

General terms and conditions for purchase transactions of MARWEGEN FRUCHTCONSULTING UND -HANDEL GMBH

1. Abbreviations and frequently used terms

MARWEGEN	means Marwegen Fruchtconsulting und -handel GmbH with - registered seat: Altlaufstr. 40, 85635 Höhenkirchen – Siegertsbrunn, Germany - registration: Handelsregister München, HRB 211260 - VAT-ID: DE294909554 - e-mail: info@marwegen.de - web: www.marwegen.de
GTC	means this general terms and conditions for purchase transactions conducted by MARWEGEN
purchase transaction	means purchase of goods from suppliers by MARWEGEN in its own name and on its own account
intermediary service	means MARWEGEN's intermediation between MARWEGEN's principal (buyer or supplier) and potential suppliers or buyers with the purpose of facilitating sales transactions, incl. salvage sales, between those parties in exchange for commission and without MARWEGEN acquiring any ownership title regarding the goods sold by the supplier to buyer
buyer	subject to the context, means (i) buyers of the goods sold by MARWEGEN in its own name and on its own account and/or (ii) buyers delivered by the principal (in its own name and on its own account) employing MARWEGEN only as an intermediary
supplier	subject to the context, means the suppliers of MARWEGEN and/or the potential or chosen supplier for principal (buyer) to whom MARWEGEN provides intermediary services
principal	means any principal (buyer or supplier) to whom MARWEGEN provides intermediary services
bank holiday	means such a day when either in the payment obligor's or the beneficiary's country financial institutions do not conduct payment transactions.
force majeure	means events or circumstances that are beyond the control of MARWEGEN or its suppliers (e.g. war, terrorist attack, riots, strikes, theft, earthquake, flood, fires, industrial action, embargoes, natural disasters, governmental orders, measures taken by the authorities, export or import restrictions) directly hampering the performance of contractual obligations

2. Scope of application of this GTC

- 2.1** Unless otherwise agreed to by MARWEGEN expressly in writing, this GTC shall apply for all purchase transactions conducted by MARWEGEN on fresh fruits, vegetables, dried fruits and nuts or, subject to compliance with all relevant legal requirements, any other goods. Any deviations from the conditions stipulated in this GTC require a prior written consent duly signed by the authorized representatives of MARWEGEN.
- 2.2** These conditions apply to all current and future business relationships. Conflicting or deviating conditions, incl. among others a ban on assignment of the supplier are not acknowledged by MARWEGEN and are to be regarded as void.
- 2.3** By signing the relevant purchase order or contract, supplier accepts the conditions of this GTC.

3. Quotes and agreed prices

- 3.1** MARWEGEN's quotes or preliminary acceptance of supplier's prices are non-binding for MARWEGEN even if submitted in writing. Final and binding prices are as stated in the respective purchase order or contract duly signed by the supplier and MARWEGEN.
- 3.2** Supplier's price lists and preliminarily agreed prices between supplier and MARWEGEN are binding for the supplier as this is necessary for MARWEGEN to be able to agree with potential buyers on the resale conditions.

3.3 For intermediary procurement services provided by MARWEGEN, MARWEGEN's principal and the supplier enter into a contract according to the terms and conditions to be agreed by them, with MARWEGEN bearing no legal or financial responsibility for either the actual performance of either of the parties under such contract or the legal, technical or business feasibility of such contract or transaction itself.

4. General delivery terms for purchase transactions

4.1 Supplier confirms that every delivery originates from controlled sources and comply with current legal requirements. Certificates or any other documents requested by MARWEGEN for certifying quality, quantity or origin of the goods need to be made available to MARWEGEN in the requested form. Even without a prior agreement laid down in the respective purchase order or contract, supplier is obliged to timely make available every customary certificate or any other document for certifying quality, quantity or origin of the goods. Unless otherwise agreed to by MARWEGEN in writing, making such certificates or other documents available to MARWEGEN is a condition of taking over, or making any payment for, the goods. Costs arising from missing, invalid or improper certificates, approvals or rejections by customs or other authorities shall be borne exclusively by the supplier.

4.2 In case of binding delivery or performance periods or dates, supplier is responsible for delivery or performance delays. Force majeure events that substantially complicate delivery or make delivery impossible for supplier relieve supplier only if MARWEGEN is able get relief from the buyer of the goods by referring to such force majeure event. Supplier is obliged to assist MARWEGEN in providing satisfactory evidence to the buyer on the occurrence of a force majeure event, and MARWEGEN's responsibility is limited to notifying the buyer and forwarding such evidence within a reasonable time.

