

General Conditions of Sale of Driscoll's of Europe B.V. (DoE)

Article 1. Definitions

In these general terms and conditions the stated terms will have the following meaning:

General Terms and Conditions:	these General Conditions of Sale;
Driscoll's:	Driscoll's of Europe B.V., having its registered office in Breda, the Netherlands, the seller of the Fruit and the user of the General Terms and Conditions;
Ex Works:	Ex Works as defined in the Incoterms 2010;
Fruit:	strawberries, blackberries, raspberries and berries of Driscoll's;
Buyer:	the buyer of the Fruit and Driscoll's other party;
Agreement:	the agreement between Driscoll's and the Buyer.

Article 2. Applicability

- 2.1. The General Terms and Conditions apply to any offer and Agreement between Driscoll's and the Buyer, to the extent not expressly derogated from by the parties in writing.
- 2.2. The General Terms and Conditions also apply to all agreements with Driscoll's if Driscoll's uses the services of third parties for their execution.
- 2.3. The applicability of the Buyer's general terms and conditions is explicitly excluded, unless the parties have agreed otherwise in writing. If the general terms and conditions of the parties apply side by side, the provisions of these General Terms and Conditions will prevail if the provisions of the Buyer's general terms and conditions conflict with the provisions of Driscoll's General Terms and Conditions.
- 2.4. Should one or more of the provisions of these General Terms and Conditions be void or be declared null and void, the remaining provisions of these General Terms and Conditions will continue to apply.

Article 3. Formation of the Agreement

- 3.1. Unless a period for acceptance is specified, all offers made by Driscoll's will be without any obligation.
- 3.2. Driscoll's reserves the right to revoke any offer made by it within two (2) working days of acceptance.
- 3.3. An Agreement will not be formed until after Driscoll's has accepted an order from the Buyer by means of a written order confirmation.
- 3.4. Driscoll's will be entitled, without stating reasons, not to accept orders or assignments or to only accept orders or assignments subject to the condition of advance payment by the Buyer.

Article 4. Prices

4.1. Unless explicitly agreed otherwise, the prices stated or agreed on by Driscoll's apply to delivery Ex Works. These prices include repackaging and packaging costs and exclude pallets, shipping costs and turnover tax.

4.2. If levies or special taxes are announced after the formation of the Agreement, as well as in the case of changes to levies or special taxes to the extent that they applied at the time that the Agreement was formed, Driscoll's will be entitled to increase the agreed price accordingly and to invoice that price increase to the Buyer, even if that price increase could already be foreseen upon entering into the Agreement.

Article 5. Delivery and Transport

5.1. Unless explicitly agreed otherwise, delivery will take place Ex Works in the Netherlands where the Fruit is stored or Ex Works at the address of the grower.

5.2. If Driscoll's, in the situation referred to in Article 5.1, arranges transport at the Buyer's request, Driscoll's does so only on behalf of the Buyer and at the Buyer's expense and risk. Driscoll's excludes any liability for the instructions given by it in connection with the transport. If the Buyer has not given special instructions for the choice of carrier, Driscoll's will be at liberty to choose a carrier.

5.3. The Buyer must take out transport insurance, which is never included in the transport.

5.4. If Driscoll's performs any customs formalities or similar acts for the Buyer's benefit, for example for KCB (quality control agency) inspections, pertaining to the settlement of the Agreement, such acts will always take place at the Buyer's expense and risk.

5.5. The Buyer guarantees Driscoll's that it will always have the required permits with respect to the import or transit of the Fruit purchased by it. The Buyer indemnifies Driscoll's against all claims, legal actions, taxes or fines from third parties, including any national or foreign government or any European agency.

5.6. If, contrary to Article 5.1, another Incoterm is agreed on, the Incoterm in question has the contents defined in the Incoterms 2010.

Article 6. Delivery Periods

6.1. Delivery periods specified by Driscoll's are without obligation and may never be regarded as strict deadlines.

6.2. In no event will Driscoll's be in default by the mere expiry of the agreed delivery periods. This always requires a written notice of default given by the Buyer.

6.3. The Buyer must at all times accept the delivery of the Fruit, even if delivery is made earlier or later than the agreed delivery period.

6.4. A failure to meet a delivery period will never entitle the Buyer to compensation, termination of the Agreement or any other action against Driscoll's. This is only different in the event of an intentional act or gross negligence on the part of Driscoll's or its managerial staff.

Article 7. Taking Delivery

7.1. If it has been agreed that deliveries to the Buyer take place Ex Works, the Buyer must have a carrier designated by it or on its behalf take delivery of the Fruit purchased by it as soon as possible after the agreed delivery date, but in any case within 24 hours.

