

General terms and conditions of Freeland B.V., established and with offices in (7821 CE) Emmen, at Nijbracht 126.

## **1. Applicability of the terms and conditions**

- 1.1 These general terms and conditions apply to every offer and agreement between Freeland B.V. (hereinafter referred to as "Freeland") and its contracting party (hereinafter referred to as "the other party"). Freeland is engaged in the trade in (open field-grown) vegetables, potatoes and fruit, including their distribution in the broadest sense of the word and as stated on its website (hereinafter to be referred to as: "the products" or "the work"). Freeland purchases the products from market gardeners. Freeland has published these general terms and conditions on its website [www.Freeland.nl](http://www.Freeland.nl).
- 1.2 In these General Terms and Conditions, "the other party" means: the (legal) person or company that enters into an agreement with Freeland, or has entered into or intends to enter into an agreement with Freeland, with reference to these general terms and conditions.
- 1.3 If the other party previously did business with Freeland and Freeland's general terms and conditions were applicable to that agreement, then the other party shall be deemed to be familiar with the contents of these general terms and conditions in the case of subsequent agreements.
- 1.4 Any general terms and conditions used by the other party do not apply, unless the other party expressly rejects Freeland's terms and conditions, stating that it will replace them with its own terms and conditions, and Freeland has expressly agreed to this in writing.
- 1.5 In the event of a conflict between the text of Freeland's offers and/or agreement(s) and its general terms and conditions, the text of its offers and/or agreement(s) shall prevail.
- 1.6 Any deviations from these general terms and conditions, or parts thereof, are only valid if laid down in writing, signed by both parties.
- 1.7 If the court has determined that one or more provisions of these terms and conditions are unreasonably onerous, the provision in question must be interpreted in the light of the other provisions of this agreement and in such a way that it can reasonably be invoked by Freeland against the other party. The circumstance that the court has established that one or more provisions of this agreement are unreasonably onerous shall not affect the effect of the other provisions.
- 1.8 The general terms and conditions may be amended by Freeland at any time. The (most recent) general terms and conditions have been filed by Freeland with the Chamber of Commerce and are adopted on the Freeland website ([www.Freeland.nl](http://www.Freeland.nl)) and are applicable between Freeland and the other party.

## **2. Offers, quotations and conclusion of agreements**

- 2.1 The offers and quotations made by Freeland in relation to the products are without obligation and may be revoked, withdrawn or amended by Freeland within seven (7) working days after notification by Freeland, unless otherwise stated in writing.

- 2.2 In view of the perishable nature (freshness of the day) of the products, an offer made by Freeland shall only be valid for one day from the date of the offer, and Freeland has the right to withdraw, revoke or amend its offer within this (one) day, unless indicated otherwise.
- 2.3 If Freeland has made an offer to the other party, an agreement between Freeland and the other party shall only be concluded through unconditional acceptance by the other party of the offer of Freeland or through the execution of the work by Freeland. Only the offer by Freeland or its invoice for the execution of the work shall be deemed to properly reflect the contents of the agreement.
- 2.4 If Freeland has not made an offer, an agreement shall only be concluded through written acceptance or execution of the work by Freeland. Only written acceptance of the work by Freeland or its invoice for the execution of the work shall be deemed to properly reflect the contents of the agreement.
- 2.5 An order confirmation sent by Freeland to the other party is deemed to accurately and fully reflect the contents of the agreement entered into. The other party is deemed to agree with the contents of the order confirmation, unless the other party - if Freeland has sent it to the other party by e-mail no later than 11 am - notifies Freeland in writing before 7 pm of the same day that it does not agree with the contents. In all other cases, the other party must inform Freeland in writing, within one day after the date of the order confirmation, that it does not agree with its contents.
- 2.6 Information provided by Freeland in its prospectuses, websites and other printed matter, such as images, dimensions and weights, only give an impression and/or indication of the product, from which the other party cannot derive any rights. Omissions in an offer, products to be delivered by Freeland with respect to an offer and - general - information that is not exclusively addressed to the other party, are not binding upon Freeland either.
- 2.7 Amendments and/or supplements to an agreement concluded between the parties are only valid after they have been unambiguously accepted in writing by Freeland and the other party.
- 2.8 Errors contained in an offer made by Freeland to the other party shall not be binding upon Freeland.

