitled to have the performance owed performed by third parties (such as subcontractors) without the prior written approval of Port. The Seller bears the risk of procurement for his performances, unless expressly agreed upon otherwise in individual cases (for example, limitation on current stock).

(2) The delivery within Germany shall take place "DAP" at the place specified in the order. If the destination is not specified and nothing else has been agreed, the delivery shall be made to the registered office of Port in Hamburg. The respective place of destination is also the place of performance for the delivery and any potential rectification (debt to be discharged at the creditors domicile).

(3) The delivery shall be accompanied by a delivery note specifying the date (issuance and shipment), content of the delivery (item number and amount) and our order code (date and number). If the delivery note is missing, incomplete or incorrect, Port shall not be responsible for resulting delays in processing and payment. Separate from the delivery note, a corresponding dispatch notice with the same content shall be sent to Port. As proof of performance, freight forwarders are required to submit bills of lading signed by the consignee with the recognizable name of the signing individual together with their invoices. In absence of such bills of lading, invoices shall not become due for payment. Warehouse keepers, where goods are collected due to an exemption of Port, are obligated to duly obtain a receipt of collection in writing and to note the full name and the truck license plate. If the warehouse keeper fails to comply with these requirements, he shall be liable for Port's resulting damages.

(4) The risk of accidental loss and accidental deterioration of the goods shall pass to Port upon delivery at the place of performance. Insofar as an

acceptance has been agreed, such acceptance shall be decisive for the transfer of risk. Incidentally, the statutory provisions regarding contracts for works shall apply accordingly with respect to acceptance. Transfer or acceptance shall be deemed to be effected, if Port is in default of acceptance. Irrespective of delivery conditions transfer or acceptance in terms of the above shall be effected at the final destination of the goods, viz. usually at the customer of Port.

(5) With respect to the occurrence of default in acceptance of Port, the statutory provisions shall apply. However, the seller must still offer its performance to Port in compliance with sections 294, 295 BGB if a specific or definable calendar time has been agreed upon for a performance or an act of cooperation of Port (for example, provision of material).

§ 5 Prices and Terms of Payment

(1) A price stated in the order is binding. All prices include all statutory sales taxes, if such taxes are not indicated separately. For services billed on a timely basis travel times and travel expenses are not billable. If a reimbursement of travel expenses has been agreed upon, the cheapest means of transport (train 2nd class, economy class flight, car) must be chosen at all times.

(2) Unless otherwise agreed upon in individual cases, the price includes all performances and ancillary performances of the seller and all ancillary costs (for example, proper packaging, transport costs including potential transport and liability insurance).

(3) The agreed price is due for payment within 30 calendar days upon complete delivery and performance (including a potentially agreed acceptance) and receipt of a proper invoice. If Port makes a payment within 14 calendar days, the Seller grants a 3% discount on the net amount of the invoice to Port. In the case of bank transfer, payment shall be deemed to be made on time if the transfer order from Port is received by the Bank of Port before the payment deadline expires; delays of banks involved in the payment process shall not be attributable to Port. Port is entitled to opt into the so-called sales VAT credit procedure (section 14 subsection 2 s. 2 of the Value Added Tax Act -Umsatzsteuergesetz -) with the Seller, namely within the contract declaration of Port (see § 2 sub-sec. (1) of this contract) or later by unilateral declaration of Port. In this case, payable amounts are not settled by means of an invoice of the Seller, but by means of Port issuing a credit. In terms

of billing, this credit of Port will replace the invoice of the Seller (automatic settlement of goods receipts, ERS = Evaluated Receipt Settlement). If Port has opted for this procedure, this also applies to subsequent contracts between Seller and Port, until Port deviates from this option by unilateral declaration. In the case of the credit procedure, the credit granted by Port shall be considered accepted if the Seller does not object to it without delay, usually within 2 working days upon receipt.

(4) Port owes no interest on maturity. The statutory provisions apply to default of payment.

