

GENERAL TERMS AND CONDITIONS OF SALE CASAFRUIT B.V.

Clause 1: definitions

In these general terms and conditions of sale ("these terms and conditions"), the following terms will have the following meanings:

- Casafruit:* the private limited liability company Casafruit B.V., with its official seat in The Hague;
- Purchaser:* the Person with whom Casafruit has concluded an Agreement or with whom Casafruit is negotiating in this respect;
- Parties:* Casafruit and the Purchaser;
- Agreement:* any agreement between the Parties, irrespective of whether this is a framework agreement or an individual agreement, that (a) aims to ensure that Casafruit delivers goods to the Purchaser against payment of a (fixed) price in money (*sales agreement*) and/or (b) that Casafruit makes goods available to the Purchaser with a view to having the Purchaser sell them on Casafruit's instructions (*commission agreement*) and/or (c) that Casafruit provides services to the Purchaser and/or (d) that Casafruit delivers any other performance for the Purchaser, any amendment or supplement to this agreement, as well as all factual and legal acts in preparation and execution of this agreement, including offers from Casafruit;
- Products:* all goods and/or services and/or other performances that are the subject of an Agreement;
- Person:* natural or legal person or partnership without legal personality.

In these terms and conditions, "written" will also be understood to mean by telefax and by e-mail.

Clause 2: general

1. These terms and conditions apply - with the express exclusion of all other general terms and conditions - to all Agreements. In the event that Casafruit does not require strict compliance with these terms and conditions, this will not mean that Casafruit loses the right to require strict compliance with these terms and conditions in future cases, similar or otherwise. Clauses deviating from these terms and conditions will only be binding if they have been agreed in writing and will only apply to the case in question.
2. All clauses in these terms and conditions have been laid down not only for Casafruit, but also for the following Persons, who may invoke this third-party clause at any time: (i) the directors and shareholders of Casafruit (including its indirect directors and shareholders), (ii) all Persons working for Casafruit, (iii) all Persons engaged by Casafruit in the performance of an Agreement, and (iv) all Persons for whose acts or omissions Casafruit could be liable.
3. If one or more provisions of these terms and conditions and/or an Agreement prove to be null and void or are annulled by the court, the other provisions of these terms and conditions and the Agreement will retain their legal force. The void or annulled provisions will be replaced by valid provisions which, in view of the object and purport of these terms and conditions and the Agreement, deviate as little as possible from the original provisions.
4. These terms and conditions are drawn up in several languages. In the event of a dispute regarding the substance or purport of these terms and conditions, the Dutch text will prevail.
5. Casafruit is entitled to amend these terms and conditions at any time.

Clause 3: offers, Agreement, harvest proviso

1. All information and specifications provided with Casafruit offers are always approximations. Deviations of up to 10% are permitted without further ado.
2. All offers by Casafruit are without obligation. Casafruit has the right to revoke its offer within three working days after receipt of acceptance by the Purchaser.
3. An acceptance by the Purchaser that deviates from Casafruit's offer, whether or not on minor points, will always be deemed to be a rejection of this offer and a new offer by the Purchaser. An Agreement will only be concluded in accordance with this new offer after written acceptance by Casafruit.
4. An Agreement will be concluded when:
 - (a) three working days have lapsed since Casafruit received the Purchaser's acceptance and Casafruit has not revoked its offer during this period;
 - (b) Casafruit confirms the agreement in writing; or
 - (c) Casafruit commences performance of the agreement.
5. Casafruit is not obliged to honor an offer and/or an Agreement at a stated price if this price is based on a printing and/or writing error.
6. If Casafruit enters into an Agreement with two or more Purchasers, they will always be jointly and severally liable towards Casafruit for the performance of all obligations arising from the Agreement.