### **3. Execution of the Agreement**

- 3.1 Freeland shall execute the agreement to the best of its ability. It shall ensure that its products comply with the agreements made between the parties, with the required standards and qualifications which may be imposed on them for the use for which they are intended (edible products).
- 3.2 To ensure the quality of the products delivered by Freeland, Freeland is an IFS (International Featured Standards) Broker. Freeland generally works with certified partners. The market gardeners, from whom Freeland buys its products, are GLOBAL GAP certified.
- 3.2 Freeland regularly has residue analyses conducted at certified laboratories in order to ensure optimum protection for the users of its products.
- 3.4 The other party must nevertheless be aware - it states and declares to be aware of this - that the products are natural products (open field-grown vegetables), which may differ slightly in colour, irregularities (specific to the (natural) product), numbers, size (measurements), etc.

from samples (previously) received by the other party, on the basis of which the other party entered into the agreement with Freeland. The other party accepts such possible minor differences and has no right to cancel the agreement with Freeland for that reason, and/or to dissolve it (wholly or partly) and/or terminate it in any other way.

- 3.5 If and where required for the proper execution of the agreement according to Freeland, Freeland is entitled to have certain work and/or products that are to be delivered carried out by persons engaged by Freeland, including third parties, including carriers. The applicability of Book 7, Sections 404 and 407, paragraph 2 of the Dutch Civil Code is excluded.
- 3.6 Freeland reserves the right to make changes to the work and/or the products to be delivered, to the extent this does not substantially alter the work/products.
- 3.7 The other party:  
- shall ensure that all information, which Freeland states to be necessary or which the other party should reasonably understand is necessary for the execution of the work/delivery of the products, shall be provided to Freeland in a timely, proper and complete manner.  
- shall provide free access to Freeland or the third party or third parties engaged by to the place where the work is carried out and/or the delivery of the products, as well as ensure that Freeland or the third party or third parties engaged by it can unload the products properly.  
If these conditions are not met, Freeland is entitled to suspend the execution of the work/delivery of the products and/or to charge the other party for the costs arising from the delay in accordance with the prices agreed with the other party, or in the absence thereof, with the usual prices.
- 3.8 In the event of special circumstances, such as a disease of or a shortage of open-field grown vegetables, delivery problems with market gardeners, etc., Freeland has the right to deliver the products in parts, unless this causes insurmountable problems for the other party, which must be demonstrated by Freeland.
- 3.9 Products are sent to the other party carefully and properly packed by Freeland or by a third party engaged by Freeland. If a product must be returned, the other party shall ensure that the products are packed carefully and properly, in the same packing material where possible.
- 3.10 Freeland uses the services of a credit insurer. If this credit insurer imposes specific requirements on the products to be delivered by Freeland for its other party/parties, these will be imposed by Freeland on the other party, unless this is contrary to the principles of reasonableness and fairness.
- 3.11 All costs that are the result of circumstances Freeland could not reasonably have taken into account at the conclusion of the agreement shall be borne by the other party.
- 3.12 With respect to the performance of the work, the other party guarantees the accuracy, completeness and reliability of the data and information provided to Freeland by it or on its behalf.

#### **4. Delivery time/period**

- 4.1 Unless otherwise agreed in writing and without prejudice to the other provisions of these terms and conditions, the delivery of products shall take place at the address of the other party. Freeland collects the products by itself from the market gardeners and organises the transport

of the products to the other party. The products delivered by Freeland are at the risk of the other party from the moment the products have arrived at the other party's premises.