4.3 Unless otherwise agreed to by MARWEGEN in writing, supplier is not entitled to make partial deliveries or partial performance.

4.4 Unless otherwise agreed to by MARWEGEN in writing, risk for the goods is transferred to MARWEGEN as soon as the shipment has been passed to the person carrying out the transport or physical takeover on behalf of MARWEGEN or the buyer.

4.5.1 Should any dispute arise between MARWEGEN and supplier regarding quality, quantity or documentation of the goods, MARWEGEN may try to resell the goods as a mitigation of damages but MARWEGEN is not obliged to do so.

4.5.2 Should the supplier take or omit any actions and thereby behave contrary to its contract with MARWEGEN, in particular falling into default with any delivery towards MARWEGEN, MARWEGEN is entitled to retain any amount outstanding from the agreed price or rescind the contract with any payments already performed by MARWEGEN and any delay interests or penalties to be paid by supplier falling due within two working days upon rescission of the contract.

4.5 If the quantity of the goods is different from the contractual amount, supplier shall be responsible for any additional freight costs and any further cost consequences suffered by MARWEGEN due to such deviation.

4.6 The place from which the goods should be delivered must be determined at the latest when the contract is agreed between supplier and MARWEGEN. Any additional costs resulting from any change in such place shall be paid by the party responsible for the change.

4.7 MARWEGEN accepts the goods after their availability in line with Clause 6. Should MARWEGEN not fulfil its duty of accepting the goods, supplier, after getting a written approval from MARWEGEN thereon, has the right to dispose of the goods. If the goods are in danger of spoiling, MARWEGEN is still to be informed and to be asked to agree in writing to disposing of the goods.

5. Payment terms

5.1 For purchase transactions, unless otherwise agreed to by MARWEGEN in writing, full value of the orders are payable 28 days following receipt of the invoice issued upon delivery of the goods. Should such invoice not comply with the delivered quantity, quality or with general legal requirements, the payment deadline shall be counted from receipt of the corrected invoice by MARWEGEN.

5.2 For purchase transactions, any payment terms different from the one in Clause 5.1 are accepted by MARWEGEN only for the purchase transaction(s) explicitly covered by the relevant purchase order or contract. For purchase transaction(s) not covered by such purchase order or contract, any payment terms different from the one in Clause 5.1 shall be repeatedly accepted by MARWEGEN explicitly in writing.

