



## FRESH FRUIT TERMS AND CONDITIONS OF SALE DOLE GERMANY OHG (VERSION JULY 2009)

- 1. GENERAL PROVISIONS/SCOPE OF APPLICATION**
  - 1.1. General Provisions/Scope of Application
  - 1.2. The following General Terms and Conditions of Business ("Conditions") shall apply to all future and similar legal transactions between Dole Germany OHG ("Dole") and the contracting party ("Buyer").
  - 1.3. Any contradictory or supplementary terms and conditions of the Buyer shall be excluded hereby, unless Dole expressly approves the validity thereof in writing. This shall apply even if Dole renders the delivery to the Buyer unconditionally in awareness of the contrary or variant provisions of the Buyer.
  - 1.4. These Conditions shall apply only to enterprises in the terms of § 310(1) of the Civil Code.
  - 1.5. In supplementation of these Conditions, the Common European Usages for the Domestic and International Sale of Eatable Fruits and Vegetables (COFREUROP) shall apply as amended. If there is a conflict between these Conditions and COFREUROP, then (to the extent permitted by law) the relevant provision of these Conditions shall take priority over the conflicting provision of COFREUROP.
- 2. DEFINITIONS**
  - 2.1. In the case goods are sold from a loaded ship, the place of performance shall be the seaport; in the case goods are sold from the warehouse, the place of performance shall be the place where the warehouse is located; in the case of a drop-shipment, the place of performance shall be the place of delivery.
  - 2.2. Unless determined otherwise, the destination shall be the place where the Buyer has its registered office.
- 3. CONCLUSION OF CONTRACTS AND TERMS OF PAYMENT**
  - 3.1. Offers made by Dole shall be subject to change.
  - 3.2. The sale shall be made subject to Dole itself being supplied in an accurate and timely fashion. Deviations common to the trade are hereby reserved.
  - 3.3. Prices are to be construed pursuant to the stipulated unit of measurement, EC duty paid, with free delivery from the loading docks, seaport or place of storage, or freight-free to the destination, as specified.
  - 3.4. Prices do not include the value-added tax applicable to transactions within the EU; the value-added tax applicable on the issue date of the invoice will be disclosed separately in the invoice.
  - 3.5. The Buyer shall only be entitled to set off claims if the counterclaims are declared by non-appealable judgment or are undisputed or recognized by Dole. Claims may only be set off if the counterclaim stems from the same contractual relation.
- 4. ACCEPTANCE**
  - 4.1. Bananas must be accepted during unloading. Unaccepted batches shall be stored immediately after the unloading at the Buyer's cost and risk.
  - 4.2. If other products are sold from the seaport and/or another warehouse, the acceptance must be made within three days after the date of sale or the earliest available date. In the case of drop shipments, the Buyer shall be obligated to accept the goods at the first destination of the means of transport.
  - 4.3. If the acceptance period is exceeded, the goods shall be stored at the Buyer's cost and risk.
  - 4.4. Dole hereby reserves the rights based on 5.1 and 5.2 COFREUROP.
- 5. RESPONSIBILITY FOR RISK**
  - 5.1. The Buyer shall bear all risks of transport between the place of performance and the destination.
- 6. DEFECT COMPLAINTS/WARRANTY**
  - 6.1. Complaints must always be made without delay.
  - 6.2. Complaints regarding Class I goods must in all cases be made within 6 hours after delivery.
  - 6.3. Complaints regarding Class II goods must in all cases be made within 8 hours after delivery.
  - 6.4. Transport defects must be reported to the shipper and noted on the delivery papers. Transport defects must moreover be reported to Dole in writing without delay.
  - 6.5. All complaints shall be excluded if the Buyer accepts the goods after inspecting them.
  - 6.6. In the event of legitimate complaints regarding quality or quantity, Dole shall be entitled and obligated to render a subsequent performance (delivery of defect-free goods) or subsequent delivery (delivery of the stipulated quantity); due to the nature of the goods sold by Dole, subsequent improvement is ruled out. If Dole fails to meet this obligation within a reasonable period, the Buyer shall be entitled to a fair reduction of the purchase price. Any other material defect warranty claims, particularly claims to rescission or damage compensation claims, shall hereby be excluded as permitted by law.
  - 6.7. The weight at the place of performance shall be decisive. Common losses associated with trans-port shall be borne by the Buyer.
- 7. RETENTION OF TITLE**
  - 7.1. The delivered goods shall remain Dole's property until full payment of all present and future claims arising from the business relation between Dole and the Buyer.
  - 7.2. The Buyer shall be entitled to process the goods within the ordinary course of business. If the title to the goods is lost as a result of processing, the Buyer hereby transfers to Dole in advance the title to the object arising through the processing as security for the claims from this title retention.
  - 7.3. Furthermore, the Buyer shall be entitled to resell the delivered goods within the ordinary course of business. This authorization may be revoked if the Buyer fails to duly fulfill the contractual obligations incumbent upon it.
  - 7.4. As a precautionary measure, the Buyer hereby assigns to Dole all its claims from sales to its buyers. Dole hereby accepts such assignment. The Buyer shall be entitled and obligated to collect the assigned claim. The authorization to collect claims may be revoked if the Buyer fails to duly fulfill its contractual duties vis-à-vis Dole. The authorization shall expire without express revocation if the Buyer suspends its payments.
  - 7.5. In the event of attachments and other third-party intervention, the Buyer must immediately inform Dole in writing so that Dole may file a complaint pursuant to § 771 of the Civil Procedure Code. If the third party is not in the position to reimburse Dole for the in- and out-of-court costs of a complaint, the Buyer shall be liable for the loss.
  - 7.6. In the event the Buyer acts in breach of contract, particularly in the event of default in payment, Dole shall be entitled to take the goods back. Taking the goods back shall constitute a rescission of the contract. After taking the goods back, Dole shall be authorized to sell them; the sale proceeds are to be credited towards the liabilities of the Buyer, less any reasonable selling costs.
- 8. PRODUCT GUARANTY; INDEMNITY; SCOPE**
  - 8.1. Excepting any acts which Buyer is obliged to take under any law or pursuant to these Conditions Dole agrees that in the event of third party claims or legal actions alleging damage for loss to property, death, illness or injuries directly resulting from any products provided to Buyer by Dole hereunder, and arising from any alleged adulteration or misbranding of such Dole products, Dole will save Buyer harmless in connection therewith, on the condition that (i) Dole receives prompt notification at the address set forth above of any such claims or legal actions, along with a sample of the alleged non-conforming product, no later than five (5) business days after Buyer has received notice of same; (ii) Dole is permitted to handle and, if necessary, to cause the disposition of such claims or legal actions at its own discretion by any means deemed appropriate by Dole; and (iii) any such claims or legal actions were caused by the act of Dole, or Dole was in material breach of applicable legal provisions as to product safety; and (iv) Buyer did not mishandle or alter the product, or act negligently with regard to the product, or contribute to the alleged adulteration or misbranding.