7.2. If the Buyer, for any reason whatsoever beyond the control of Driscoll's, does not take delivery of the Fruit, it will nevertheless be obliged to fulfil the agreed payment conditions as if it had received the Fruit.

7.3. If the Buyer does not take delivery of the Fruit, Driscoll's will be entitled to store the Fruit at a location selected by Driscoll's at the Buyer's expense and risk.

7.4. If the shortcoming in the delivered quantity of Fruit totals less than 10 (ten) % of the total agreed quantity of Fruit, the Buyer will be obliged to fully accept the Fruit in exchange for a proportionate reduction of the purchase price.

7.5. Driscoll's will not be obliged to compensate the Buyer for any loss - including but not limited to a deterioration in quality or weight of the Fruit - in connection with the Buyer's failure to take delivery of the Fruit.

Article 8. Payment

8.1. Payment must always be made within fourteen (14) days after the invoice date, unless explicitly agreed otherwise.

8.2. If the Buyer fails to pay in good time, it will owe default interest from the fifteenth (15th) day until the day of payment in full that is equivalent to 1 (one) % a month on the whole sum that has not been paid in good time, counting part of a month as a whole month, without prejudice to Driscoll's right to full compensation.

8.3. In the event of late payment, Driscoll's will be authorised to postpone future Fruit deliveries until the time when the Buyer has fulfilled its payment obligations in full, including the payment of the interest due as provided in Article 8.2.

8.4. If payment has not been made on the fourteenth day after the invoice date, the Buyer will be in default by operation of law without any notice of default being required, and the Buyer will immediately owe the interest referred to in Article 8.2.

8.5. All outstanding invoices will immediately be due and payable if the Buyer applies for a suspension of payments or a liquidation, or if the Buyer's liquidation is petitioned for.

8.6. All judicial and extrajudicial costs to be incurred by Driscoll's in the event of the Buyer's failure to fulfil its obligations in good time or properly will be fully payable by the Buyer. Any judicial and extrajudicial costs to be claimed by Driscoll's will together amount to at least fifteen (15) % of the total sum due by the Buyer to Driscoll's, subject to a minimum of € 1,000 (one thousand euros).

8.7. Any reliance upon setoff by the Buyer is excluded.

Article 9. Complaints

9.1. The Buyer will at all times be obliged to inspect the Fruit upon delivery Ex Works or upon delivery on the basis of another Incoterm. If the Fruit is made available to a carrier, the Buyer must have the Fruit inspected by a person to be designated by it. If the Buyer has not designated a person, the driver of the vehicle, who takes delivery of the Fruit on the Buyer's behalf, will be deemed to have inspected the Fruit on the Buyer's behalf.

9.2. The Buyer must submit complaints about the Fruit to Driscoll's as soon as possible, but in any case within 2 hours after delivery Ex Works or delivery on the basis of another Incoterm.

9.3. Unless explicitly agreed otherwise, complaints are to be submitted by sending a completed complaints form - made available by Driscoll's - together with the corresponding documents to the email address stated on the complaints form.

9.4. Driscoll's will at all times be entitled to demand from the Buyer that the Fruit that is the subject of the complaint is assessed by a certified independent expert with costs payable by the party found to be wrong.

9.5. Driscoll's will not handle a complaint from the Buyer that has not been submitted to Driscoll's in accordance with this article.

9.6. Complaints within the meaning of this article do not affect the Buyer's payment obligation agreed in Article 8.

Article 10. Liability

10.1. Driscoll's only accepts liability for the damage or loss suffered by the Buyer as a result of an attributable failure in the performance of its obligations under the Agreement or pursuant to an unlawful act, if and to the extent that this liability is covered by its insurance, up to the sum paid out under that insurance.

10.2. If the insurance company, for any reason whatsoever, does not pay out, or if the damage or loss is not covered by the insurance policy, in all cases the amount of the loss that must be paid by Driscoll's will be limited to the invoice amount.

10.3. Contrary to the above paragraphs and without prejudice to the provisions of Article 6, Driscoll's does not accept liability for the exceeding of delivery periods, nor for trading loss or consequential loss, both on the part of the Buyer and the Buyer's customers.

10.4. Driscoll's will not be liable if the failure is the result of force majeure within the meaning of Article 14.

10.5. The Buyer will always be fully liable vis-à-vis Driscoll's for the settlement of any customs and transit documents including, but not limited to, T1 and T2 documents.

10.6. When first so requested, the Buyer will provide Driscoll's with sufficient security with respect to the consequences of the possible failure to settle the above documents, such as the indebtedness of import duties and VAT, fines and interest.

10.7. The exclusions or limitations of liability included in these General Terms and Conditions will not apply to the extent that the damage or loss is the result of an intentional act or gross negligence on the part of Driscoll's or its managerial staff.

