

BLUE WHALE SAS GENERAL TERMS AND CONDITIONS OF SALE

Pursuant to article L.441-1 of the French commercial code, the Buyer is reminded that these general terms and conditions of sale (T&Cs) form the sole basis for commercial negotiations. The Buyer has one month from receipt hereof to give explicit written notice of either their detailed reasons for rejecting these T&Cs, their acceptance thereof, or, where applicable, the provisions of these T&Cs that they wish to submit for negotiation. If no response is received during this period, the Buyer will be considered to have accepted these T&Cs in their entirety.

SALES PRICE

The sales prices for each product category are set periodically by the BLUE WHALE sales department. The sales prices fluctuate in response to supply and demand on the national and international markets. Price quotations are set either on a daily or weekly basis, depending on the products and the time of year. They are sent to customers upon request, either by telephone, by facsimile and/or by any other electronic means of communication customarily used between the parties (email, extranet, etc.).

Unless otherwise agreed, BLUE WHALE does not apply any rebate or discount policy for cash payments.

ORDER

Placement of any order implies the Buyer's full and unreserved acceptance of the BLUE WHALE SAS T&Cs, to the exclusion of all other documents. Consequently, the Buyer waives its own general terms and conditions of purchase or any other document issued by it.

BLUE WHALE's failure to avail itself of one or more stipulations of these T&Cs or of any right cannot under any circumstances be interpreted as its waiver thereof.

No special condition can take precedence over these T&Cs without the formal, written acceptance of the parties.

Any order, confirmed in writing or electronically, is considered firm and final and can only be changed with the written agreement of BLUE WHALE. Following acceptance of the order, and depending on its stage of fulfilment, BLUE WHALE reserves the right to either take into consideration or refuse any change to the order requested by the customer.

Any order cancellation must be expressly accepted by BLUE WHALE.

DELIVERY

Delivery times are indicated as accurately as possible, for information purposes only. They are not binding in nature unless expressly indicated otherwise in the order accepted by BLUE WHALE.

BLUE WHALE undertakes to make every reasonable effort to deliver orders within the indicated delivery times. Late deliveries will not give rise to damages, penalties or deductions or changes to or the cancellation of open orders unless expressly agreed in writing by BLUE WHALE.

Any delays due to a force majeure event within the meaning of article 1218 of the French civil code, or any event reasonably beyond the control of BLUE WHALE (including, but not limited to: bad weather affecting harvests, strikes, transport blockades, procurement issues, administrative decisions, etc.) preventing the shipping, handling, transportation or delivery of the Products cannot under any circumstances entitle the Buyer to damages or penalties. In any event, BLUE WHALE's liability in connection with a late delivery caused by its actions is limited under the terms and conditions in the "CLAIMS - LIABILITY" article.

Unloading operations are carried out under the sole responsibility of the customer.

Regardless of the mode of transport and the terms of payment of the freight charges, any damage caused to the Products during transport will in no way release the Buyer from its obligation to pay the full purchase price to BLUE WHALE.

RETURN

The Products cannot be returned without the prior agreement of BLUE WHALE. Failing such agreement, no product refund or replacement may be granted by BLUE WHALE. The costs and risks of returning Products are always borne by the customer. Any set-off or unilateral deduction of penalties is prohibited.

PAYMENT TERMS

Pursuant to article L.441-11 of the French commercial code, the payment terms cannot exceed thirty days after the delivery date.

In the case of deferred payment or post-payment, the mere delivery of a bill of exchange or a cheque creating an obligation to pay does not constitute payment within the meaning of this article.

Any late payment will lead, automatically and without formal advance notice, to the payment of late payment penalties calculated based on a rate equal to the rate applied by the European Central Bank to its most recent refinancing operations increased by TEN (10) percentage points, provided that such rate is no lower than THREE (3) times the statutory legal interest rate in force. The penalties are calculated pro rata temporis on the outstanding amount, inclusive of taxes, from the day after the due date appearing on the invoice and until full payment.

Unless a deferment is requested in time and accepted by BLUE WHALE, failure to pay for goods by the fixed due date will lead to all remaining amounts falling due, regardless of the payment terms and methods provided. In the event of late payment, BLUE WHALE may suspend all open orders, without prejudice to any other path of action.

In addition, for any payment after the due date, fixed compensation of FORTY (40) euros will be applied, under article D-441-5 of the French commercial code.

TERMS OF SALE

The price is *quérable*, i.e. all sales are concluded and payable at the registered office of BLUE WHALE. The sales contract need not be in any particular form.

For each order, the Incoterm specifies the special terms and conditions of sale and liability. The Buyer must ensure that the ordered goods meet current standards in its chosen place of distribution.

Unless BLUE WHALE expressly agrees to any special provision, the Products are delivered in compliance with sanitary and phytosanitary rules, legislation on foodstuffs and labelling and community regulation applicable in France for the fruit market.

CLAIMS - LIABILITY

Any claim concerning the apparent quantity or quality of the Products must be made upon arrival of the goods. It is the recipient's responsibility to express any necessary reservations. These must be specific and substantiated, and indicated on the consignment note, in the presence of the carrier.

In the case of loss or damage which is not apparent at delivery:

- **Transport within France:** the Buyer must confirm their reservations to both the carrier and BLUE WHALE by letter sent by registered post with acknowledgement of receipt or by bailiff's deed within THREE (3) working days of delivery, in accordance with article L.133-3 of the French commercial code.
- **International transport subject to the CMR Convention:** the Buyer must send its written reservations to both the carrier and BLUE WHALE within the deadline indicated in said Convention (SEVEN (7) days, not including Sundays and public holidays, for loss or damage which is not apparent).