(5) Port is entitled to the right to setoff and the right for retention as well as the objection of unfulfilled contract within the statutory scope. In particular, Port is entitled to withhold due payments as well as to deduct claims for damages and other counterclaims as long as Port still has claims against the Seller due to incomplete or deficient performances. It shall be irrelevant, whether such claims of Port are derived from the same legal relationship or owned by the same Port company. The various Port companies hereby grant the required collection authorization.

(6) The Seller is only entitled to a right to setoff or a right for retention on the basis of legally established or undisputed counterclaims.

§ 6 Assignment of Claims

(1) The assignment of claims against Port to third parties is excluded, unless Port has expressly agreed to such an assignment in writing in each individual case.

§ 7 Secrecy and Retention of Title

(1) Port reserves its proprietary- and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents shall be used exclusively for the contractual service and shall be returned to Port after completion of the contract. The documents must be kept secret from third parties, even after completion of the contract. The secrecy obligation shall only expire, if and insofar as the knowledge contained in the provided documents has become generally known. The Seller must ensure that employees or third parties commissioned by him have been obliged to maintain secrecy, accordingly. If the Seller provides services on behalf of Port, which are subject to copyright protection, the Seller hereby irrevocably grants Port a comprehensive, transferable and sublicensable right of

usage without restriction in terms of time, content or geographical scope and without additional compensation.

(2) The above provisions of sub-section (1) s.1 to s.4 shall apply accordingly to substances and materials (for example software, finished and semi-finished products) as well as to tools, templates, samples and other items provided by Port to the Seller. Such items shall be kept separate - for the time that they are not being processed - at the expense of the Seller and shall be adequately insured against destruction and loss.

(3) Processing, mixing or combination (further processing) of provided items by the Seller shall be performed on behalf of Port. The same applies to further processing of the delivered goods by Port, thus, Port shall be considered the manufacturer and acquires ownership of the product at the latest with the further processing pursuant to statutory provisions.

(4) The transfer of ownership of the goods to Port shall be executed unconditionally and without consideration of the payment of the purchase price. If Port accepts in individual cases an offer of the Seller which stipulates that the transfer of ownership shall be subject to previous payment of the purchase price, the retention of title of the Seller expires at the latest upon payment of the purchase price for the delivered goods. In this case, Port remains authorized for resale of the goods within the ordinary course of business under advance assignment of the resulting claim even before payment of the purchase price. This excludes all other forms of retention of title, in particular the expanded and forwarded retention of title as well as the retention of title extended to further processing.

§ 8 Defective Delivery

(1) For the rights of Port in case of quality defects and defects of title of the goods (including false, over- and short-deliveries as well as the cases of section 434 sub-sec. 2 BGB) and other breaches of duty by the Seller, the statutory provisions shall apply, as far as nothing different is determined below.

(2) In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality at the time of the transfer of risk to Port. In any case, those product descriptions, supplier's statements and/or customer requirements (e.g. product specifications), which are the subject of the respective contract or were included in the con-

tract in the same way as these GPC, in particular by designation or reference in the order of Port, shall represent the terms of the agreement on properties. It shall make no difference whether the product description (or customer requirement) was introduced by Port, the Seller, the manufacturer or the customer. If there is no product description, supplier statement or customer requirement in the aforementioned sense, then such properties shall be deemed to be agreed upon, which result from the reference specifications of the leading food retail chains of the respective country of destination of the goods. In particular, the goods must constitute marketable goods without restriction according to the respective valid food regulation provisions and the so-called Aldi Norm. In addition, in case of the delivery of food, the temperature instructions published on the Port website (www.port-international.de under the heading Quality/Temperature Instructions) in their current version shall be considered minimum quality assurance requirements. If a condition of the goods is found at the head warehouse of the customer or at the latest in the supermarket, which would have represented a defect if it had already been present at the time of transfer of risk to Port - if such transfer of risk already occurred -, it shall be assumed that the goods already contained an initial defect at the time of the transfer of risk to Port, which led to the appearance of this condition, unless this presumption is incompatible with the nature of the defect or the nature of the goods. In addition, the provision of section 477 BGB remains applicable pursuant to section 478 sub-section 1 BGB.