Article 11. Packaging Material

11.1. Packaging material delivered via Driscoll's, including but not limited to pallets, crates and boxes, for which Driscoll's has charged a returnable deposit, will not be taken back by Driscoll's, unless explicitly agreed otherwise.

11.2. Unless agreed otherwise, the Buyer will at all times be responsible for returning the packaging material to the issuing authority. Driscoll's does not return the deposit after the packaging material is returned.

11.3. Unless agreed otherwise in writing, only the Buyer will be responsible and pay all costs, taxes, levies and contributions for the removal of packaging waste with respect to the Fruit.

Article 12. Labelling and Perpetual Clause

12.1 Unless explicitly agreed otherwise, the Buyer must leave the packaging, including the brand and labelling, used by Driscoll's upon delivery unchanged.

12.2 If the Buyer in turn sells the Fruit to a third party, the Buyer will impose the obligation referred to in the first paragraph of this Article 12 on that third party in writing for Driscoll's benefit, unless Driscoll's and the Buyer explicitly agree otherwise.

Article 13. Indemnification

13.1. The Buyer indemnifies Driscoll's with respect to third-party claims of any nature whatsoever, including but not limited to product liability connected to Fruit or other items delivered by Driscoll's, particularly pursuant to personal injury or death.

Article 14. Force Majeure

14.1. In the event of force majeure, being a non-attributable failure on the part of Driscoll's to fulfil its obligations under the Agreement, Driscoll's delivery obligation will be suspended for the duration of the situation of force majeure.

14.2. Force majeure in any event includes, but is not limited to, war, threat of war, mobilisation, uprising, civil war, fire, flood emergency, frost, lightning, labour dispute, strike (both on

Driscoll's part and on the part of its suppliers, growers and the carriers it engages), lockouts, delays in supply, the unavailability - by whatever cause - of the sold Fruit, transport difficulties, negligence by auxiliary persons, defects in means of transport, wilful damage, loss of harvest, seizure of goods and a trading block.

14.3. If fulfilment of the Agreement has become impossible due to force majeure within the meaning of this Article 14 for a period of more than fourteen (14) days, each party will be entitled to terminate the Agreement by means of an explicit and written communication, without judicial intervention.

14.4. If force majeure as referred to in this Article 14 occurs, Driscoll's will never be obliged to pay the Buyer any compensation.

14.5. If a situation of force majeure referred to in this Article 14 occurs at a time when Driscoll's had already partially fulfilled its obligations or could only partially fulfil its obligations, Driscoll's will be entitled to separately invoice the part that has already been delivered or the part to be delivered, and the Buyer is obliged to pay this invoice as if it concerned a separate agreement.

Article 15. Retention of Title

15.1. Title to the Fruit delivered by Driscoll's is explicitly reserved by Driscoll's until full payment has been made of all of its claims against the Buyer under the Agreement, including any interest and costs due.

15.2. The Buyer may only dispose of the Fruit subject to the retention of title in the context of its normal business operations. In that case, Driscoll's retention of title expires after the Fruit has been delivered to a third party.

15.3. The Buyer undertakes to make the unpaid Fruit available to Driscoll's when first requested by Driscoll's. The Buyer grants Driscoll's, or the person or persons to be appointed by Driscoll's, irrevocable power of attorney to enter the site where the Fruit is located in order to repossess the Fruit and store it in sheds of Driscoll's choice.

15.4. In accordance with the provisions of Article 15.1 Driscoll's grants the Buyer title to the delivered Fruit once the Buyer has fulfilled all of its payment obligations.

15.5. As security for the payment of all that the Buyer owes Driscoll's at any time, Driscoll's will have a right of retention and a right of pledge in respect of all items of the Buyer that Driscoll's retains or will obtain at any point in time, among other things in accordance with the provisions of Article 15.3.

Article 16. Applicable Law

16.1. Offers and Agreements between Driscoll's and the Buyer, and all resulting commitments, to which these General Terms and Conditions pertain are governed exclusively by Dutch law.

16.2. If the Buyer is established outside the Netherlands, the applicability of the Uniform Commercial Code and the Vienna Sales Convention is explicitly excluded.

16.3. These General Terms and Conditions have been drawn up in a Dutch and English version. In case of a difference between the English and Dutch text, the Dutch text will be binding.

Article 17. Competent Court

17.1. The District Court of Zeeland-West-Brabant, Breda location, has exclusive jurisdiction to hear disputes arising from or connected with the Agreement and these General Terms and Conditions.

17.2. Driscoll's will nevertheless be entitled to submit the dispute to the competent court in the Netherlands according to the law.