7. Without Casafruit's prior written consent, the Purchaser is not allowed to fully or partially transfer an Agreement or one or more of its rights and/or obligations under an Agreement. In addition to its effect under the law of obligations, this prohibition also has effect under property law (within the meaning of Article 3:83(2) of the Dutch Civil Code).
8. All Agreements relating to the delivery or provision ("delivery") of agricultural Products by Casafruit will be subject to a harvest proviso, regardless of whether the Products in question have been cultivated by Casafruit or a third party. If a disappointing harvest results in a smaller quantity of Products conforming to the Agreement than could reasonably have been expected at the time the Agreement was concluded, Casafruit will be entitled to reduce the quantity of Products to be delivered or made available by it ("deliver") accordingly. By delivering the thus reduced quantity, Casafruit will be deemed to have fully fulfilled its obligation to deliver. In the case referred to here, Casafruit will not be obliged to deliver replacement agricultural Products or any other form of performance and Casafruit will not be liable for any damage whatsoever.

Clause 4: sales and commission agreement

1. If the Purchaser obtains Products from Casafruit without the Parties having concluded an explicit and written commission agreement, the Parties will be deemed to have entered into a sales agreement.
2. In the event of a commission agreement, the following applies:
 - (a) after the Products have been delivered, the Purchaser will immediately have them inspected by an independent expert;
 - (b) upon receipt of the quality control report, the Purchaser will immediately forward it to Casafruit;
 - (c) the Purchaser will keep the Products with due care;
 - (d) the Purchaser will authorize Casafruit at its first request to enter the premises where the Products are stored during normal working hours in order to inspect the Products;
 - (e) the Purchaser will sell and deliver the Products to third parties in its own name, with the Purchaser bearing the payment risk and the debt collection risk;
 - (f) without Casafruit's prior written consent, the Purchaser will not (i) sell the Products to any Person affiliated with the Purchaser and (ii) have the Products sold by any third party, whether or not affiliated with the Purchaser;
 - (g) the Purchaser will endeavor to realize the highest possible sales proceeds;
 - (h) prior to the sale of the Products, the Purchaser will consult with Casafruit in order to determine the sales price; if it proves impossible to sell the Products at this price, the Parties will adjust the sales price in joint consultation;
 - (i) the Purchaser will inform Casafruit on a daily basis about the market situation and developments, the quantity of Products sold, the sales prices realized and the remaining stock of the Products;
 - (j) in addition to the commission accruing to the Purchaser, the latter will only charge Casafruit costs that have been agreed in advance in writing between the Parties and that are visible on the sales invoices;
 - (k) the Purchaser will give Casafruit the opportunity to check the accuracy of the sales accounts, or have it checked; at Casafruit's first request, the Purchaser will (i) provide Casafruit with all documents underlying the sales accounts, including but not limited to the relevant consignment accounts (*partijkaarten*), sales invoices and cost invoices, as well as all relevant proofs of payment and accounts receivable cards, and (ii) give an auditor to be appointed by Casafruit the opportunity to check the relevant part of the Purchaser's records and the books, documents and other data carriers belonging thereto with the right to copy the relevant documents;
 - (l) the Products will remain the property of Casafruit until the Purchaser has sold and delivered them to third parties; the Purchaser will take out and maintain insurance for the Products at the expense of Casafruit against the risk of fire, theft, loss and damage;
 - (m) Casafruit will at all times be entitled to terminate the commission agreement with immediate effect without giving reasons, in which case the Purchaser will cooperate fully in Casafruit's repossession of the Products; the Purchaser will waive any rights of retention in respect of the Products in advance and will not have any attachment levied on the Products.

The other clauses of these terms and conditions also apply, whether or not by analogy, to commission agreements, except to the extent that such application is not possible in view of the nature of a commission agreement. To the extent that this Clause 4(2) is in conflict with any other clause or paragraph of these terms and conditions, the provisions in this Clause 4(2) will prevail.

Clause 5: prices

1. Unless the Parties have agreed otherwise in writing, the prices will be shown in euros.
2. The prices are exclusive of VAT and other taxes and levies and exclusive of transport costs.

3. The prices are based on cost-determining factors at the time of the conclusion of the Agreement. If there is a change in these factors after the Agreement has been concluded but before delivery of the Products without Casafruit being able to exercise reasonable influence over this, Casafruit will be entitled to charge on the resulting costs to the Purchaser.