- 4.2. Freeland engages third parties for the transport of the products.
- 4.3 In the event of delivery of products within the Netherlands, the risk for the products shall pass to the other party as soon as Freeland's carrier has delivered the products to the other party's premises. If the other party collects the products by itself from the market gardener(s) - the market gardener shall organise the loading of the products -, the products are for the risk of the other party as soon as the products have been loaded by the market gardener into the means of transport of/on behalf of the other party.
- 4.4 The 2020 Incoterms apply In the case of cross-border delivery/ies of the products. If the other party collects the products by itself from the market gardener(s) - the market gardener organises the loading of the products - the products are for the risk of the other party as soon as the products have been loaded by the market gardener into the means of transport of/on behalf of the other party (Ex-Works delivery). If Freeland organises the transport of the products (via third-party carriers), delivery shall take place on the basis of DAP (delivered at place), which means that Freeland has fulfilled its delivery obligation when the products have arrived at the address of the other party and are ready for unloading (Freeland shall bear the costs and risks of transporting the products to an agreed address). The parties may jointly and in writing agree a different method of delivery of the products.  
If the products are transported by ship, the delivery of the products shall take place FOB.
- 4.5 Freeland may continue to consider the address given by the other party both in the provisions of paragraph 1 and in paragraph 4 of this article, to be the address to be used, until the other party has notified Freeland in writing of a new address. The other party is obliged to take delivery of the products at this address and at the time stated by Freeland.
- 4.6 The delivery period shall only commence once Freeland has received all the information necessary for the delivery from the other party.
- 4.7 The (delivery) times of the products given by Freeland to the other party, have been determined to the best of its knowledge on the basis of the details known to Freeland at the time of the conclusion of the agreement, and shall be respected by Freeland to the extent possible. Merely exceeding a delivery date does not constitute a default on the part of Freeland, and the other party cannot derive the right to wholly or partially terminate the work or wholly or partially dissolve the agreement in question solely from the fact that a (delivery) date has been exceeded, unless the delivery date has been exceeded to such an extent that, according to the requirements of reasonableness and fairness, the other party can no longer be required to uphold the agreement. If the other party dissolves the agreement, Freeland is under no obligation to compensate any damage suffered by the other party in that respect.
- 4.8 In the event that other party fails to provide Freeland with the information and/or obligations required with respect to the work on time, properly, adequately, or appropriately, this may affect the agreed date, commencement and/or duration of the (execution of the) work, which shall be at the expense and risk of other party. Any additional costs caused by this must be compensated by the other party to Freeland. The other party is obliged to notify Freeland of all events and circumstances that may be relevant to the proper execution of the work. This also applies to events and circumstances that only become known after the conclusion of the agreement.

- 4.9 A delivery date given by Freeland for the execution of the work is at all times approximate and is not a deadline, unless expressly agreed otherwise.
- 4.10 In the event of late delivery, Freeland must be declared to be in default in writing by the other party, and given a period of at least 14 days to comply, unless reasonableness and fairness in the given circumstances justify a longer period.
- 4.11 Each partial delivery shall be regarded as a separate delivery and treated accordingly with all the respective legal consequences attached.
- 4.12 Freeland is not charged with the storage of products. If the other party does not take delivery of the products at the agreed time, Freeland shall store these products at the expense and risk of the other party. All related costs, such as storage costs and internal transport costs, shall be payable by the other party.

## **5. Prices**

- 5.1 All prices quoted by Freeland are exclusive of VAT, unless expressly agreed otherwise in writing.
- 5.2 The prices quoted by Freeland are (partly) based on the cost factors applicable at the time of the conclusion of the agreement.
- 5.3 Freeland reserves the right to change prices, unless otherwise agreed in writing. The other party has the right to dissolve the agreement through a written statement if the price has increased by more than 15%. The agreement must be dissolved by the other party immediately after the other party is notified of the price increase. If indexation has been agreed, prices quoted by Freeland shall be adjusted on the basis of and in accordance with the change in the price index figure for family consumption, published by the CBS (Dutch Central Statistical Office).
- 5.4 If during the period between the date of the quotation or offer and that of execution of the work, the cost prices are increased, such as, but not limited to, as a result of government measures, import duties, etc., or, in the case delivery periods have been agreed, the cost prices are increased during such period, Freeland is entitled to increase the price to be charged to the other party accordingly.
- 5.5 If Freeland has made obvious calculation errors in the price and/or price increase, it may adjust them at any time.
- 5.6 If a price increase is the result of a legal or other government measure, Freeland is entitled to pass such increase on to the other party, even if it has been agreed that the price is fixed, without this creating a right of termination for the other party.

