

1. **Definitions**
- 1.1. **"Customer"**: the party to whom F.P.S. makes an offer and with whom F.P.S. concludes or has concluded a contract;  
**"F.P.S."**: Fresh & Pack Services (F.P.S.) B.V.
2. **Applicability**
- 2.1. These terms and conditions apply to or form part of every quote, offer and every contract between F.P.S. and the Customer and all obligations ensuing therefrom.
- 2.2. The applicability of the general terms and conditions of the Customer is explicitly rejected.
- 2.3. Nullity or voiding of one of the provisions of these terms and conditions or of any provision in the contract is without prejudice to the effect of the other provisions of these terms and conditions or the contract.
3. **Offers and concluding of contract**
- 3.1. The offers made by F.P.S. are without commitment.
- 3.2. Illustrations and descriptions in quotes, offers, prospectuses, catalogues, specifications of dimension and weight, promotional material and other information provided by F.P.S. are not binding.
- 3.3. The prices stated in an offer are exclusive of VAT and other government charges, unless otherwise stated.
- 3.4. If the Customer provides information to F.P.S., F.P.S. may assume the accuracy and completeness thereof and shall base its offer thereon.
- 3.5. F.P.S. is not bound by an acceptance which (regardless of whether such relates to subordinate points) deviates from the terms in the offer.
- 3.6. F.P.S. can always withdraw an offer, including immediately after the acceptance of the offer by the Customer.
- 3.7. The contract with the Customer shall be concluded by written acceptance by F.P.S. of an assignment or at the time that F.P.S. has started the performance of the contract.
- 3.8. F.P.S. shall only be validly represented by the person registered as holder of power of attorney and/or director in the commercial register of the Chamber of Commerce.
- 3.9. Each contract is concluded subject to the condition precedent of creditworthiness of the Customer.
4. **Delivery and work by third parties**
- 4.1. Deliveries shall be effected Ex Works, unless explicitly otherwise agreed in writing.
- 4.2. The Customer is obliged to take receipt of all purchased goods at the agreed time, or if no time has been agreed, the time specified by F.P.S.
- 4.3. If the Customer does not take receipt of the purchased goods in full and/or in time or fails to provide information or instructions necessary for the (timely) delivery, the goods shall be stored at the Customer's expense and risk.
- 4.4. F.P.S. is at all times authorised to have certain work carried out by third parties.
5. **Delivery time**
- 5.1. A delivery time or period for execution of work specified by F.P.S. is indicative.
- 5.2. The delivery time shall only commence when agreement has been reached regarding all commercial and technical details, all information, including definite and approved drawings and the like are in the possession of F.P.S., the agreed (instalment) payment has been received and the other conditions for the performance of the contract have been satisfied.
- 5.3. If there:
  - a. are other circumstances than F.P.S. was aware of when it specified the delivery time, the delivery time shall be extended by the time that F.P.S., in accordance with its planning, needs to perform the contract under these circumstances;
  - b. is suspension of obligations by F.P.S. the delivery time shall be extended by the time which it, in accordance with its planning, needs to perform the contract after the reason for the suspension has lapsed.
- 5.4. Subject to counter-proof by the Customer, the duration of the extension of the delivery time or execution period shall be presumed to be necessary and the consequence of a situation as referred to in Article 5.3.
6. **Partial deliveries**
- 6.1. F.P.S. is permitted to deliver goods in instalments (partial deliveries).
- 6.2. If the goods are delivered in partial shipments, F.P.S. is entitled to invoice each instalment (partial shipment).
7. **Quality**
- 7.1. The goods must possess the characteristics which the parties have agreed in writing. F.P.S. does not guarantee any characteristic of the goods other than what has been agreed in writing.
- 7.2. If the goods are intended for a particular use that entails particular risks or quality requirements, the Customer must explicitly inform F.P.S. thereof in advance and this particular use must be recorded in writing in the contract; in the event of failure to do so normal use shall be presumed.
8. **Changes to the goods to be delivered**
- 8.1. F.P.S. has the right to deliver goods which deviate from what has been agreed if the matter concerns changes to the goods to be delivered, the packing or the related documentation which are required to satisfy the applicable legal prescriptions.