(3) Contrary to section 442 sub-section 1 s. 2 BGB Port shall be entitled to claims for defects without restriction, even if the defect remained unknown to Port at the time of conclusion of the contract as a result of gross negligence.

(4) In terms of commercial inspection and notification obligations the statutory provisions (sections 377, 381 HGB) shall apply, subject to the following restrictions: Port's inspection obligation shall be limited to defects which are openly revealed during the incoming goods inspection by Port (or its agents or the end customer) at the final destination at the customer by means of external inspection including delivery documents (eg transport damage, false and short delivery) or which are recognizable during quality control of Port by means of sampling. Insofar as acceptance is agreed or required, there shall be no inspection obligation. Otherwise it shall be decisive, to which extent an investigation is adequate in

view of the circumstances of the individual case in the ordinary course of business. The obligation to notify of defects, which are discovered later, remains unaffected. Without prejudice to the obligation of inspection, Port's notification (notification of defects) shall in any case be deemed to be prompt and without delay if received by the Seller within 10 calendar days from discovery or, in case of obvious defects, from delivery to the final customer.

(5) The costs incurred by the Seller for the purpose of inspection and rectification shall be borne by the Seller, even if it turns out that actually no defect was provided. The liability for damages of Port in the case of an unjustified claim for rectification of defects remains unaffected; however, Port shall only be liable if Port has recognized or not recognized as a result of gross negligence that no defect was provided.

(6) If the Seller does not fulfill his obligation to subsequent performance - at Port's choice by rectifying the defect (rectification) or by delivering a defect-free item (replacement) - within a reasonable period set by Port, Port shall be entitled to rectify the defect itself and claim reimbursement of necessary expenses or claim a corresponding advance payment from the Seller. If the subsequent performance of the Seller has failed or is unreasonable for Port (for example because of particular urgency, endangerment of operational safety or the threat of disproportionate damage), no setting of a deadline is required; Port will inform the Seller immediately, if possible, in advance, of such circumstances.

(7) Apart from that, Port is entitled to a reduction of the purchase price or to withdraw from the contract in case of a quality defect or a defect in title according to statutory provisions. In addition, Port is entitled to damages and reimbursement of expenses according to statutory provisions.

(8) The Seller is not entitled to refuse the type of subsequent performance chosen by Port on grounds of disproportionate costs pursuant to section 439 sub-section 4 s.1 BGB. However, if the costs are disproportionately high, Port may only claim the reimbursement of reasonable costs from the Seller. When assessing the disproportionality, the significance of the defect for Port and its customer, the value of the goods in a defect-free condition and the degree of negligence of the Seller shall be considered. In case of doubt, disproportionality shall not be assumed if the costs of the subsequent performance chosen by Port do not exceed 250% of the reduction of value due to

the defect or 120% of the purchase price.

§ 9 Supplier Recourse

(1) Besides claims for defects, Port is entitled to the legally determined recourse claims within a supply chain (supplier recourse in accordance with sections 445a, b and 478 BGB) without limitation. In particular, Port is entitled to demand exactly the type of subsequent performance (rectification or replacement) from the seller, which Port owes to its customer in the individual case. The statutory right of choice of Port (section 439 sub-section 1 BGB) shall not be limited thereby.

(2) Before Port recognizes or fulfills a deficiency claim asserted by its customer (including reimbursement of expenses in accordance with sections 445a sub-section 1, 439 sub-section 2 BGB), Port will notify the Seller with a brief statement of the facts and request a written response. If the response is not provided promptly within a reasonable period of time and if no mutually agreed solution is found, the defect claim actually granted by Port shall be deemed to have been owed to the customer; in this case the Seller bears the burden of counter-proof.

(3) The claims arising from supplier recourse also apply if the goods were further processed by Port or one of its purchasers prior to their sale to a consumer.

§ 10 Producer Liability

(1) If the Seller is responsible for a product defect, he shall indemnify Port from claims of third parties, insofar as the cause derives from his sphere of control and organization and he himself is liable externally.