## **6. Payment**

- 6.1 Payment of Freeland's invoices by the other party must be made within 30 days of receipt of the products, unless expressly agreed otherwise in writing.
- 6.2 Freeland is entitled to require full or partial payment in advance by the other party for the products to be delivered and to deliver the products only after payment has been received.

- 6.3 In the case of payment into Freeland's bank account, the day of transfer into the account shall be deemed the day of payment.
- 6.4 Payment must be made without discount or settlement.
- 6.5 If Freeland takes collection measures against the other party who is in default, the costs of such collection, with a minimum of 15% of the outstanding amount, shall be payable by the other party. Extrajudicial collection costs are also due if only a single reminder is sent.
- 6.6 All legal costs incurred by Freeland, which Freeland has to incur to enforce its rights in relation to the agreement entered into between Freeland and the other party, shall be borne by the other party, unless they are unreasonably high.
- 6.7 Payments made by the other party shall first serve to settle all interest and costs due and subsequently to settle due and payable invoices, which have been outstanding the longest, even if the other party states that the payment relates to an invoice specified by the other party.

## **7. Cancellation, amendment and termination of the agreement**

- 7.1 Freeland reserves the right to make minor adjustments to the delivery of the products (as stated in the offer) without being liable for damages as a result and/or without giving the other party the right to cancel the agreement or to have it dissolved. This will be the case, for example, if specific safety and/or environmental regulations and/or other statutory regulations cannot (temporarily) be complied with.
- 7.2 The other party is only entitled to cancel and/or dissolve the agreement if this has been agreed in writing, or if the other party derives the possibility of cancellation or dissolution from applicable regulations. If the other party (lawfully) cancels or dissolves the agreement, it shall be obliged to simultaneously cease exercising any rights granted under the agreement and to reimburse Freeland for the costs incurred with regard to the offer and the performance and execution of the work.
- 7.3 If an amendment or addition to the agreement results in extra deliveries of products by Freeland, these shall always be charged to the other party at the current prices at such time. If an amendment or addition to the work results in fewer deliveries, this may result in a reduction in the agreed price, however, Freeland reserves the right to charge the other party for the costs it has already incurred, as well as for lost profit.
- 7.4 The other party accepts that, if the parties agree that the delivery of the products will be expanded or changed, this may influence the time of delivery of the products. Freeland shall notify the other party of this as soon as possible.
- 7.5 If, after an agreement has been concluded, the other party wishes to cancel the deliveries of products resulting from the agreement, 10% of the agreed price (excluding VAT) shall be charged as cancellation costs, without prejudice to Freeland's right to claim the additional damage from the other party, including loss of profit.
- 7.6 Without prejudice to the provisions of the other articles of these terms and conditions, the other party is deemed to be in default by operation of law if it fails to meet any obligation arising from the agreement with Freeland, or to meet it properly or in a timely manner, as well

as in the event of bankruptcy, (application for) suspension of payment, a situation involving a WHOA (Dutch Act on the homologation of a private agreement), the liquidation of its business, or if all or part of the property of the other party is or has been seized and this seizure is not lifted within a reasonable period of time. The other party is obliged to immediately inform Freeland of the occurrence of the events referred to in this article. In that case, Freeland is entitled, without any notice of default and without court intervention, to suspend the execution of the work or to dissolve the relevant agreement in whole or in part, at Freeland's discretion, without being held to pay any damages, however, without prejudice to its right to compensation for the damage caused by the attributable shortcoming and the suspension or dissolution. In these cases, any claim Freeland holds against the other party shall be immediately due and payable.