- 8.2. If during the performance of the contract it turns out that it is necessary for the proper performance thereof to amend or supplement the contract, the parties shall amend the contract in due time and in consultation. The Customer accepts the possibility of amendment of the contract, including a change in price and time period of execution.
9. **Tolerance**
- 9.1. For deliveries of packing materials F.P.S. shall be deemed to have effected proper performance if there are minor deviations in colour, thickness, quality, dimensions and other such specifications which do not essentially affect the functionality of the goods.
- 9.2. If on the Customer's request F.P.S. adds EAN codes, similar codes, ingredients used or other details on the packing, F.P.S. can assume the accuracy thereof and F.P.S. does not accept any liability in this respect.
- 9.3. F.P.S. does not guarantee the legibility of the EAN code or similar codes by equipment which is used therefor by the Customer or its Customers. Deviations in this respect shall never be deemed breach on the part of F.P.S.
- 9.4. If F.P.S. adds printing to goods on the Customer's request, F.P.S. shall use the PMS colour code(s) specified by the Customer. The material used can result in minor colour deviations. Deviations in this respect shall not be deemed breach on the part of F.P.S.
10. **Printed materials**
- 10.1. If F.P.S. delivers printed materials to the Customer after the Customer has approved a proof of this material, F.P.S. is not responsible for mistakes in texts and/or designs of printed materials if the printed materials have been produced in accordance with the proof approved by the Customer.
- 10.2. The Customer guarantees that the printed material does not infringe any intellectual property rights or any other rights of a third party.
- 10.3. The Customer indemnifies F.P.S. against claims of third parties and against the direct and indirect consequences resulting from any infringement of any intellectual property rights or any other rights of a third party.
- 10.4. F.P.S. can destroy designs of materials if the Customer has not ordered any material with this design for a period of 3 years. The Customer is itself responsible for making a back-up and/or for storing the designs of materials.
11. **The packing, storage and use of the purchased goods**
- 11.1. All goods which F.P.S. delivers to the Customer must be stored in conformity with the provisions in the certificate which F.P.S. furnishes to the Customer, the technical data sheet, manual for storage or another instruction. Unless explicitly otherwise stipulated the following applies:
  - a. Storage must be cool (between 15 and 25°C), dry and dust-free;
  - b. Foil may not be exposed to direct sunlight;
  - c. The air humidity is a maximum of 70%;
  - d. Rolls shall only be unpacked shortly before use;
  - e. Used rolls must be repacked in foil;
  - f. To prevent the transfer of odours, foil must not be stored in an environment where it is subject to odour pollution;
  - g. The processing term of the goods is 6 months after delivery.
12. **Right to enforce claims and termination of the contract**
- 12.1. F.P.S.' claims on the Customer are immediately enforceable in the following cases:
  - If the Customer does not perform obligations under the contract, does not perform such in full or does not perform such in time;
  - After circumstances have come to the attention of F.P.S. which give it good grounds to fear that the Customer will not perform its obligations;
  - If F.P.S. has asked the Customer to give security in accordance with Article 17.7 of these terms and conditions and this security is not given or is inadequate;
  - If F.P.S. determines or has a valid fear that the material delivered or to be delivered to the Customer infringes any intellectual property rights or any other rights of a third party;
  - If the Customer goes into liquidation, petitions for bankruptcy or a moratorium on payment, or offers its creditors a composition of creditors.
- 12.2. In the aforementioned cases F.P.S. is entitled to suspend the (further) performance of its obligations under the contract, or to cancel the contract, without prejudice to F.P.S.' right to demand compensation.
- 12.3. If F.P.S. suspends or cancels the contract, it shall not be bound in any way to compensate loss and costs arising in any way as a result thereof.
- 12.4. If circumstances arise with regard to persons and/or (the availability of) materials or resources which F.P.S. uses or undertakes to use in the performance of the contract, which are of such nature that they make the (timely) performance of the contract impossible or so cumbersome and/or disproportionately costly, that performance of the contract can no longer be reasonably demanded, F.P.S. is entitled to cancel the contract.