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- 8.2. Notwithstanding anything contained herein, in no event shall Dole be liable for incidental, consequential or punitive damages arising from any claims whatsoever under guaranties and warranties, if any, express or implied, including without limitation any guaranty or warranty as to merchantability or fitness of purpose or any other matter with respect to the product supplied.

### 9. PACKING/MEANS OF TRANSPORT

- 9.1. Unless agreed otherwise with Dole in any specific case, the following provisions shall apply between Dole and the Buyer in relation to packing and means of transport:
- a. The Buyer shall only receive reusable packing on loan for the transport of purchased goods. Buyer shall pay the replacement value for reusable packing that is not returned.
  - b. Pool pallets (e.g. Euro pallets and Duesseldorf pallets) shall be exchanged consecutively at the unloading point. The Buyer assures that the number of Euro pallets to be exchanged is actually available at the unloading point. Pallets that are not returned by Buyer shall be reimbursed to Dole against market prices.
  - c. If any Dole owned pallets are not returned within four weeks after delivery then Dole shall be entitled to obtain from Buyer the replacement price of such means of transport.

### 10. FORCE MAJEURE EVENTS

- 10.1. In the event that Buyer or Dole is unable to perform its obligations with respect to any sale to which these Conditions apply due to events of force majeure, including but not limited to acts of God, severe weather disturbances, governmental action, fires, explosions, strikes, slowdowns or other concerted acts of workmen, war or hostilities, insurrections, rebellions, riots or any other civil disorder, embargoes, wrecks or delays in transportation, inability to obtain necessary materials, equipment, or shipments at commercially reasonable costs due to industry shortage or disruptions, criminal conduct of third parties, or any failure of the other party to act as required, then in that event, and then only to the extent so justified, the party unable to perform shall, upon writ-ten notice to the other party, be relieved of its obligations, but only to the extent of the effects of force majeure and only for so long as the event of force majeure continues. The party unable to perform shall use its best efforts to remedy the effects of force majeure; however, Dole shall not be obligated by reason of force majeure circumstances, or purchase products from others in order to enable it to deliver such products to Buyer. In order to remedy a force majeure situation, parties may, upon agreement of both parties in writing, attempt to locate alternative supply or to secure alternative modes of transport to the extent practicable but Buyer shall remain responsible for any additional charges incurred due to Dole's good faith efforts during this period of force majeure.

### 11. FINAL PROVISIONS

- 11.1. Exclusively German law shall apply to the legal relations between Dole and the Buyer. The application of the United Nations Convention on Contracts for the International Sale of Goods is here-by excluded.
- 11.2. Hamburg shall be the place of jurisdiction for all disputes, even internationally. However, Dole shall also be entitled to initiate legal proceedings against the Buyer at the latter's place of general jurisdiction. This shall also apply to protests regarding bills of exchange and summary proceedings based on documentary evidence.
- 11.3. Clauses 4.3.4, 4.4.5, 6.2.2.1, 6.2.3.1, 6.2.3.2, 6.2.3.4 and clause 8 of COFREUROP are hereby excluded.