- 5.3 Any payment obligation shall be deemed performed on the day the amount's transfer has been initiated by MARWEGEN. If the last day of the payment deadline is a bank holiday, the payment shall be performed on the next banking day following the payment deadline.
- 5.4 For any payment transfer, the expenses of the sending bank shall be borne by the sender of the payment, and the expenses charged by any other banks (correspondent or beneficiary) participating in the transaction shall be borne by the recipient.
- 5.5 Should payments pertaining to any purchase transaction be performed by the obligor later than agreed, starting from the first day of the delay to the day of actual payment of the amount overdue a yearly delay interest of 6% over the applicable reference interest rate is to be charged. The afore mentioned applicable reference interest rate is the 1 month interbank rate of the currency of the overdue amount quoted on the first workday of the calendar month of falling in delay. For the calculations, a year shall consist of 365 days.
- 5.6 MARWEGEN is entitled to offset any claims towards any supplier by the claims of such supplier towards MARWEGEN.
- 5.7 MARWEGEN is entitled to assign any of its rights and obligations resulting from any purchase order or contract with giving prior written notice thereon to supplier. Any assignment of rights and obligations resulting from any purchase order or contract concluded with MARWEGEN is subject to MARWEGEN's prior written approval.
- 6. Acceptance and claims**
- 6.1 For this Clause 6, MARWEGEN and/or MARWEGEN's buyer (if the goods are transported directly to the buyer without reloading) is/are referred to as Buyer.
- 6.2.1 Buyer inspects and accepts the contractual goods upon arrival at the agreed place of destination. In the case where goods are delivered "en groupage", i.e. deliveries to a group of different addresses, the goods are to be examined and taken at each individual place of destination. Passages in border or intermediate warehouses of distribution are not considered as place of destination.
- 6.2.2 The Buyer or his representative shall inspect the goods put at their disposal for transport damage and incorrect quantities and to make a note to this effect on the freight documents (bill of lading). The supplier or his representative is to be informed accordingly. An average adjuster or surveyor must be employed to examine the matter if the damages justify so.
- 6.2.3 The claim will be addressed to the supplier or supplier's agent regarding that transaction, if any. If the claim is made to an agent, the agent must transmit it immediately to the appropriate person. This clause does not affect any other rights particularly those to damages.
- 6.2.4 Faults reasonably determinable before unloading, following a quality control, shall be reported at that time.
- 6.2.5 Faults that were not discovered, despite appropriate inspections, until unloading shall be reported upon discovery and the unloading shall be halted and a communication of the claim shall take place. The unloading may then recommence. In the case of successive deliveries, each delivery shall be considered separately.
- 6.2.6 The claim is to be raised immediately in all cases. The claim is to be made within 24 hours as from time of delivery. If the delivery is at an unusual time, the afore-mentioned time shall run from the moment when the quality control examination can be made in accordance with the usual trade and local customs.
- 6.2.7 Faults which cannot be discovered during appropriate inspections and examinations before or during unloading, are deemed to be hidden faults to which the above rules do not apply. Claims for hidden faults must be made from the moment they are discovered. All economically reasonable technical measures are to be taken as rapidly as possible in order to detect hidden faults.
- 6.2.8 The claim shall be made as follows:
- (i) from the loading point of departure, orally or by telephone,
 - (ii) from the delivery point or unloading point, by telephone, fax, telex telegram or e-mail.
 - (iii) all oral or telephone claims shall be confirmed within a reasonable time in writing by sending an e-mail.
- 6.2.9 The claim shall contain:
- (i) information as to the means of transport.
 - (ii) a detailed and exact description of the faults
 - (iii) detailed proof that the delivered goods are identical to the rejected goods.
- 6.2.10 For claims based on weight there shall be taken into account that the Supplier has the right to deliver 3 % more or less than the agreed weight or quantity. This does not apply to restricted entry goods or goods requiring special import licences.

6.2.11 These conditions also apply to products delivered on palettes.

6.3.1 If a claim is made about a delivery in accordance with 6.2 and the parties are unable to achieve an immediate settlement, the buyer must appoint an expert to make a report. If one of the contractual parties requests it, samples of the goods may be taken by a specialised laboratory. The results of the analyses and the expert's report should be sent to all the parties and the laboratory should hold a special set of samples for further analysis by a party, if required.

6.3.2 The expert's report shall comply with the following guidelines:

- (i) The form annexed to this GTC must be used and should be fully completed (see Annex 1).
- (ii) Supplier or his agent shall be informed promptly of the time and place of the examination of the goods and, if applicable, of the taking of any samples. Both parties are allowed to be present during any such examination or sample taking. Parties to the dispute are not allowed to influence the expert in any way.
- (iii) Obviously if there is an earlier report mentioned on the invoice or waybill one or both parties may submit this report to the appointed expert. The fact that an earlier report has been submitted must be stated by the expert in his report. If the expert differs in his conclusions from the earlier report he must justify his conclusions by appropriate reasons and proofs.
- (iv) The expert must not sell or buy the goods that are the subject of the dispute.
- (v) The expert should, inter alia, report on whether the goods could be salvaged by re-selection.

6.3.3 Supplier will bear the report costs, if the claim is found to be justified. If the claim is not justified, the Buyer will pay the costs. If the claim is justified, MARWEGEN has the right to a price reduction or to refuse acceptance of delivery or to compensation (including obtaining substitutes, from another supplier, if necessary).

6.3.4 MARWEGEN is entitled to a reduction in price is possible if the percentage of loss exceeds 1.5% for normal and 1% for cooling carriages/wagons/trucks. In this case, the minimum amount/reduced value results from the difference between the value of the contractual goods and of the actual value of the delivered goods, irrespective of the market situation/conditions.