(2) Within the framework of his obligation to indemnification, the Seller shall reimburse expenses of Port in accordance with sections 683, 670 BGB, which arise from or in connection with the assertion of a claim against a third party, including product recalls conducted by Port. When determining whether the management of Port is in the interest of the Seller, it shall also be considered whether Port thereby indemnifies or releases the Seller from obligations towards Port. Port will inform the Seller as far as possible and reasonable about the content and extent of product recall measures and give him the opportunity to comment. Further statutory claims remain unaffected.

(3) In the case of delivery of goods, the seller shall conclude and maintain a product liability insurance with a lump

sum coverage of at least 2 Mio EUR for each injury to persons and damages to materials. Evidence shall be provided immediately upon request of Port.

§ 11 Compliance

(1) The Seller shall comply with the generally accepted Rules of Technique and the statutory provisions on product safety (e.g. the Food-, Commodities- and Feed-Code, any European regulations, such as food hygiene regulations, etc.), the minimum international labor standards, in particular all Conventions of the International Labor Organization ("ILO") regarding employee's rights, working time and safety at work as well as all applicable statutory and regulatory provisions. The Seller undertakes to comply with the relevant environmental protection regulations and pursues to permanently reduce the adverse effects on humans and the environment arising from his performances.

(2) The Seller shall not participate, neither actively nor passively nor directly or indirectly, in any form of bribery or corruption, violation of human rights or discrimination of its employees, forced labor or child labor. In this context, the Seller undertakes not to hire workers below a minimum age of 15 years. In countries, which are subject to the exception for developing countries under ILO Convention 138, the minimum age may be reduced to 14 years.

(3) The Seller must ensure that all agents engaged by him who are involved in the production of the goods delivered to Port in any way shall comply with the obligations set out in sub-sections (1) to (2) above.

(4) The Seller shall also ensure that the goods supplied by him comply with the statutory provisions, in particular the food law regulations in the country of destination.

(5) In the event that the Seller violates any of the aforementioned obligations, the Seller shall indemnify Port and its customers from all costs, claims of third parties (in particular direct or indirect claims for damages) and other disadvantages (e.g. fines) resulting from the violation of the above provision. This shall not apply if the Seller is not responsible for this breach of duty. Furthermore, Port is entitled at any time to cancel the corresponding order immediately and to refuse acceptance of the corresponding delivery, without any costs being incurred for Port. Potential claims for damages remain unaffected thereby. A cancellation or refusal of acceptance does not consti-

tute a waiver of any claims for damages.

§ 12 Statute of Limitations

(1) The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stated below.

(2) Notwithstanding section 438 sub-section 1 no. 3 BGB, the general period of limitation for claims for defects is 3 years from the passing of risk. Insofar as acceptance has been agreed, the period of limitation begins with the acceptance. Accordingly, the 3-year limitation period shall also apply to claims arising from defects in title, whereby the statutory limitation period for claims in rem for the restitution of property of third parties (section 438 sub-section 1 no. 1 BGB) remains unaffected; In addition, claims arising from defects of title shall not become statute-barred in any case as long as the third party can still assert the claim against Port - in particular due to an absence of statute of limitations - (suspension of proceedings).

(3) The periods of limitation set out in statutory provisions regarding the right of purchase including the above prolongation apply - within the statutory scope - for all contractual claims for defects. As far as Port is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (sections 195, 199 BGB) shall apply, unless the application of the limitation periods set out in statutory provisions regarding the right of purchase lead to a longer limitation period in the individual case.

§ 13 Choice of Law and Jurisdiction

(1) These GCP and the contractual relationship between Port and the Seller shall be governed by the law of the Federal Republic of Germany, under exclusion of international private and uniform law, in particular the UN Sales Convention.

(2) If the Seller is a merchant in terms of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the registered office of Port in Hamburg. The same applies if the Seller is an entrepreneur in terms of section 14 BGB. However, in all cases, Port is also entitled to initiate legal proceedings before the courts at the place of performance of the delivery obligation in accordance with these GPC or on the grounds of a preferential individual agreement or at the general place of jurisdiction of the Seller. Statutory

provisions which take precedence, especially exclusive competences of jurisdiction, remain unaffected.