Clause 6: conformity, delivery period, delivery and risk

1. The conformity of the Products is assessed on the basis of the laws and regulations in force in the Netherlands at the time of delivery. Unless the Parties have agreed otherwise in writing, Casafruit will not be obliged to comply with any other laws and regulations.
2. The delivery periods stated by Casafruit are always approximate and will never be regarded as strict deadlines.
3. Unless the Parties have agreed otherwise in writing, the delivery takes place Ex Works. "Ex Works" will be explained in accordance with the final version of the Incoterms.
4. If the Parties have agreed that Casafruit will store the Products for the Purchaser, either at Casafruit itself or at a third party, and these Products have not yet been delivered to the Purchaser, the Products will be deemed to have been delivered at the time they are stored. As of this moment, the Purchaser will be subject to the obligation to inspect and complain as described in Clause 7 of these terms and conditions and this Clause 7 will also otherwise apply in full. Casafruit is not obliged to insure the Products for the duration of the storage.
5. Casafruit is entitled, but never obliged, to deliver the sold Products in parts and to invoice each part separately.
6. The Purchaser is obliged to take delivery of the purchased Products. The obligation to take delivery consists of: a) performing all acts that can reasonably be expected of the Purchaser in order to enable Casafruit to deliver and b) taking possession of the Products. If taking delivery does not take place within six hours after the Products have been made available to the Purchaser, the Purchaser will be in default without a notice of default being required and Casafruit will be entitled, without prejudice to its other rights, including the right to store the Products at the risk and expense of the Purchaser, to terminate the Agreement and to claim compensation from the Purchaser.

Clause 7: inspection and complaints

1. Purchaser is obliged to inspect the Products, or have them inspected, immediately upon delivery - and therefore prior to transport - which in this Clause is understood to mean that the Purchaser must thoroughly and accurately inspect whether the Products comply with the Agreement in all respects, more specifically:
 - (a) whether the right Products have been delivered;
 - (b) whether the delivered Products meet the quality requirements, both internally and externally, that may be set for normal use and/or for commercial purposes; and
 - (c) whether the Products delivered correspond in terms of quantity (number, quantity, weight) with what the Parties have agreed in this respect.
2. With a view to the inspection of the internal quality of the Products, the Purchaser must cut them, or have them cut, on a random basis and check them, or have them checked, for the presence of foreign components and other defects.
3. In the case of a delivery shortfall up to 10% of the total quantity, the Purchaser will be obliged to accept the delivered Products in full at a proportional reduction in price.
4. Complaints about the quantity delivered and about visible defects, including internal defects discovered during the inspection referred to in paragraph 1 of this Clause, or which should reasonably have been discovered, must be reported to Casafruit immediately after this inspection - and therefore prior to transport - subject to forfeiture of all rights, and must then be confirmed in writing within four hours, specifying the nature of the defect.
5. Complaints about any invisible defects must be reported to Casafruit in writing immediately after these defects have been discovered or should reasonably have been discovered, subject to forfeiture of all rights, but at the latest within eight hours of delivery and in any event prior to the (re)sale and delivery by the Purchaser and/or further transport by or on the instructions of the Purchaser, specifying the exact nature of the defects.
6. Complaints relating to minor and/or customary and/or technically unavoidable deviations in quality, size, weight, color, quantity and suchlike and complaints about processed Products are inadmissible.
7. If Casafruit does not accept a complaint from the Purchaser within four hours, the Purchaser will be obliged, subject to forfeiture of all rights, to have an independent assessment carried out within 12 hours by a sworn expert and to give Casafruit the opportunity to be present or represented at the said assessment. Both periods referred to in this paragraph start at 7.00am (Casafruit's local time) on the next working day after the day on which the Purchaser filed the complaint. Casafruit is entitled to have a second assessment carried out.