- 7.7 The provisions of the previous paragraph with regard to Freeland's right to dissolve the agreement do not apply if the failure does not justify such dissolution and its consequences in view of its special nature or minor importance.
- 7.8 Freeland shall never be liable to pay any compensation to the other party on account of the termination of the agreement and the deliveries (undertakings) ensuing from this agreement on account of the events referred to in the previous subsection, without prejudice to its right to compensation for the resulting damage.
- 7.9 In the event the agreement has been dissolved, the performance already received by the other party in execution of the agreement, and the payment obligations of the other party with regard to such performance, shall not be subject to a reversal obligation, unless Freeland is in default with regard to such performance. The amounts invoiced by Freeland to the other party before or at the time of the dissolution of the agreement - with respect to the delivery of products - shall be immediately due and payable by the other party after the dissolution.
- 7.10 If Freeland learns, either from information gathered or otherwise, that the other party is not (or no longer) creditworthy for the amount of the transaction in question, Freeland shall have the choice of either delivering the products exclusively against cash payment, or requiring payment in advance, or dissolving the agreement.

## **8. Retention of title**

- 8.1 Products delivered to the other party with respect to the work shall remain the property of Freeland, until the amounts owed by the other party have been paid in full.
- 8.2 Products delivered by Freeland to the other party, which fall under the retention of title in accordance with the previous paragraph, may only be resold by the other party under normal business operations. However, in the event of bankruptcy or suspension of payment or a request for a WHOA from the other party, the resale of these products under normal business operations is not permitted.
- 8.3 If the other party fails to fulfil its obligations, or Freeland has a valid fear that it will not fulfil its obligations, Freeland is entitled to remove (or cause to be removed) the delivered products, which are subject to the retention of title mentioned in the previous paragraph, from the other party or from third parties holding the products for the other party. The other party is obliged to fully co-operate with this under penalty of a fine of 15% of the amount due to Freeland for the work, without prejudice to Freeland's right to claim full damage from the other party.

- 8.4 The other party must mark the products delivered under retention of title as the property of Freeland or keep them separate from other goods in a proper and careful manner.
- 8.5 With respect to such situation, the other party hereby irrevocably and unconditionally grants Freeland the right to enter all those places where Freeland's property is located and to recover those products if the other party remains in default.
- 8.6 If Freeland consequently claims the products in which the retention of title is vested as its property and either repossesses these products or delivers them to a third party, then Freeland's claim against the other party in respect of these products shall be reduced by the market value of the repossessed products at the moment of repossession, to the total amount that the other party owes Freeland. The market value shall in any event be equal to the purchase price achieved through the private or public sale of the recovered products to third parties, all this at the discretion of Freeland.
- 8.7 Freeland is entitled to recover an amount of products from the other party that is equal in value to Freeland's entire claim, including costs, interest and possible damages, until payment in full through the private or public sale of the recovered products.

## **9. Extended retention of title in Germany (Eigentumsvorbehalten in Deutschland)**

- 9.1 Contrary to the provisions of Article 8 of these terms and conditions, the following shall apply to products delivered by Freeland to other parties established in Germany: (Abweichend von den Bestimmungen in Artikel 8 dieser Allgemeinen Geschäftsbedingungen gilt für Produkte, die von Freeland an in Deutschland ansässige Vertragsparteien geliefert werden, Folgendes:)
- 9.2 Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die dem Freeland aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer zustehen.
- 9.3 Das Eigentum von Freeland streckt sich auch auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für Freeland her und verwahrt sie für ihn. Hieraus erwachsen ihm kleine Ansprüche gegen Freeland.
- 9.4 Bei einer Verarbeitung der Vorbehaltsware von Freeland mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwirbt Freeland zusammen mit diesen anderen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers – Miteigentum an der neuen Sache zu deren vollem Wert (einschließlich Wertschöpfung) wie folgt:
- a. Das Miteigentumsanteil von Freeland entspricht dem Verhältnis des Rechnungswertes der Vorbehaltsware von Freeland zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren.
  - b. Verbleibt ein von Miteigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Abnehmer erstreckt haben, so erholt sich der Miteigentumsanteil von Freeland um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht Freeland an ihm nur ein Anteil zu, der sich aus dem Verhältnis des Rechnungswertes der Vorbehaltsware von Freeland zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten bestimmt.

Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus die gegenwärtigen und künftigen Warenlieferungen von Freeland zur Sicherung am Freeland ab. Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages der Rechnung von Freeland für die mitverarbeitete Vorbehaltsware schon jetzt am Freeland Fashion abgetreten.