13. **Retention of title**
- 13.1. The goods delivered by F.P.S. shall remain the property of F.P.S. until the Customer has performed all of the following obligations under all contracts made with F.P.S.:
  - The consideration relating to goods delivered or to be delivered;
  - The consideration relating to services provided or to be provided by F.P.S.;
  - Any claims of F.P.S. on the Customer due to non-performance by the Customer of one or more obligations ensuing from the contracts made with F.P.S.
- 13.2. Goods delivered by F.P.S., which pursuant to Article 13.1 fall under the retention of title, may only be resold in the normal course of business.
- 13.3. The Customer cannot pledge these goods or grant any other right thereon, as long as the goods are the property of F.P.S. This provision has consequences under property law.
- 13.4. If the Customer does not perform its obligations or there is a valid fear of such, F.P.S. is entitled to retrieve delivered goods which are subject to the retention of title from the Customer or third parties who hold the goods on behalf of the Customer. The Customer is obliged to fully cooperate in this respect.
- 13.5. The cutting dies, stamps and cylinders produced by F.P.S. shall remain its property, even if the Customer has paid a part of the costs. Storage of these materials can only be guaranteed up to one year after their last use.
14. **Defects; term for lodging complaints**
- 14.1. The Customer must inspect the goods upon delivery or as soon as possible thereafter. The Customer must determine in this respect whether the delivered goods are in conformity with the contract.
- 14.2. If visible defects or shortfalls are noted, the Customer must report these to F.P.S. in writing within 5 working days after delivery. In addition, the Customer or the person who takes receipt of the goods for or on behalf of the Customer must, upon receipt of the goods, record a written description of the noted defect or shortfall on the transport documents accompanying the goods, to confirm that the complaint existed at the time of delivery of the goods.
- 14.3. The Customer must store the goods in respect of which complaints have been lodged carefully in such manner that loss of quality or quantity is prevented.
- 14.4. The Customer must report non-visible defects to F.P.S. in writing within 5 working days after detection, but at latest within 14 days after delivery. Any right to compensation in relation to non-visible defects lapses after 14 days, which term starts on the day of delivery.
- 14.5. If it is established that goods are defective and a complaint has been lodged in time in this respect, F.P.S. has the choice to replace the goods or to see to repair thereof or to pay replacement compensation therefor to the Customer. In the event of replacement the Customer is bound to return the replaced goods to F.P.S. and to transfer title thereof to F.P.S., unless F.P.S. indicates otherwise.
15. **Price increase**
- 15.1. If F.P.S. agrees a specific price with the Customer, F.P.S. is nevertheless entitled after the concluding of the contract, before the agreed time of delivery, to pass on increases in the wages or other price-determining factors, such as the price of raw materials.
- 15.2. Price increases ensuing from additions and changes to the contract are at the Customer's expense.
- 15.3. If the price increase is not the result of additions or changes to the contract on the Customer's request and is more than 15%, the Customer has the right to cancel the contract within 30 days after the Customer has become aware of the price increase, but in any event before the delivery of these goods to the Customer.
16. **Packaging**
- 16.1. The Customer is obliged to return returnable packaging within 14 days empty in undamaged condition.

- 16.2. If the Customer does not perform its obligations relating to packaging all costs ensuing therefrom are at the Customer's expense. Such costs are, inter alia, the costs ensuing from late return shipment and costs of replacement, repair or cleaning.
- 16.3. If the Customer does not return returnable packaging after a reminder within the specified term, F.P.S. is entitled to replace it and charge the costs therefor.
- 17. Payment**
- 17.1. Payment must be made within 14 days after the invoice date on F.P.S.' bank account, unless a different payment term has been agreed in writing with regard to a specific contract.
- 17.2. Complaints or compensation claims shall not suspend the Customer's payment obligations.
- 17.3. After the expiry of an agreed payment term the Customer shall be in default and without the need for notice of default shall owe interest of 1 % per (part of a) month over the due amount, unless the statutory commercial interest is higher, in which case the statutory commercial interest is owing.  