8. The Purchaser will provide all cooperation necessary for the investigation of the complaint. If the Purchaser fails to cooperate or if an investigation is otherwise not or no longer possible, the Purchaser's complaint is inadmissible.
9. If the Purchaser's complaint, also in view of the provisions of this Clause, is well-founded, Casafruit will, after consulting the Purchaser, arrange for delivery of the missing Products, repair or replacement of the delivered Products or adjustment of the price. Casafruit will have no other obligation or liability. Full or partial termination of the Agreement, including a reduction in the price, requires Casafruit's written consent.
10. The Purchaser is obliged to ensure the preservation of the Products as a diligent debtor at all times.
11. The Purchaser is not free to return the Products until Casafruit has agreed to this in writing. If Casafruit stores the returned Products or takes care of these Products in any other way, this will take place at the expense and risk of the Purchaser. Approval or acceptance of the return can never be inferred from these measures.
12. Any violation of the Purchaser's obligation to inspect and complain will always result in the forfeiture of all rights, regardless of whether Casafruit's actual interests have been prejudiced as a result of this violation.
13. If the Purchaser violates its obligation to inspect and complain and Casafruit nevertheless handles a complaint, this is done subject to all rights and Casafruit's efforts will be regarded as a goodwill gesture without acceptance of any obligation or liability.
14. If a complaint turns out to be unfounded, the internal and external costs incurred by Casafruit in handling the complaint will be borne by the Purchaser.
15. Any legal proceedings must be initiated no later than 1 year after timely notification of a complaint, subject to forfeiture of all rights.

Clause 8: retention of title

1. Casafruit retains ownership of all Products delivered until the purchase price has been paid in full. The retention of title also applies to the other claims referred to in Article 3:92(2) DCC which Casafruit has or will have against the Purchaser.
2. As long as the ownership of the Products has not been transferred to the Purchaser, the Purchaser is not permitted to pledge the Products or grant any other right to a third party thereon without the prior written consent of Casafruit. In addition to its effect under the law of obligations, this prohibition also has effect under property law (within the meaning of Article 3:83(2) in conjunction with Article 3:98 DCC). However, the Purchaser is permitted to sell and transfer the Products delivered subject to retention of title to third parties in the ordinary course of its business, on the understanding that, in the event of resale, the Purchaser is obliged to stipulate a retention of title in accordance with the provisions of this Clause. Without the prior written consent of Casafruit, the Purchaser is not permitted to assign, pledge or transfer or encumber the claims it has or will have against its customers under any other title whatsoever. In addition to its effect under the law of obligations, this prohibition also has effect under property law (within the meaning of Article 3:83(2), also in conjunction with Article 3:98 DCC). The Purchaser undertakes to pledge the claims against its customers to Casafruit at Casafruit's first request in the manner indicated in Article 3:239 DCC as an additional security for the performance of its obligations to Casafruit by whatever virtue.
3. If the Purchaser fails to fulfil one or more obligations or if Casafruit has good reason to fear that it will fail to do so, Casafruit is entitled to repossess the Products delivered subject to retention of title. The Purchaser will provide its full cooperation. The Purchaser waives any rights of retention in respect of the Products in advance and will not have any attachment levied on the Products. After the Products have been repossessed, the Purchaser will be credited with the market value, which may under no circumstances be higher than the original purchase price, less any costs incurred in the repossession of the products and any other loss incurred by Casafruit.
4. If the law of the country of destination of the Products purchased provides for more far-reaching possibilities with regard to the retention of title than provided for in the previous paragraphs of this Clause, these more far-reaching possibilities will be deemed to have been stipulated between the Parties for the benefit of Casafruit, on the understanding that if it cannot be objectively determined which more far-reaching rules are concerned, the provisions of the previous paragraphs of this Clause will continue to apply.
5. If the Purchaser is established in Germany and/or the Products are destined for Germany, the following extended retention of title under German law will apply between the Parties, whereby Casafruit is referred to as "wir" and the Purchaser as "Käufer":
Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Käufer und seine Konzerngesellschaften zustehen.

Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Käufer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.

Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen anderen Lieferanten - unter Ausschluss eines Miteigentumserwerbs des Käufers - Miteigentum an der neuen Sache zu deren vollem Wert (einschliesslich Wertschöpfung) wie folgt: a) Unser Miteigentumsanteil entspricht dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren. b) Verbleibt ein von Eigentumsvorbehalten zunächst nicht erfasster Restanteil, weil andere Lieferanten den Eigentumsvorbehalt nicht auf die Wertschöpfung durch den Käufer erstreckt haben, so erhöht sich unser Miteigentumsanteil um diesen Restanteil. Haben jedoch andere Lieferanten ihren Eigentumsvorbehalt ebenfalls auf diesen Restanteil ausgedehnt, so steht uns an ihm nur ein Anteil zu, der sich aus dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu den Rechnungswerten der mitverarbeiteten Waren dieser anderen Lieferanten bestimmt. Der Käufer tritt bereits jetzt seine Forderungen aus der Veräusserung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab. Bei Verarbeitung im Rahmen eines Werkvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten. Solange der Käufer seinen Verpflichtungen aus der Geschäftsverbindung mit uns ordnungsgemäss nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretenen Forderungen selbst einziehen. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Käufers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen, jedoch liegt ein Rücktritt vom Vertrag nur dann vor, wenn wir dies ausdrücklich schriftlich erklären. Scheck-/Wechsel-Zahlungen gelten erst nach Einlösung der Wechsel durch den Käufer als Erfüllung. Hinsichtlich der Vereinbarung von Eigentumsvorbehaltsrechten gilt ausschliesslich deutsches Recht.

Clause 9: payment

1. Casafruit's invoices must be paid within the period stated on the invoices. Payment must be made unconditionally, without suspension, discount or setoff, by whatever virtue. The Purchaser will not have any self-garnishment imposed.
2. Without notice of default being required, the Purchaser is in default by the expiry of the payment term. If the Purchaser is in default with any payment, all claims of Casafruit against the Purchaser will be immediately due and payable in full. During its period of being in default, the Purchaser will owe default interest of 1% per month or part of a month on the outstanding claims.
3. All internal and external costs incurred by Casafruit in connection with the collection of invoices and/or the assessment of the loss and liability and/or the collection of claim amounts, including but not limited to the actual lawyer's fees, bailiff's costs, expert and translator costs incurred by Casafruit, will be borne by the Purchaser.
4. The extrajudicial collection costs owed by the Purchaser will amount to at least 15% over the first EUR 5,000 (with a minimum of EUR 250), 10% over the excess up to EUR 10,000, 8% over the excess up to EUR 20,000, 5% over the excess up to EUR 60,000 and 3% over the excess above EUR 60,000.
5. Payments made by or on behalf of the Purchaser, regardless of the designated sequence of allocation, will first be set off against the costs (including but not limited to the extrajudicial collection costs), then against the outstanding interest and finally against the principal sum and the accrued interest.
6. In response to a request to that effect from Casafruit, which may be made both prior to and during the performance of the Agreement, the Purchaser will make a full or partial advance payment or provide adequate security for the performance of its obligations at its own expense. Adequate security is in any case understood to mean a bank guarantee payable on first demand by Casafruit, provided by a first-class Dutch bank, in the amount of 110% of the amounts owed by the Purchaser (100% of these amounts with a surcharge of 10% for interest).
7. Casafruit is at all times entitled to set off the amounts it owes by whatever virtue to the Purchaser or any Person affiliated with it ("Purchaser et al.") against the amounts that Casafruit or any Person affiliated with it ("Casafruit et al.") has to claim from the Purchaser et al. by whatever virtue. The authority to set off referred to herein also exists if the payment of the claims is not yet enforceable and if the performance that Casafruit et al. can claim does not meet its debt.

Clause 10: right of retention and right of pledge

1. Until the Purchaser has fully fulfilled all its obligations towards Casafruit by whatever virtue, Casafruit has both a right of retention and a right of pledge to all goods that Casafruit has or will have in its possession,

either directly or indirectly, in connection with an Agreement. For the purposes of this Clause, "goods" are understood to mean movable property, bearer rights or rights to order, securities, documents and funds.

2. As a result of these terms and conditions becoming applicable, the Purchaser has undertaken to grant the right of pledge referred to in paragraph 1 of this Clause to Casafruit. The pledge will be established by placing the goods under the control of Casafruit or of a third party holding the goods for Casafruit, including but not limited to a carrier or a storage and transshipment company.
3. The right of summary execution will be exercised in the manner prescribed by law. Private sale is possible if there is consensus between the Parties in this respect or, provided that Casafruit has a sound valuation report, if the goods are perishable so quickly that Casafruit cannot reasonably be required to apply to the preliminary relief court. All judicial and extrajudicial costs incurred by Casafruit with a view to exercising the right of summary execution, including but not limited to the actual costs incurred by Casafruit for legal assistance and the costs of the valuation, will be borne by the Purchaser and will be recovered from the (gross) sales proceeds.

