1. Application

1.1. These conditions hereinafter called COFREUROP will be applicable to all national and international trade in fruit and vegetables whether fresh, frozen or intended for industrial use.

1.2. These conditions reflect the current commercial custom and usage of the trade.

1.3. Any mention of the word COFREUROP in contractual documents refers expressly to these conditions. The use of these conditions must be communicated to the other contractual party in writing before the first contract is concluded.

1.4. The above clause “1.3.” does not apply if one of the contractual parties is domiciled or established in a country with a Common Law legal system. COFREUROP will only be applicable in this case if both contractual parties agree in writing that COFREUROP will apply, either on making the contract or in a later variation of the contract.

2. Contract

2.1. Contract of Sale

2.1.1. The contract of sale does not need to be in any particular form but should be confirmed (e.g. fax, telex or letter) immediately and before contractual performance is un-

dertaken. The terms of the confirming document are final, unless there is an immediate objection to the terms.

2.1.2. Unilateral or contradictory conditions subsequently inserted in documents of any kind, e.g. in bills or delivery notes, are void.

2.1.3. If no country of destination is agreed, the country where the buyer has established his business or is domiciled is deemed to be the country of destination.

2.2. Sales on commission

2.2.1. There is a sale on commission when the business is done to the order of the principal on his own account and at his risk. The agent guarantees del credere.

2.2.2. In the case of an agreement on a guaranteed minimum price, the rules relating to sale on commission will apply.

2.2.3. The agent must act with utmost good faith and care particularly where the goods are perishable.

2.2.4. Except where there is contrary contractual agreement, the agent must inform his principal in writing at regular intervals of the sales returns and send the principal, as quickly as possible, full sales accounts. The sales accounts must show the gross sale results, the costs and disbursements as well as the agreed rate of commission. Where there is an express agreement the principal may also demand exact current details of the sales.

2.2.5. The principal may, at his own costs, have the agent's accounts checked. The agent may employ an expert to verify the accounts at the principal's office. This expert must be an independent one subject to professional secrecy, e.g. a chartered accountant. This expert is not allowed to inform the principal of the names of the agent's customers, unless the agent contracts in his own name.

2.2.6. "Price after sale" means the agent contracts in his own name as buyer.

2.2.7. If advance payment and/or payment on account and /or full or partial taking over of the marketing costs is agreed. The principal guarantees the repayment of the agreed advance payments to the agent.

The agent may have the use of the goods within the limits of the agreed advance payments.

2.3. Price upon arrival

2.3.1. In the case where "Price upon Arrival" or "Suggested Price" or "Price Basis" is agreed, the price is only a proposal. However, other contractual conditions are not affected by such an agreement. After arrival of the goods and their availability, or if agreed, later, the parties should agree on the purchase price by telephone or by fax taking into account market trends and the quality of the goods. The buyer should confirm immediately, by telephone or telex, the price to the seller. The business is then dealt with as a sales contract at a fixed price. If, however, the seller objects immediately, the conditions of COFREUROP will be applicable.

2.4. Joint Sales

2.4.1. In the case of a joint sale, the contractual obligations are as follows:

2.4.1.1. The contracting partner in the country of departure/the exporting country will be responsible for the condition, packaging and transport of the goods.

2.4.1.2. The contracting party in the country of destination/importing country will be responsible for unloading, the sale and payment recovery and assumes the del credere.

2.4.2. The exporting party will inform the importing party of the price, the type of packaging and the costs of transport.

2.4.3. After the sale of the goods, the importing party will immediately make an account detailing the costs according to 2.4.2. plus transport costs, customs duties, taxes and other costs that have been agreed upon. Profits and losses will be shared according to the contract. If there is no contractual agreement, they will be shared equally.

2.4.4. The contractual parties are mutually obliged to grant the right to have applied prices and assumed costs checked upon demand and at their own expense. The examination is to be done by independent experts subject to rules of professional secrecy.

2.5. Conditions of Sale

2.5.1. Supplementary to these conditions (COFREUROP) the rights and obligations of both parties are governed by the individual agreements/arrangements, particularly by the INCOTERM agreed upon.

2.5.2. The “INCOTERMS 2000” (becoming effective on 1st 01. 2000) are as follows:

EXW	ex work
FCA	free delivery to carrier
FAS	free alongside ship
FOB	free on board
CF	cost and freight
CIF	cost, insurance, freight
CPT	cost prepaid transport
CIP	cost, insurance prepaid
DAF	delivery at frontier
DES	delivery ex ship
DEQ	delivery ex quai
DDU	delivery douane unpaid
DDP	delivery douane prepaid

Further comments on the INCOTERMS are available from the International Chamber of Commerce (CCI), in Paris.

3. Goods

3.1. Condition, Labelling, Packaging

3.1.1. The condition, labelling and packaging must comply with the rules in force, in the country where the goods will be marketed. The buyer must have informed the seller, beforehand, of the country where the goods will be marketed. This rule also applies to commercial, container, transport as well as to consumer packaging.

3.1.2. If there is a contractual agreement to that effect, deliveries may be made in non-returnable/one-way packaging, re-usable packaging or loose.

3.1.3. In the case where delivery is made in re-usable packaging, the conditions agreed between the contractual parties (buyer and seller) will apply. Unless there is an agreement to the contrary, reusable packaging material provided by the seller must be returned to the latter at his option either free at place of arrival or free at place of departure.