The interest over the due amount shall be calculated as of the time that the Customer is in default until the time of payment of the full amount owed.
- 17.4. Payments made by the Customer shall always be put toward payment in the first place of all interest and costs owing and in the second place toward due invoices which are outstanding the longest, even if the Customer states that the payment relates to a later invoice.
- 17.5. For contracts which must be performed over a long time F.P.S. can demand payment in part instalments, whereby the amounts and payment dates must be agreed in advance.
- 17.6. The Customer is not entitled to set off amounts which F.P.S. charges to the Customer pursuant to the contract existing between them.
- 17.7. The Customer is obliged on F.P.S.' first request to give security for what the Customer owes or will owe F.P.S.
- 18. Debt collection costs**
- 18.1. If the Customer fails to perform one or more of its obligations, all costs reasonably made by F.P.S. to obtain extrajudicial payment are at the Customer's expense. F.P.S. is permitted to charge these costs without the Customer receiving a reminder from F.P.S.
- 18.2. If F.P.S. demonstrates to have made higher costs, which were reasonably necessary, than what F.P.S. is entitled to pursuant to the Extrajudicial Collection Costs Act (*Wet Incassokosten*; WIK), these higher costs must also be reimbursed. With this arrangement F.P.S. intends to explicitly deviate from the provisions in the WIK.
- 19. Liability and indemnification**
- 19.1. The total liability of F.P.S. due to default in the performance of the contract or under any other heading, such as unlawful act, is limited per loss-causing event to compensation of direct loss up to a maximum of the amount of the price agreed for that contract and actually paid by the Customer, exclusive of VAT, whereby a series of related loss-causing events shall be seen as one (1) event, with a maximum of € 100,000. The liability of F.P.S. is in any event always limited to the amount of the payout of its insurer where relevant, increased by the excess.
- 19.2. F.P.S. is not liable for any loss whatsoever which is the result of incorrect or inexperienced use, processing, storage or conditioning of the delivered goods or contravention of the instructions for use, the technical description of product specifications and standards and values applicable in the industry and/or safety regulations, including acting in contravention of Article 11.
- 19.3. F.P.S. is not liable for loss if the Customer or third parties has/have made changes to the delivered goods.
- 19.4. F.P.S. is not liable if the delivered goods are used for a purpose other than that for which they are intended.
- 19.5. F.P.S. is not liable for consequential loss, which in any event includes: lost turnover, lost profit, lost savings, production loss, wages, transport costs, operating loss, disruption in business operations, stagnation loss, reputation loss, environmental loss, penalties imposed, regardless of their origin.
- 19.6. If a third party holds F.P.S. liable for compensation for loss which was caused by or in connection with goods delivered or to be delivered by the Customer to F.P.S., the Customer shall indemnify F.P.S. upon its first request.
- 19.7. When adding any code to packing, including the EAN code, F.P.S. accepts no liability whatsoever with regard to any defects of this code.
- 19.8. The limitation of liability described in this article shall not apply in the event of intent or wilful misconduct of F.P.S. and/or of its managerial subordinates.
- 20. Force majeure**
- 20.1. Force majeure means: all external causes, foreseen or unforeseen, which are beyond F.P.S.' control which hinder performance of the contract. This includes: fire, work strike or work lock-out, riot, war, government measures such as import or export restrictions, non-availability, non-timely availability or faulty availability of raw materials, auxiliary materials and/or parts, failure on the part of sub-suppliers, transport problems, natural disasters, epidemics or pandemics, disruptions in F.P.S.' business or in the business of sub-suppliers, electricity malfunctions, theft or misappropriation from the storerooms or work places of F.P.S. Force majeure on the part of F.P.S.' sub-suppliers is also deemed to be force majeure on the part of F.P.S.
- 20.2. F.P.S. also has the right to claim force majeure, if the circumstance which prevents (further) performance arises after F.P.S. should have performed its obligation.
- 20.3. During force majeure the delivery and other obligations of F.P.S. shall be suspended.
- 20.4. If the period in which performance of the obligations by F.P.S. is not possible due to force majeure lasts longer than 4 weeks, both parties have the right to cancel the contract, without there being an obligation to pay compensation in such case.
