

CONDITIONS OF SALE

Considering that it is advisable to apply conditions of sale to all sales agreements concluded for the sale and delivery of goods and services in the context of its business, Combilo, with registered office at Transportweg 23, 2742 RH Waddinxveen, the Netherlands, and the companies directly or indirectly affiliated with Combilo and/or their successor(s) in title, hereinafter to be referred to as “Combilo” or “we” have drawn up the following Conditions of Sale.

Article 1: Applicability

1. Any sales agreements Combilo shall conclude with third parties, hereinafter to be referred to as “counterparty”, shall be governed by the following terms and conditions only, save as expressly agreed otherwise.
2. Provisions, deviating from these conditions, are only binding if they are agreed to in writing.
3. We explicitly exclude the applicability of any General Terms and Conditions (of Purchase) applied by counterparty. We shall not accept any reference by counterparty to counterparty’s General Terms and Conditions (of Purchase).
2. Goods delivered by Combilo subject to retention of title pursuant to clause 1, can only be re-sold in the context of the counterparty’s normal business operations.
3. If the counterparty fails to honour his commitments or if there is a reasonable fear that he will not do so, Combilo is entitled to retrieve the delivered goods which are subject to the retention of title as provided in clause 1 from the counterparty or third parties who are holding the goods for the counterparty, or can arrange for them to be retrieved. The counterparty is obliged to co-operate fully to this effect.
4. If third parties wish to vest or invoke any right to the goods delivered, the counterparty undertakes to inform Combilo of it as quickly as can be reasonably expected.
5. The counterparty undertakes to co-operate within reasonable boundaries with all measures Combilo wishes to take to protect its title to the goods delivered.

Article 2: Tenders, quotations

1. All our tenders and quotations shall be given without any commitment. Promises made by and arrangements made with our staff shall bind us only if and insofar as our Management Board has confirmed the same in writing.
2. Unless counterparty objects by email to the content of our order confirmation immediately on receipt thereof, our order confirmation shall be deemed to be a faithful reflection of the contract.
3. Any subsequent and additional arrangements or alterations and (oral) arrangements and/or promises made by our staff or made by our sales staff, agents, representatives or other intermediaries on our behalf shall bind us only if we have explicitly confirmed the same in writing or, as the case may be, if we explicitly confirmed and implemented them.
4. The invoice/delivery note shall also act as an order confirmation, which shall also be deemed to be a full and faithful reflection of the agreement regarding goods and services for which we did not send a quotation or order confirmation on account of their nature and scope.
5. We shall accept orders by telephone solely at the risk of counterparty. Any resulting inaccuracies will be at the expense and risk of the counterparty.

Article 3: Prices

1. All our prices are given in euro and are net of freight charges (unless stated otherwise in writing).
2. Our prices are net of VAT unless explicitly stated otherwise.
3. We shall be under no obligation to honour an agreement at a stated price that is obviously the result of a typing or printing error.
4. Payment must only be made either at our place of business or through a branch of a banking institution designated by us.

Article 4: Place and method of delivery

1. All deliveries and services rendered shall be deemed to be made at Combilo’s place of business.
2. Delivery shall be made ex Combilo’s warehouse. If it has been agreed that the goods shall be transported by or on behalf of Combilo, delivery shall be made before the goods are loaded onto the means of transport.
3. If the goods are stored by or on behalf of Combilo for the counterparty at Combilo’s premises or those of a third party, delivery shall be made at the time the goods are stored. From such time, the goods are at the expense and risk of the counterparty.
4. Delays in the delivery, insofar they remain within reasonable boundaries, shall not entitle counterparty to damages and/or to rescind the contract.

Article 5: Risk

The risk in respect of the goods shall be borne by the counterparty from the time the goods are delivered and, in the event the counterparty refuses to co-operate with delivery, from the time acceptance is refused.

Article 6: Amount delivered

As regards number and weight as well as any requirements stipulated by public and/or private law, the quantity delivered shall be deemed to correspond with what has been agreed or stipulated, subject to evidence to the contrary to be provided by the counterparty.

Article 7: Retention of title

1. Combilo will retain the title of the goods it delivers until such time as all claims Combilo has against the counterparty under agreements concluded between the parties have been settled in full, including costs and interest.