6.3.5 A right to reject the goods is possible if the loss rate exceeds 10%. If MARWEGEN makes use of his right of rejection, MARWEGEN is obliged to inform the supplier correspondingly by telephone or any other customary method in trade within the period set for the claim. In addition, MARWEGEN may request the supplier to make other arrangements. The Buyer/consignee of the goods is obliged to protect the goods at his expense until new directives. This period for very perishable goods is up to 8.00 a.m. of the day following the delivery, for other goods, the set period is up to 12.00 a.m. on the second day after the delivery. If during this grace period the supplier does not dispose of the goods elsewhere, Buyer has both the right and the obligation to use his best efforts to market the goods in the most appropriate manner. The results of any such marketing by the Buyer will be awarded to the successful party in the claim. If the goods are very perishable, the Buyer must attempt to market the goods immediately, if necessary, after informing the supplier. A comment of the expert that the goods are very perishable ought to be included in the expert's report. Any correspondence exchanged between MARWEGEN and the seller must be confirmed in writing.

6.3.6 Without prejudice to the full compensation, the supplier shall be given the option of providing a substitute delivery if this does not inconvenience the Buyer. If the supplier cannot or will not provide substitute delivery; or if the buyer would sustain substantial losses from such a delivery, the buyer may obtain goods from another supplier. If he does so, the buyer must have regard to the interests not only of himself but also those of the seller. The compensation payable will be the buyer's loss of profit, i.e. the difference between the contractual price and the price the buyer would have achieved if he had been able to sell the goods on the market. To this must be added any other damages incurred; but an allowance must be made for costs that may have been spared by non-delivery.

6.3.7 Controls or examinations made under EU market regulations will not replace an expert's report unless both parties agree to such a replacement.

6.3.8 In the case of an official import ban or the impossibility of appointing a recognised expert the parties may agree to abandon the contract. However, if this is not done within three days, the contract will be regarded as continuing.

7. Representation and communication

7.1 Only Mr. Sascha Marwegen and Mr. Oliver Marwegen, as chief executive officers, are entitled to undertake any legally binding commitments on behalf of MARWEGEN. Legally binding commitments are made by MARWEGEN only in writing, duly signed and stamped by one of the aforementioned chief executive officers.

- 7.2 MARWEGEN's employees or contracted agents preparing and negotiating purchase and sales transactions or intermediary services for MARWEGEN are not entitled to
- (i) conclude or amend any purchase order or contract,
 - (ii) enter into any legally binding commitment in the name, or on behalf, of MARWEGEN,
 - (iii) accept money from any of the suppliers, buyers or principals,
 - (iv) independently determine any of the payment or delivery terms or
 - (v) waive any rights or claims of MARWEGEN
- pertaining to any transactions or intermediary services of MARWEGEN.
- 7.3 Where this GTC mentions written form with regard to any approval, consent or agreement, such approval, consent or agreement is only valid and imposes any obligation on MARWEGEN if it was stamped and signed by any of MARWEGEN's authorized representatives in line with Clause 7.1 of this GTC.
- 7.4 All agreements reached between MARWEGEN and the supplier are to be recorded in writing and any purchase order or contract is only valid if duly signed by one of the authorized representatives of MARWEGEN and the authorized representative (or in case of joint representation, the authorized representatives) of the other contracting party.
- 7.5 For purchase transactions, by signing any purchase order or contract and forwarding it to MARWEGEN, the supplier irrevocably undertakes to deliver the goods under the agreed conditions as stipulated in such purchase order or contract. Any purchase order or contract first signed by the authorized representatives of MARWEGEN and forwarded for signing to the supplier is to be regarded as valid only after being signed and returned by the supplier to MARWEGEN.
- 7.6 Duly signed contracts, purchase orders or other signed documents are to be forwarded via e-mail (in scanned form), by post or by courier. MARWEGEN is entitled to request the buyer or principal to send any signed documents also, or exclusively, in original copy via post or courier. In case of forwarding any signed document via e-mail to MARWEGEN, such document shall be deemed received only upon getting a written confirmation of receipt from MARWEGEN.
- 7.7 E-mails with attached contracts, purchase orders or other documents meant to be received by MARWEGEN, or written confirmations on orally made claims in line with Clause 6.1.4-6.1.7 shall be sent to info@marwegen.de. Contracts or purchase orders may contain also additional e-mail addresses that have to be used jointly with the before mentioned e-mail address.
- 7.8 SMS, Skype and Viber are non-excluded means of communication but these may serve only the purpose of mere information exchange and no legal consequence shall be attributed to them.
- 8. Applicable law and jurisdiction**
- 8.1 Any issues not regulated explicitly in this GTC are governed by the relevant laws of the Federal Republic of Germany with the exception of the rules on the conflict of laws.
- 8.2 The provisions of the UN Convention on the International Sale of Goods and the COFREUROP (Conditions of Business for Fresh Edible Horticultural Products, applicable to all national and international trade in fruit and vegetables (fresh, frozen or for industrial use)) do not apply to the purchase transactions conducted by MARWEGEN.
- 8.3 In case of any disputes, the parties shall endeavour to reach an amicable settlement. Should such amicable settlement not be reached, the respective matter shall be referred to a court in Munich, Germany. In case of conflicts with suppliers from abroad or if the supplier has no general legal venue in Germany, the supplier is authorised regarding all demands based on its contract with MARWEGEN to contact the chamber of industry and commerce (IHK Munich and upper Bavaria). The decision of the IHK Munich and upper Bavaria is binding under exclusion of ordinary legal proceedings.
- 9. Miscellaneous**
- 9.1 This GTC was worded only in English language. Should any translations or excerpts be prepared by MARWEGEN or its agents, this English copy prevails.
- 9.2 This GTC is subject to alteration by MARWEGEN. This GTC and any subsequent amendments come automatically and without notice into effect for purchase transactions contracted following disclosure of the latest version of this GTC at MARWEGEN's website (www.marwegen.de). Should any purchase order or contract concluded by MARWEGEN mention 'MARWEGEN's GTC for purchase' then the latest version of this GTC being in effect at the time of conclusion of such purchase order or contract is referred to.