Clause 11: packaging

1. Packaging which has been delivered via Casafruit and on which a deposit has been charged, will be repossessed at the return price valid upon the moment of return, possibly reduced by a fixed packaging fee.
2. The packaging to be returned by the Purchaser must be completely empty, not damaged in any way (not even by staples or stickers) and so clean and fresh that it is suitable for the packaging of fresh fruit and vegetable products. If the packaging does not meet these requirements, Casafruit will be authorized not to repossess the packaging or to arrange for emptying, replacing, repairing and/or cleaning the packaging at the expense of the Purchaser.
3. If Casafruit repossesses packaging via its own means of transport, the packaging must be sorted by type and ready for transport.
4. Packaging which has not been delivered via Casafruit will not be repossessed, unless the Parties have agreed otherwise in writing.

Clause 12: intellectual and industrial property

1. All intellectual and industrial property rights in relation to the Products and the packaging and packaging materials intended for them, all in the broadest sense of the word, are vested exclusively in Casafruit and its licensors.
2. For each infringement of a right as referred to in paragraph 1 of this Clause, the Purchaser will forfeit an immediately payable penalty of EUR 5,000, increased by an immediately payable penalty of EUR 1,000 for each day, including part of a day, on which the infringement continues. This penalty clause does not affect Casafruit' other rights, including but not limited to its right to compensation pursuant to the law.

Clause 13: suspension, termination

1. Without prejudice to its other rights pursuant to the law and/or the Agreement and/or these terms and conditions, Casafruit is authorized to suspend its obligation or, without any notice of default or judicial intervention being required, to terminate the Agreement in whole or in part by means of a written notification to the Purchaser if:
 - (a) the Purchaser fails to fulfil an obligation, or fails to do so in good time or properly;
 - (b) Casafruit has good reason to fear that the Purchaser will fail to fulfil one or more of its obligations;
 - (c) the Purchaser has been declared bankrupt or has filed for bankruptcy;
 - (d) the Purchaser has been granted a suspension of payments, provisional or otherwise, or a request to that effect has been made;
 - (e) a statutory debt restructuring arrangement has been declared applicable in respect of the Purchaser or a request to that effect has been made;
 - (f) the Purchaser's company is wound up; or
 - (g) if goods of the Purchaser were seized in execution or if a prejudgment seizure of said goods was not lifted within one month after the date of seizure.
2. If the Purchaser's default under both the law and the Agreement and these terms and conditions commences only after a notice of default has been given, then Casafruit will in the case referred to in paragraph 1 under (a) of this Clause not terminate the Agreement in whole or in part until it has sent the Purchaser a written demand setting a reasonable period for performance and performance has not taken place within this period.
3. In the event of full or partial termination of the Agreement by Casafruit, it will not be obliged to pay any compensation and all its claims against the Purchaser will become immediately due and payable in full.

Clause 14: force majeure

1. In these terms and conditions, force majeure ("non-attributable failure to perform") is understood to mean

any circumstance not attributable to Casafruit's fault in the subjective sense which makes it impossible or practically too onerous for Casafruit to perform its obligation or part thereof or to do so in good time or properly, including – but explicitly not limited to – total or partial harvest failure, crop diseases, pest infestations, force majeure and/or failure to perform ("attributable failure to perform") and/or unlawful acts on the part of suppliers or carriers of Casafruit or on the part of other third parties involved in the performance of the Agreement, abnormal weather conditions, frost, storm damage and other damage caused by natural forces, strikes, transport difficulties, epidemics, pandemics, fire, theft, war and threat of war, terrorist attacks and the threat of terrorism, as well as government measures such as import, export and transit bans, levies, import duties and quota restrictions.