- c. Solange der Abnehmer seine Verpflichtungen aus der Geschäftsverbindung mit Freeland ordnungsgemäß nachkommt, darf er über die in Eigentum von Freeland stehende Ware im ordentlichen Geschäftsgang verfügen und die an abgetretene Forderungen von Freeland selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifel an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers ist Imagebuilders berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen; jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn Freeland dies ausdrücklich schriftlich erklärt.

Übersteigt der Wert der eingeräumten Sicherheiten die Forderungen von Freeland um mehr als 10%, so wird Freeland auf Verlangen des Abnehmers insoweit Sicherheiten nach seiner Wahl freigeben.

- 9.5 Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschliesslich deutsches Recht.

## **10. Failure to take delivery on time**

- 10.1 If the other party fails to take delivery of the products before the agreed delivery date has expired, and/or if the other party refuses to take delivery of the products, Freeland is entitled to put the products in storage (with a third party) for the account of the other party, to store them or to otherwise hold them for the account of the other party. Freeland shall notify the other party in writing of such storage.
- 10.2 All costs incurred and to be incurred by Freeland with respect to the storage of the products shall be borne by the other party.
- 10.3 The foregoing does not affect the other party's obligation to pay Freeland the full purchase price.

## **11. Packaging**

- 11.1 Freeland delivers its products in crates, boxes, on pallets and/or in/on similar items, which are its property or which it has borrowed or leased from third parties.
- 11.2 Any packaging delivered by Freeland, to which a deposit and/or a rental price applies, must be returned by the other party in a clean, undamaged and faultless condition.
- 11.3 Freeland shall not take back packing materials nor shall it any respective refund deposits/rents of packing materials which it has not supplied, unless the parties have agreed otherwise.
- 11.4 If Freeland collects the packaging to be returned from the other party by itself, the other party must ensure that this packaging is sorted out and ready for loading.

## **12. Complaints and claims**

- 12.1 The other party must check the delivered products - also in view of the fact that these are perishable products (open field-grown vegetables) - as soon as possible upon delivery, and within 6 hours at the latest, and/or have them checked to see whether the right products of the required quality and numbers have been delivered and whether they meet the requirements of the agreement. The other party shall thereby verify that the products do not appear to contain any irregularities, diseases, etc.
- 12.2 As the products are perishable, complaints must in any case be made by the other party in writing to Freeland within six (6) hours after receipt of the products, under penalty of dissolution of any claim.
- 12.3 Complaints about the invoice amount must be submitted to Freeland by registered mail within fourteen days of the invoice date, stating the precise reason for the complaint.
- 12.4 If the other party fails to comply with the provisions of articles 11.2 and 11.3, this shall result in the cancellation of all claims of the other party against Freeland with respect to this.
- 12.5 Visible shortcomings and/or defects and/or damages that are discovered upon delivery of the products must be notified by the other party to Freeland within the term mentioned in this article. If no comments have been made with regard to any improper, damaged or not up to standard quality products and/or improper or broken packaging, this shall, in the absence of proof to the contrary, constitute full proof that the other party has received the products upon delivery in a good and undamaged condition.
- 12.6 The mere fact that Freeland is investigating a claim does not imply that it recognises any liability at that stage.
- 12.7 The products to which the complaints are related must remain available for inspection by Freeland in the state in which they were found by the other party at the time the defects were discovered.
- 12.8 If Freeland believes a complaint about a fault is valid, it shall, at its discretion, either take back the products without the other party owing any amount to Freeland, or redeliver the same type of products to the other party. In such a situation, Freeland shall not be obliged to pay any damages. The other party is not entitled to refuse Freeland's offer to deliver the same type of products, unless this cannot reasonably be required of the other party.
- 12.9 Claims with regard to a delivery do not automatically suspend the payment obligation.

## **13. Liability**

- 13.1 Freeland's liability is at all times limited to the amount payable in the relevant case under Freeland's liability insurance, increased by the amount of the excess under the relevant policy. If and to the extent that, for any reason, no payment is made under the insurance policy concerned, or if the insurance policy does not provide cover, any liability on the part of Freeland shall be limited to the amount of the invoice value of the order.
- 13.2 Freeland is not liable for consequential loss, such as loss of profit and other indirect loss.