Article 8: Force Majeure

1. In the event of force majeure, Combilo will be entitled either to suspend the implementation of the agreement or to fully or partly terminate the agreement without the counterparty being owed any compensation by Combilo.
2. Force majeure of Combilo should be understood to include:
 - strikes held by the employees of Combilo or of third parties it engages in connection with the implementation of the agreement;
 - fire;
 - illness of employees of Combilo or of the third parties it engages in connection with the implementation of the agreement;
 - measures taken and/or prohibitions issued by the Dutch government and/or foreign government by which Combilo is bound;
 - unforeseen and unpredictable traffic impediments;
 - accident(s) with a means of transport employed in connection with the implementation of the agreement as well as unforeseen technical defects in these means of transport;
 - (attributable) failure to comply by the suppliers of Combilo;
 - theft of goods required for the implementation of the agreement;
 - as well as all other unforeseen circumstances that prevent Combilo from implementing the agreement properly and on time .
3. In the event that at the start of the force majeure, Combilo has already partly met its obligations or can only partly meet its obligations, it will be entitled to send out separate invoices for what was supplied and/or the part supplied. The counterparty will then be obliged to pay the invoice concerned as if it relates to a separate agreement.

Article 9: Harvest reservation

All our contracts for agricultural products are concluded subject to crop yield. If, as a result of a poor harvest in terms of quantity and/or quality of agricultural products, fewer products are available, also following rejection by relevant authorities, than could reasonably be expected when the contract was concluded, we will be entitled to reduce the quantity we sell accordingly. We will therefore be considered to meet our delivery obligations in full by supplying such reduced quantity. We shall thus not be under any obligation to deliver any alternative agricultural products, nor shall we be liable for any loss or damage whatsoever.

Article 10: Obligations of the counterparty

1. During delivery (as meant in Article 4) by Combilo, the counterparty must check the goods to see whether the goods correspond with the agreement, namely:
 - a. that the right goods have been delivered;
 - b. that the delivered goods are of merchantable quality and/or satisfy the quality requirements governing normal use and/or commercial objectives, as part of which the counterparty is obliged to perform internal checks on random product samples;
 - c. that the quantity (number, amount, weight) of the goods delivered corresponds with what was agreed. If any deficit amounts to less than 10% of the total, the counterparty shall be obliged to accept the goods delivered in full.

2. If the goods are delivered to a third party, who holds the goods for the counterparty, the counterparty shall carry out the inspection referred to in clause 1, or arrange for said inspection to be carried out, on the day the goods are delivered. If the goods are delivered CPT, the counterparty is obliged to perform the inspection described in clause 1 or to arrange for it to be carried out on the day the goods are delivered to the agreed address.
3. If the counterparty wishes to lodge a complaint, he must notify Combilo of the complaint as soon as possible after discovering the defect or after he should within reason have discovered it, but no later than 6 hours after delivery at the risk of forfeiting all rights. In the event of deliveries as referred to in Article 10 clause 2, the counterparty must lodge any complaint within six hours from the actual delivery to the agreed location, at the risk of forfeiting all rights. The notification concerned must be made by email or fax. Unless the counterparty complains in good time, i.e. no later than six hours after delivery or from delivery of the goods in the circumstances described in clauses 2 and 3, the counterparty will forfeit its right to complain and Combilo will be deemed to have fulfilled its obligations.
4. In the event of complaints, the consignment in question shall remain available in its entirety and the counterparty shall grant Combilo an opportunity to inspect the goods.
5. If Combilo does not accept the complaint by email or fax within four hours, the counterparty is obliged to arrange for AQS or an equivalent loss adjustment agency to be ratified by Combilo to carry out an investigation at the counterparty's expense within four hours from said deadline's expiry in the presence of Combilo or of an expert designated by Combilo, at the risk of the counterparty forfeiting all its rights, including its right to complain.
6. The counterparty must take due care of the goods at all times, as a careful debtor.
7. The counterparty will be liable for any expenses we incur if a complaint is found to be unfounded.
8. The counterparty is obliged to observe the secrecy of all confidential information it has obtained in the context of the agreement or from another source. Information is regarded as confidential if this ensues from the nature of the information.
9. Unless agreed differently, not 100% of all goods Combilo provides are guaranteed from IFS and BRC certified sources.

Article 11: Liability

1. Any liability of Combilo, its directors and employees, on whatever ground, is limited to the invoiced amount the complaint relates to and in any case to a maximum amount of EUR 50,000 (fifty thousand euro).
2. Any legal claim made by the counterparty against Combilo will become barred by limitation one year after the claim arises.