Given the perishable nature of the Products sold, any claim concerning the intrinsic quality of the Products (excluding damage during transit) must, to be deemed valid, be made in writing to BLUE WHALE within no more than FORTY-EIGHT (48) hours of delivery, by email confirmed by letter sent by registered post with acknowledgement of receipt.

If the parties disagree on the appraisal of the reservations, the Buyer must immediately have an expert assessment carried out by a court-appointed expert registered with the court of appeal in the jurisdiction of BLUE WHALE's registered office. BLUE WHALE must be allowed to assist with any sampling and expert assessment operations.

The Buyer will advance the costs of the expert assessment, provisionally. The final distribution will be determined according to the conclusions of the expert assessment and at the end of any litigation: if the expert assessment finds that BLUE WHALE is not liable or that the process instigated by the Buyer is unjustified, all the costs will remain payable by the Buyer; otherwise, the costs will be borne by BLUE WHALE.

In the event of a seizure or any other intervention on the part of a third party, the Buyer must arrange for the Seller to be present or represented.

Given the nature of the Products sold, the Buyer's loss, in the event of BLUE WHALE's liability arising from any recognised or established defect or fault, will not, under any circumstances, exceed the total amount of the delivery in question, including duly justified costs incurred in returning the goods. This limitation of liability does not apply in the event of gross negligence or wilful misconduct on the part of BLUE WHALE.

RETENTION OF TITLE

Pursuant to articles 2367 *et seq.* of the French civil code and article L.624-16 of the French commercial code, BLUE WHALE retains title of the sold goods until full payment of the price, in principal and any additional expenses, it being specified that the risks inherent to the goods are transferred to the Buyer from delivery.

If the Buyer files for insolvency, goes into receivership, is the subject of a takeover or disposal plan, or its assets are liquidated, BLUE WHALE is at all times entitled to demand the return of, or itself remove, the Products belonging to it from the Buyer's premises, as the Buyer expressly authorises it to do in advance in the event of non-payment at the due date.

The Buyer must then issue the corresponding credit note. If the Products have been resold, BLUE WHALE reserves the right to claim the proceeds thereof. In all cases, any payments received will be allocated by priority to Products that cannot be recovered in kind. The Buyer acknowledges having reviewed this retention of title clause and undertakes to accept it without restriction or reservation.

Any sum paid as a deposit will remain acquired by BLUE WHALE by way of compensation. The Buyer undertakes to take all necessary measures to ensure that the goods are identified as the property of BLUE WHALE.

PRICE REASSESSMENT

To comply with the provisions of article L.441-8 of the French commercial code and in the event of a contract with a performance duration exceeding three months, the sales prices must be adjusted – upwards or downwards – if the price of food and agricultural commodities and food and agricultural products and, where applicable, the cost of energy, fluctuate, significantly affecting the production cost of fruit and vegetables, to take such fluctuations into account.

Price renegotiation is initiated by either the Buyer or the Seller if variations of plus or minus 15% are observed in the following French indices: IPAMPA GENERAL, IPPAP FRUITS ET LÉGUMES FRAIS, IPPAP FRUITS FRAIS, IPPAP POMME. The price renegotiation will last no more than one month. It is conducted in good faith, in compliance with business secrecy, and will give rise to the preparation of a report.

APPLICABLE LAW

BLUE WHALE sales are subject to French law as a matter of public policy; they are subject to these T&Cs for the other provisions and for export sales.

PLACE OF JURISDICTION - ARBITRATION

In the event of a dispute that the parties have not managed to settle out of court within ten (10) calendar days of the referral by letter sent by registered post with acknowledgement of receipt by either party, whether regarding the interpretation or performance hereof, and, more generally, the parties' commercial relationship, and even in the event of an emergency, exclusive jurisdiction is granted to the commercial court in the jurisdiction of the registered office of BLUE WHALE, regardless of whether there is more than one defendant or whether third parties are introduced. This assignment of jurisdiction also applies in urgent interim proceedings. Notwithstanding the above, if the Seller were to be sued before another court, it reserves the right to summon the Buyer before this court.

Should both parties prefer to avoid a judicial settlement, they can decide together, by express, written agreement, to turn to the arbitration process offered by the Chambre Arbitrale Internationale pour les Fruits et Légumes [international arbitration chamber for fruits and vegetables] (6 avenue Pierre 1er de Serbie – 75116 PARIS) in accordance with its Regulations, which the parties declare in advance having reviewed and accepted. Unless it has been jointly exercised, this arbitration option does not exclude the jurisdiction of the commercial court named above.

PROTECTION OF PERSONAL DATA

During the performance of these T&Cs and the management of the commercial relationship, BLUE WHALE collects and processes personal data concerning the Buyer's representatives, agents and/or employees (including, but not limited to: surname, first name, position, professional contact details, connection data where applicable).

Such data are processed by BLUE WHALE in its capacity as data controller, on the basis of the performance of the sales agreement and its legitimate interest to ensure the continuation of the commercial relationship, invoice management, recovery and business marketing in connection with the Buyer's activities.

Data are kept for the duration of the contractual relationship, plus the applicable statutory periods of limitation. They may be disclosed to service providers and subcontractors working for BLUE WHALE (including, but not limited to: IT service providers, accountants, logistics providers), located in the European Union.

In accordance with Regulation (EU) 2016/679 (GDPR) and the French data protection law (amended), data subjects have the right of access, rectification, erasure, restriction of processing, objection and the right to data portability in respect of their personal data. They can exercise these rights by sending a request to the following address: [Email address/contact details of the data protection officer or relevant department]

Data subjects also have the right to submit a complaint to France's data protection authority, the Commission Nationale de l'Informatique et des Libertés (CNIL).

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