- 13.3 The other party is aware that the products delivered by Freeland are natural products (open-grown vegetables), vulnerable, of a perishable nature and therefore risky. Freeland ensures that the market gardeners, from whom it purchases the products, apply all due care and deliver the products in excellent quality. However, Freeland cannot be held responsible for the fact that a small part of the products contains irregularities, which is inherent to the delivery of the products.
- 13.3 Freeland's liability shall only arise after the other party has given Freeland proper notice of default in writing immediately after the execution of the work and/or immediately after the delivery of the products, or immediately upon detection of the shortcoming, and has given Freeland a reasonable term to rectify the shortcoming.
- 13.4 Any right of claim of the other party against Freeland expires after a period of one year after the products have been delivered by Freeland to the other party in accordance with the agreement. In the case of partial deliveries, this period shall be deemed to commence by the end of the completion of each partial work.
- 13.5 The other party indemnifies Freeland against claims from third parties, against which third parties Freeland cannot appeal to these general terms and conditions, with respect to the execution by Freeland of the agreement and/or the delivery of the products..  
The other party shall only be bound by this indemnification to the extent that Freeland can also appeal to exclusion or reduction of liability against the other party in that regard.
- 13.6 When Freeland engages third parties, such as carriers, it shall at all times apply all due care. However, Freeland is not liable for any shortcomings of these third parties.
- 13.7 Freeland is not liable for damage, of any nature, caused by the fact that Freeland has relied on inaccurate and/or incomplete information provided by the other party.
- 13.8 Freeland shall never be liable for any damage suffered by the other party due to a delay in the production of the market gardeners' products.
- 13.9 The limitations of liability included in these general terms and conditions do not apply if the damage is due to intent or deliberate recklessness by Freeland

#### **14. Force majeure**

- 14.1 If Freeland is temporarily unable to deliver the products, as agreed with the other party, due to force majeure, it is authorised to suspend the execution of the work and/or the delivery of the products, in whole or in part, for the duration of the force majeure. If Freeland is permanently unable to perform the work and/or deliver the products due to force majeure, it has the right to terminate and/or dissolve the agreement with the other party, in whole or in part, with immediate effect, without being liable for damages in respect of the other party.
- 14.2 'Force majeure' includes, but is not limited to, failure by suppliers of Freeland and/or companies to which Freeland has outsourced work (carriers) and/or other auxiliary persons, interruption in deliveries by horticulturalists and suppliers, disruptions in traffic (such as roadblocks), the unavailability of open-field grown vegetables due to disease, weather conditions, etc., production disruptions, delays in shipments and transport, work stoppages and/or strikes, excessive absenteeism of employees and/or other auxiliary persons, a pandemic, government measures, war conditions, etc. production disruptions, delays in shipments and transports, work stoppages and/or strikes, excessive absenteeism of

employees and/or other auxiliary persons, a pandemic, government measures, war conditions, fire and extreme weather conditions.

- 14.3 If Freeland has already partially fulfilled its obligations when the force-majeure situation arises, or can only partially fulfil its obligations, it is entitled to separately invoice the products already delivered or the part of the products that can be delivered, and the other party is obliged to pay this invoice as if it were a separate contract.

## **15. Confidentiality**

Freeland and the other party undertake to observe confidentiality with regard to all confidential information they have obtained from each other or from another source under their agreement. Information is regarded as confidential if this has been stated by the other party or if this arises from the type the information.

## **16. Applicable law**

All agreements between Freeland and the other party are governed by Dutch law, with due regard for the provisions of Article 9, section 5.

## **17. Dispute resolution**

All disputes arising between Freeland and the other party shall in the first instance be exclusively heard by the District Court of Noord-Nederland, Assen location, unless provided otherwise by law.

## **18. Translations**

If Freeland uses a non-Dutch version of these general terms and conditions and any discrepancies between the Dutch version and the non-Dutch version exist, only the Dutch version shall be binding.

Duly prepared and signed at Emmen April 1, 2022.