

GENERAL TERMS AND CONDITIONS FEELING FRESH B.V.



ARTICLE 1: DEFINITIONS

1. Feeling Fresh: The private company with limited liability Feeling Fresh B.V., having its registered office in De Lier (The Netherlands) as well as its principal place of business.
2. Customer: The party (including its legal successors in title and approved assignees) to whom Feeling Fresh has made an offer or from whom Feeling Fresh has received an order, or with whom Feeling Fresh has otherwise entered into a legal relationship wherein Feeling Fresh is the supplier of products and / or services.

ARTICLE 2: SCOPE

1. These Standard Terms and Conditions may be quoted as "Feeling Fresh' Standard Terms and Conditions of Sale". They are drawn up in the English language. In case of translation and discrepancy between the various languages, the English version shall prevail.
2. These conditions apply to all offers by and all orders to Feeling Fresh for the sale and delivery by Feeling Fresh of goods, and to all agreements with Feeling Fresh with respect thereto.
3. The applicability of any other conditions is excluded and insofar as necessary any other conditions are herewith rejected.
4. Changes in the agreement do not affect the applicability of these conditions. They apply as well to the changed agreement. Deviations from these conditions are only binding if and insofar as Feeling Fresh consents to these in writing. If Feeling Fresh amends these Standard Terms and Conditions, the amended version thereof will apply, also to existing legal relationships with Customer. Customer will be deemed to have explicitly accepted the applicability of the amended version of these Standard Terms and Conditions.
5. If one or more stipulations of these standard conditions are invalid or invalidated, the other stipulations of these conditions shall be maintained.

ARTICLE 3: OFFERS, ORDERS AND AGREEMENTS

1. All offers made by Feeling Fresh (whether oral or in writing) are non-binding. Unless otherwise stipulated in the offer, any offer of Feeling Fresh, if not agreed to, shall expire within 5 days.
2. An agreement between Customer and Feeling Fresh is only established following written confirmation from Feeling Fresh. Verbal commitments or agreements by or through its personnel do not bind Feeling Fresh except and insofar as Feeling Fresh has confirmed these in writing.
3. Unless otherwise agreed, the scope and the content of the agreement is only determined by Feeling Fresh's offer or by Feeling Fresh's written acceptance of Customer's order.
4. Orders and acceptance of offers by the Customer are irrevocable.
5. Changes, supplements and extensions to the offer, orders and agreements are only valid after written confirmation of both parties and are only considered to be part of the agreement in that case. A change, supplement and/or extension shall be deemed accepted by Customer if it is informed thereof by Feeling Fresh and fails to give notice within 2 days after such a notification.
6. Without Customer's prior consent, no additional work shall be performed by Feeling Fresh, unless the additional work is inevitable for the performance of the agreement. The costs of additional work shall be charged to Customer.

ARTICLE 4: PRICE AND PAYMENT

1. Unless otherwise agreed, prices set by or agreed with Feeling Fresh are net, thus exclusive of VAT and exclude storage, packing, insurance, and delivery. Should Feeling Fresh provide storage, packaging, loading / unloading, transport, insurance and or any other services without having expressly and in writing agreed to a price for this service, it is entitled, to its choice, to charge the Customer the actual costs and/or its usual rates therefore.
2. Prices set by or agreed with Feeling Fresh are based on the cost price at the time of signing the agreement.
3. Feeling Fresh is entitled to adjust the rates and prices agreed upon proportionally if any circumstances of unusual nature are involved, such as war, rebellion and or/other serious entanglements, nationally or abroad, or import and / or export measures, changes in taxes imposed by the government etc. Feeling Fresh is also entitled to charge the Customer for any additional costs, whether or not by means of a price increase, as a consequence of changes from Customer in orders, accepted by Feeling Fresh.
4. Unless otherwise agreed in writing, payment by Customer has to be made without the right of suspension or set off, in the type of currency specified by Feeling Fresh on its invoice, within 21 days after delivery, on the bank account as stipulated by Feeling Fresh.
5. Feeling Fresh's claims and invoices are immediately due if:
 1. A payment period is expired;
 2. Customer becomes insolvent, asks for suspension of payment ("surséance van betaling") or if bankruptcy proceedings have been initiated by or against Customer;
 3. Goods or claims of Feeling Fresh are arrested or seized for a claim from a third party against Customer;
 4. The Customer as legal entity is dissolved or liquidated;
 5. The Customer as private person is placed under guardianship or deceases.
 6. Feeling Fresh is entitled at all times to claim full or partial payment in advance, and/or otherwise to obtain security for payment. In the event of late payment of the advance sum or failure of Customer to provide the demanded security, Feeling Fresh is entitled to suspend delivery. The breach entitles Feeling Fresh to dissolve the agreement without being obliged to pay Customer any compensation.
 7. Customer is in default without notice if it fails to pay timely the amount(s) due. As soon as the Customer is in default on any payment, all further claims Feeling Fresh may have under the specific agreement or under any other agreement against the Customer are due, and the Customer is immediately in default without notice with respect to those claims.
 8. As from the day the Customer is in default, it owes to Feeling Fresh an interest of 1.5% per month or part thereof during which the default continues. All actual legal and extra-judicial costs related to the recovery of any claim against the Customer will be for the account of the Customer. The extra-judicial costs will amount to at least 15 % of the amount claimed.