- 20.5. If F.P.S. has already performed its obligations in part upon the arising of the force majeure, or can only perform its obligations in part, it is entitled to invoice the part already delivered or that can be delivered separately and the Customer is bound to pay this invoice as if it related to a separate contract. This does not apply if the part already delivered or that can be delivered does not have an independent value.
- 21. Time limit for claims**
- 21.1. Without prejudice to the provisions in Article 14 all claims on F.P.S. shall lapse after 1 year.
- 21.2. Time starts running in relation to the above-mentioned time limit on the day following the day when the claim falls due, or the day following the day when the Customer became aware of the loss.
- 22. Electronic communication**
- 22.1. During the performance of the contract the Customer and F.P.S. can communicate with each other by electronic means and/or may make use of electronic storage (such as cloud applications). Except in so far as otherwise agreed in writing, the parties may assume that transmission of correctly addressed messages regardless of whether they contain confidential information or documents which relate to the contract, shall be accepted on both parts. The same applies to other means of communication used or accepted by the other party.
- 22.2. F.P.S. is not liable to the Customer for loss resulting from the use of electronic communication means, networks, applications, electronic storage, or other systems including – but not limited to – loss as a result of non-delivery or delay in the delivery of electronic communication, omissions, corruption, interception or manipulation of electronic communication by third parties or by software/equipment used for sending, receipt or processing of electronic communication, transfer of viruses and the non-functioning or improper functioning of the telecommunications network or other resources necessary for electronic communication, except in so far as the loss is the result of intent or gross negligence. The above also applies to the use that F.P.S. makes thereof in its contact with third parties.
- 23. Personal Data Protection (GDPR)**
- 23.1. The Customer agrees that F.P.S. may process confidential information and personal data concerning the Customer and/or persons (formerly) working at, or for, or connected with the Customer, and/or its clients or third parties (i) data which the Customer provides to F.P.S. in the framework of a contract, (ii) to perform a legal obligation, (iii) to optimise the service and (iv) in connection with internal business purposes. In this context processing also includes sharing these data with parties involved in the performance of the contract.
- 23.2. The Customer guarantees that personal data provided by it or derived from it may be processed by F.P.S. and indemnifies F.P.S. against all loss suffered in connection with claims of third parties relating to non-compliance with the applicable national and foreign laws and regulations in the area of the protection of personal data.
- 23.3. Processing of personal data by F.P.S. shall take place in conformity with the applicable national laws and regulations in the area of the protection of personal data.
- 24. Applicable law**
- 24.1. All offers of F.P.S. and every contract between F.P.S. and the Customer are exclusively governed by Dutch law.
- 24.2. The applicability of the Vienna Sales Convention 1980 (UN Convention on Contracts for the International Sale of Goods) is explicitly excluded.
- 24.3. In the event of any conflict between the English version and Dutch version in the content, tenor or interpretation of these terms and conditions, the Dutch version shall prevail.
- 25. Disputes**
- 25.1. All disputes between F.P.S. and the Customer shall, to the exclusion of any other court / arbitration tribunal, be presented to the competent court in Rotterdam. This does not apply if the dispute comes within the competence of the subdistrict court, if this is the case the legal rules regarding subject-matter and territorial jurisdiction shall prevail so that therefore a subdistrict court has jurisdiction to adjudicate the dispute.
- 25.2. In urgent cases the parties may turn to the preliminary relief judge of the competent district court to adjudicate in preliminary relief proceedings or may appear before the competent district court to take prejudgment preservation measures.
- 25.3. F.P.S. remains entitled to summons the Customer to appear before the court which has jurisdiction under the law or the applicable international law.
- 26. Changes and registration**
- 26.1. F.P.S. is entitled to change these terms and conditions. The Customer is deemed to have accepted the relevant changes if the Customer has not lodged a written objection thereto within 14 days after receipt of the written notice from F.P.S. that changes were made.
- 26.2. These terms and conditions are deposited with the court registry of the District Court of Rotterdam under number 39/2021.