Article 12: Packing

1. Packing supplied via Combilo, including pallets, crates and boxes subject to a deposit, will be taken back at the invoice price valid at the time it is returned, plus any fixed charge for packing as provided in the applicable regulations. A fixed reimbursement of expenses may be levied for taking receipt of returned packing in accordance with relevant prevailing regulations. Returned containers must be sufficiently clean and fresh to store fresh edible horticultural produce.
2. When packing is returned via Combilo's own means of transport, it must be sorted and ready for transport upon collection.
3. Packing not supplied via Combilo will only be taken back insofar Combilo carries the produce concerned in its own range and provided the packing is in good condition.

Article 13 Industrial and intellectual property rights

1. Combilo explicitly reserves any intellectual and/or industrial property rights (trademarks) with regard to the products it supplies.
2. The counterparty is not permitted to infringe on the intellectual and/or industrial property rights of a third party using the products supplied by Combilo. The other party indemnifies Combilo against any claims by third parties based on an infringement of intellectual and/or industrial property rights by means of goods delivered by Combilo and/or crates supplied to Combilo.

Article 14: Payment

1. Payment of the goods and services delivered must be made within two weeks of the date of invoice, unless an agreement has been reached in writing on a departure from this rule.
2. Each payment on outstanding invoices shall be deemed to have been made in settlement of the oldest items outstanding.

3. Counterparty may not offset any actual or alleged claim unless Combilo has issued a credit note to counterparty or has been ordered by the courts to pay a sum of money the counterparty.
4. If counterparty exceeds the time limit specified in clause 1, counterparty shall be liable for interest at a rate of 1% per month for any month or partial month the default continues, without prejudice to Combilo's right to compensation in accordance with the law.
5. Should adverse information about counterparty come to light after a contract has been concluded, that seriously compromises the counterparty's creditworthiness and if Combilo was not aware of counterparty's actual circumstances, Combilo will be entitled to demand a bank guarantee or prepayment in respect of the purchase price, disregarding the terms of payment agreed in the contract. Counterparty must provide the guarantee within three working days, failing which Combilo will be entitled to suspend its obligations arising from the contract.
6. Combilo and all companies directly or indirectly affiliated with it are entitled to offset any claims they have that are due or not yet due against the counterparty against any claims held by the counterparty against Combilo B.V. and all companies directly or indirectly affiliated with Combilo B.V.

Article 15: Rescission and counterparty's liability

1. If the counterparty fails to fulfil his obligations as set out above (in time), Combilo shall be entitled to suspend any further goods or services. Counterparty shall then be in breach of contract. In this case Combilo will be entitled to rescind the agreement without the intervention of the courts by serving notice in writing and counterparty shall be liable for any loss incurred by Combilo, including loss of profits, losses suffered, product damage, costs and interest, freight charges, commission, judicial and extra-judicial costs, as well as all other costs connected directly or indirectly with the sale.
2. The judicial costs owed by the counterparty consist of Combilo's actually incurred legal costs, including the court fee, bailiff costs, expert's fees, translation costs and solicitor's fees.
3. Any extrajudicial costs incurred by Combilo in the event of counterparty's failure to fulfil the agreement, or his failure to do so on time or in the proper manner, shall be entirely for counterparty's account. The extra-judicial costs incurred by Combilo shall amount to 15% of the total sum owed by counterparty to Combilo, either with a minimum of EUR 500 or the amount due according to the Extrajudicial Collection Costs (Fees) Decree, at Combilo's discretion.

Article 16: Applicable law

1. All contracts of sale concluded by Combilo and counterparty shall be governed exclusively by Netherlands law. Contracts shall be deemed to have been concluded at Combilo's place of business, where such contracts shall be performed with regard to delivery and payment.
2. The Dutch text shall take precedence. For transactions with foreign counterparties, the applicability of the Vienna Sales Convention is expressly excluded.

Article 17: Disputes

1. Any disputes arising from agreements with Combilo, including any claim for overdue payments, shall be subject to the sole jurisdiction of the court in Combilo's place of business. Counterparty's right to involve Combilo in legal proceedings shall expire six months after the dispute has arisen.
2. Contrary to the provisions in clause 1, the parties can agree in writing to have the dispute settled by a different body.