ARTICLE 5: DELIVERY (PLACE AND PERIOD)

1. Unless otherwise agreed, delivery is ex cold store or warehouse indicated by Feeling Fresh for the benefit of the Customer.
2. Execution of the order shall not begin until Customer has provided Feeling Fresh with all necessary data, samples, specifications, permits or other matters needed. Should there be any delay in this, the delivery period shall be extended correspondingly and the Customer shall be obligated to pay Feeling Fresh any additional cost arising from this delay, with due regard to the provisions stipulated in section 5.4 of this article.
3. Failure of Customer to take receipt of the goods, Feeling Fresh may at its choice, store the goods at Customer's risk and expense, or dissolve the agreement and /or sell the goods at the Customer's risk and expense.

4. Delivery is to take place at the time specified in the agreement, under normal conditions and during normal hours. The failure of Feeling Fresh to deliver the goods within the delivery period does not entitle the Customer to claim any damages (including substitutional and or consequential damages), or to non-fulfillment of any of its own obligations arising from the agreement. The Customer is, however, entitled to dissolve the agreement, subject to the provisions of article 8.1, by a written declaration, if and insofar as after the above-mentioned failure to deliver, Feeling Fresh still fails to deliver the agreed goods within a reasonable further period as agreed with the Customer in writing.
5. Delivery periods will be extended by the amount of time that the implementation by Feeling Fresh of the agreement is delayed by Force Majeure (article 7). They will also be extended by the time that the Customer is delayed in the fulfillment of any obligation than is agreed to or could reasonably be expected by Feeling Fresh.
6. Feeling Fresh has the right to deliver in parts. Each partial delivery will be deemed an independent delivery with respect to the applicability of these conditions.
7. Feeling Fresh is never liable for any late or incorrect delivery of the goods by their suppliers and / or shipping agents.
8. Euro pallets provided to Customer by or through Feeling Fresh must be returned to Feeling Fresh on Customer's risk and expense.

ARTICLE 6: RISK AND TRANSFER OF TITLE

1. Loading, dispatch or transport, unloading and insurance of the goods, even if handled by Feeling Fresh, takes place at Customer's risk and expense.
2. The transfer of title is after delivery, with due regard to the provisions in article 10.

ARTICLE 7: FORCE MAJEURE

1. Feeling Fresh is entitled to invoke Force Majeure if the implementation of the agreement is, in whole or in part, temporarily or not, prevented or impeded by all circumstances, that are reasonably out of its control, including but not limited to war, riots, government or any other public authority interference, sabotage, strikes (organized or unorganized), lockouts and other labor unrest, burglary, fire and explosions, nuclear reaction, failure of energy and/or water supply, failure of (computerized)systems, bad deliveries, bad materials delay in the supply of parts, goods or services by third parties and any event that Feeling Fresh could or cannot reasonably foresee or prevent.
2. In the case of Force Majeure on the part of Feeling Fresh its obligations are suspended. If the Force Majeure lasts longer than two months, Feeling Fresh and the Customer are both authorized to rescind the non-feasible parts of the agreement by a written declaration, without prejudice to the provision of article 9.
3. In the event Force Majeure occurs, Customer is not entitled to claim for loss or damages from Feeling Fresh.

ARTICLE 8: CLAIMS AND LIABILITY

1. Feeling Fresh is not liable for any damage or loss suffered by Customer of any kind, unless in the case of gross negligence. Feeling Fresh's liability is always limited to, at its choice either the invoice value of the goods delivered, whereby or in connection with which the damage was caused, or, if the damage is covered by an insurance policy of Feeling Fresh the amount that is actually paid out by the insurer with respect thereto.
2. Feeling Fresh's liability for loss of profits, consequential or in direct damages is however, excluded at all times.
3. Any claim of Customer against Feeling Fresh will lapse if it is not lodged in written form within 48 hours after delivery of the goods. In any case, any claim against Feeling Fresh will become time-barred unless a summons to appear before the Court of Rotterdam has been served to Feeling Fresh within 12 months after the event has given rise to such claim occurred.

4. In case of a claim on quality Feeling Fresh has the right to have the goods inspected after receipt of a claim as mentioned in the above paragraph. Subject to the limitation under article 8.1, Feeling Fresh at its choice will either redeliver at its own expense, or credit the Customer as far as is reasonable in whole or in part.
5. In case of redelivery these conditions apply as well.
6. Feeling Fresh's employees or subcontractors for the implementation of the agreement can, towards the Customer, invoke the same defenses Feeling Fresh can as if they themselves are Customer's contractual party.
7. The Customer is entirely liable and will hold Feeling Fresh harmless for claims from third parties, for any actions of its employees or subcontractors called in by the Customer or on behalf of Customer. The Customer carries the responsibility for any orders, directions and work methods instructed by it or on behalf of it.