- 9.3 Should any provision of this GTC become void or invalid, it does not affect the validity of other provisions and the validity of this GTC itself.
- 9.4 Annex no 1 forms an inseparable and integral part of this GTC.

Annex 1: Expert opinion form
Höhenkirchen, 19th November 2015

**Annex 1 to MARWEGEN's GTC for purchase transactions accessible at www.marwegen.de
Expert Opinion Form**

Opinion commissioned by..... (name, profession, address of the requesting person)

in by(Name of the expert)

I. General Information (TO BE GIVEN BY THE COMMISSIONING BODY/PERSON)

1. Description of the goods

I. Product:

- Sort:
- Variety:

II. Packaging

- Case (wood-cardboard)
- Sacks
- Loose

III. Weight of the freight:

(according to the consignment note or the official weighing upon arrival)

2. Dispatch

I. Means of transport used

- Wagon (type and registration number)
- Lorry (type and registration number)

II. Name and address of the consignor:

III. Place, date and dispatch number:

IV. Place, date and hour when the product was delivered to consignee

3. Reasons for complaint

I. the goods (quality – variety – size – packaging - short weight - hidden faults etc.)

II. the transport:

(Delay –damage– short weight etc.)

(Detailed and thorough description of the fault(s) of the goods in question).

Place and Date Signature of the requesting person

Place and Date

Signature of the requesting person

II. Expert's assessment:

1. Circumstances of the examination:

I. Place, date and time of the examination

II. Name, address and profession of the persons present on the occasion of the examination

- Sender (or his representative)
- Addressee (or his representative)
(Commissioning person/body)
- Transporting person (or his representative)

III. Submitted documents

- Identification evidence of the goods
- Essential contractual conditions
- Dispatch conditions

IV. Certificate of the official control (if available)

2. Condition of the examined goods

I. on wagon/carriage:

on the truck:

otherwise

II. during the unloading:

III. on the platform:

in stock:

at selling point:

3. Examination

I. Percentage of the examined sample in proportion to the batch

II. Compilation of the sample

III. Examination procedure

(Counting, weighing etc.)

4. Estimation of the faults

(limited to reasons for complaint)

I. - Condition of the means of transport

(Defectiveness – sanitary condition etc.)

- Duration of transport
- Temperature
- Anti-Freeze
- Means of refrigeration: supply of Ice – ventilation

II. Freight and packaging

- Piling up and stowing away devices
- Type and condition of the packaging
- Condition in the packaging

III. Quality of the goods

- General assessment with reference to the contractual conditions and, in the case of packaged products, to the labelling

(item/quality class marked on the package)

- Size
- Ripeness
- Colour or hidden faults

IV. Weight (short weight)

III. Conclusions

I. Exact description of the ascertained fault(s)

II. Assessment of the decrease in value

III. Possibility of sorting out and assessment of the costs involved

Place and date

Signature of the expert