2. In the event of force majeure, Casafruit will be entitled to suspend the performance of its obligation or part thereof and the Purchaser will not be entitled to claim performance or compensation. If the period of force majeure lasts longer than two months, either Party will be entitled to terminate the Agreement in whole or in part without being liable to pay compensation, on the understanding that if Casafruit has partially performed its obligation before or after the occurrence of the force majeure, it will at all times be entitled to a proportional part of the price. Casafruit is also entitled to invoke force majeure if it occurs after it should have performed its obligation.

Clause 15: liability and indemnity

1. Without prejudice to the provisions of the above clauses, the following rules apply with regard to the liability of Casafruit for damage suffered by the Purchaser and/or third parties and with regard to the indemnification of Casafruit by the Purchaser.
2. The total liability of Casafruit by whatever virtue per event, whereby a series of connected incidents is regarded as a single event, is limited to the amount of the net invoice value of the Products in question, i.e. the price excluding turnover tax and other taxes and levies and excluding transport costs, respectively, in the case of a commission agreement, the amount of the net sales proceeds of the Products in question, always subject to a maximum of EUR 5,000.
3. Casafruit is only obliged to pay compensation for damage to persons and property. Therefore, Casafruit is not liable for - and the Purchaser must take out insurance against - indirect damage, consequential damage, trading loss, business interruption loss, loss of profit, missed savings, loss as a result of claims from the Purchaser's customers, loss of customers, reduced goodwill and reputational damage.
4. Without prejudice to the provisions of the previous paragraphs of this Clause, Casafruit is not liable for Products it has obtained from third parties beyond the liability of these third parties towards Casafruit.
5. Casafruit is not liable for failures on the part of third parties it engaged in the performance of the Agreement.
6. To the extent that performance by Casafruit is not permanently impossible, liability on the part of Casafruit for an attributable failure in the performance of an obligation will only arise if the Purchaser has immediately declared Casafruit in default in writing, specifying the nature of the failure and setting a reasonable period for remedying the failure, and Casafruit continues to fail attributable in the performance of its obligation even after that period has expired.
7. Any right to compensation is always subject to the condition that the Purchaser reports the damage to Casafruit in writing immediately, but no later than 14 days after the Purchaser has become aware of the damage or should reasonably have become aware of it.
8. Any legal proceedings must be initiated no later than 1 year after timely notification of the damage, subject to forfeiture of all rights.
9. The Purchaser must indemnify Casafruit against any form of liability on the part of Casafruit in respect of third parties in relation to Products delivered or to be delivered by Casafruit. The Purchaser must reimburse Casafruit for the reasonable costs of defense against claims from third parties.
10. Casafruit will not invoke any limitation of its liability, and the Purchaser is not obliged to indemnify Casafruit, in so far as the damage is the direct result of intent or deliberate recklessness on the part of Casafruit or its executive subordinates.
11. The above regulation does not apply to the extent that provisions of mandatory law dictate otherwise.

Clause 16: applicable law, disputes, legal costs and arbitration costs

1. Without prejudice to the provisions of Clause 8 paragraphs 4 and 5 of these terms and conditions, the legal relationship between the Parties is governed by Dutch law, including the Vienna Sales Convention.
2. With due regard to the provisions of paragraph 3 of this Clause, any disputes that may arise between the Parties as a result of or in connection with an Agreement and/or these terms and conditions will in the first instance be exclusively settled by the District Court of The Hague (proceedings on the merits) or the preliminary relief judge of the District Court of The Hague (preliminary relief proceedings and other interim measures), without prejudice to the authority of Casafruit to submit disputes as referred to here to any other competent court.

3. In the event that the Purchaser is domiciled in a country which is a party to the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards and where neither Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast Brussels I Regulation) nor the Lugano Convention of 30 October 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Lugano II Convention) applies, any disputes between the Parties will be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute ("the Rules"). The arbitral tribunal will consist of one arbitrator. Article 14(4) of the Rules does not apply. The place of arbitration and the place of the oral hearing(s) will be Rotterdam. The proceedings will be conducted in the English language. The arbitral tribunal will decide according to the rules of law.
4. The costs related to judicial and arbitral proceedings, including but not limited to the actual costs of lawyers, bailiffs, experts and translators incurred by Casafruit, will be fully borne by the Purchaser if the Purchaser is fully or predominantly ruled against.

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