ARTICLE 9: DISSOLUTION

1. Notwithstanding Feeling Fresh's other rights of termination under the agreement or by law, in particular in case of breach of agreement by Customer or occurrences of Force Majeure (article 7) Feeling Fresh may dissolve the agreement in full or in part for any reason and at any time by notifying Customer.
2. Feeling Fresh may also dissolve the agreement in full or in part by notifying Customer without being obligated to pay any compensation to Customer in the event that Customer becomes insolvent or if suspension of payment ("surséance van betaling") or bankruptcy proceedings have been initiated by or against Customer.
3. In case of default Feeling Fresh has the right to suspend performance of the agreement or to dissolve the agreement in whole or in part, without prior notice of default, by written declaration, at its option and always reserving any rights to which it is entitled.
4. In the case of termination of the agreement pursuant to section 9.3, Customer is obligated to compensate Feeling Fresh for any damage it may suffer, including profit loss.

ARTICLE 10: PLEDGE AND RIGHT OF RETENTION ("RETENTIERECHT")

1. With respect to all claims he has or may at any time have against the Customer, Feeling Fresh shall have a pledge and a right of retention on all goods, documents and moneys which it holds or will hold in its possession whatever the reason and the purpose thereof may be, as against any party requiring their delivery. Feeling Fresh shall in this respect also have a pledge on delivered goods.
2. Feeling Fresh may also exercise the rights granted to him in paragraph 10.1 also for that which the Customer owes Feeling Fresh with respect to previous orders.

ARTICLE 11: SUBCONTRACTING AND ASSIGNMENT

Only Feeling Fresh is entitled to subcontract or assign the agreement in whole or in part and Customer will be deemed to have given its permission therefore. In case of an assignment Customer will be notified. As per date of notification of an assignment Feeling Fresh is relieved from all its obligations against Customer.

ARTICLE 12: CONSIGNMENT

1. If Feeling Fresh delivers goods on consignment, the party holding the consignment goods shall act as the custodian as long as the goods have not been sold and delivered, and it is obligated to keep the goods as a good custodian. The party holding the goods shall make requisite effort to sell the goods within the consignment period agreed. It is obligated to inform Feeling Fresh daily as to the numbers sold and the sales prices (obtained).

2. If the party of consignment was unable to sell the goods within the consignment period and or for the minimum price agreed, it is obligated, upon Feeling Fresh's choice, to return the goods to Feeling Fresh upon its own risk and expense, or take possession of the goods against payment to Feeling Fresh, at the market prices in effect at that moment. In the latter case, after receipt of payment by Feeling Fresh, the party of consignment becomes the owner of the goods.
3. During the consignment period, the goods on consignment shall at all times remain Feeling Fresh's property, without the party of consignment having any right of lien or retention on the goods. In the case of loss or damage to the goods, the party of consignment is obligated to inform Feeling Fresh immediately. The party of consignment will be charged entirely for the damaged or missing goods.
4. The party of consignment of the goods shall insure the goods at its own expense with a recognized insurance company and submit proof of insurance to Feeling Fresh upon request. Feeling Fresh has the right of access during office hours to the place where the goods on consignment are located, to inspect the goods.

ARTICLE 13: CONFIDENTIALITY AND INTELLECTUAL RIGHTS

1. Any images, models, tenders etc., supplied by Feeling Fresh are and shall remain Feeling Fresh's property and may not be duplicated, shown to any third parties or set in any other way without Feeling Fresh's prior written consent. Customer must return the aforementioned goods to Feeling Fresh upon Feeling Fresh's request.
2. Feeling Fresh remains the owner of all industrial and / or intellectual property rights related to the aforementioned materials (images, models, documents etc.), unless these rights are transferred to the Customer by means of the Agreement.
3. Feeling Fresh is not liable and Customer will hold Feeling Fresh harmless for claims from third parties, for any costs, damage and interests that might be incurred as a direct or indirect consequence of violation of patents, licenses or other rights as a consequence of data supplied by or on behalf of the Customer.
4. Customer assumes the obligation to keep confidence of all it learned at or about Feeling Fresh, both in the stage of offerance and during implementation of the agreement, unless disclosure of data is legally and / or statutorily compulsory. In case of violation of this section Customer is due to Feeling Fresh a fine of € 100.000,-- per violation and per day or part of day that the violation persists, notwithstanding Feeling Fresh's other rights under the agreement.

ARTICLE 14: APPLICABLE LAW AND JURISDICTION

1. The law of the Netherlands applies. The applicability of any international regulation, including the United Nations Convention on the International Sales of Goods 1980 (CISG) is excluded if exclusion thereof is permissible.
2. Only the civil court of Rotterdam may take cognizance of disputes. However, Feeling Fresh is always entitled to take legal actions against Customer at her place of domicile or business.