3.1.4. If no other arrangement has been made, then if the contract for the goods is not fulfilled the packaging must be returned immediately. The costs of this will be borne by the party responsible for the non-fulfilment of the contract. Where only part of the packaging is returned, the party responsible for the partial failure to deliver entire packaging must bear the costs.

3.1.5. Unless there is an agreement to the contrary, invoicing of the goods will be done according to the net weight of the goods without packaging or according to the standardised weights customary in the trade for transport units. In the case where delivery is made in customer packaging the legal tolerances of the country of destination/of the country where the goods will be marketed are applicable.

3.1.6. The seller has the right to deliver 5 % more or less than the agreed weight or quantity. This does not apply to restricted entry goods or goods requiring special import licences.

3.2. State of the Goods

At the time of the loading of the contractual goods, they must be in such a condition that if the delivery is made during the normal period and by the normal transport methods, the goods will be of the quality agreed between the parties, at arrival.

3.3. Legal rules and regulations relating to the quality

3.3.1. The seller is obliged to deliver the goods in a condition which complies with all laws applicable in the place where the goods are to be marketed, particularly with the applicable laws relating to hygiene, health & safety, food and drugs, labelling, weight and measures, market regulations. If no other arrangement has been made, the place of business of the buyer is deemed to be the country of destination.

3.4. Export and Import Licences and other Documentation

3.4.1. The parties to the contract are obliged to comply with all the necessary formalities and to supply all the necessary documents to enable the contract to be fulfilled.

3.4.2. In particular, the seller is obliged to provide all necessary export documents, including the export licences and also the buyer is obliged to supply to the seller all im-

portation documents, including the importation licences, which are necessary for the implementation of the contract.

3.4.3. Failure or delay in complying with the formal requirements or in supplying necessary documents will not nullify the contracts but will give the right to any injured party to claim damages from the party in default and/or terminate the contract.

4. Loading, Dispatch, Delivery

4.1. Loading

4.1.1. The loading and dispatch must be appropriate to the goods being delivered.

4.1.2. If no other specific agreement has been made, the seller will be responsible for the damages that result from inappropriate loading or inappropriate dispatch, notwithstanding paragraph 3, except for sales ex work.

4.1.3. At the time of the loading, the seller must inform the buyer of the dispatch of the goods as well as of the specifications of the load, the number plate of the lorry or van, the airway bill number or the name of the ship.

4.2. Transportation costs in the case of delivery changes

4.2.1. The places to and from which the goods should be delivered must be determined at the latest when the contract is agreed between the parties. Any additional costs resulting from any change in destination shall be paid by the party responsible for the change.

4.2.2. If the quantity of the goods is different from the contractual amount, the seller will be responsible for any additional freight costs.

4.3. Weight of shipment

4.3.1. If nothing has been agreed upon to the contrary between the parties, the correct weight of the shipment is the net weight at the arrival point. Net weight is defined as the weight of the shipment less any packaging and less the weight of the transport vehicle.

4.3.2. On the delivery of the goods in trade-standardised packaging, the weight of the packaging on arrival must be the same as the weight agreed between the parties. If the goods are in non-trade-standardised packaging, the weight of the goods will be determined by the terms of the contract, at the point of departure or by the weighing at the destination of the load on an approved scale.

4.3.3. The costs of investigating the freight will be borne according to the place of the weighing, i.e. by the seller at the point of loading and by the buyer at the point of delivery.

4.3.4. When the weight of the goods has been determined at the delivery place, tolerances and allowance for spoilage (conforming to the annex 1) will be applicable.

4.4. Time of delivery

4.4.1. A delivery that is to be made on a fixed date, must be made on that date. This rule does not apply to collected deliveries. In this case, each buyer is obliged to unload his delivery share promptly in order to avoid delay to subsequent deliveries.

4.4.2. Where delivery is to be made during a said period, the seller has the right to decide that date and quantity of the delivery/deliveries within the said period. In the case of delivery on demand the buyer may decide the date and quantities.

4.4.3. If no delivery time table has been agreed between the parties, the delivery will be deemed to be required as quickly as possible.

4.4.4. If there is a failure to deliver on the agreed date, the buyer has the right to rescind the contract. The rescinding must be communicated to the seller immediately, i.e. as soon as the delay is apparent, if this is not done, delivery may not be refused. In any case, this delay does not affect any rights that the buyer may have for late delivery. Unless there has been an agreement to the contrary between the parties, this rule does not apply to deliveries by instalments.

4.4.5. If the delivery is delayed due to “force majeure” (industrial action, embargoes, natural disasters, governmental orders), unforeseeable, insuperable and uncontrollable by the parties, the seller must inform the buyer immediately he has notice of the matter and he should confirm in writing. Both parties should use their best endeavours to fulfil the contract at least partly. However, if, because of these events the contract cannot be completely or at least partially fulfilled, either party has the right to rescind the contract immediately. There is no right to claim damages.

5. Receipt of delivery/Acceptance, Fulfilment

5.1. Obligation to accept delivery

5.1.1. If the buyer does not fulfil his duty of accepting the goods, the seller, after informing the buyer, has the right to have the use of the goods for the account of any affected party/person. If the goods are in danger of spoiling, the seller has the right to dispose of the goods without informing the buyer.

5.1.2. If during the execution of the contract the contractual goods are the subject of an export or import ban or comparable prohibitions, both parties are released from their mutual obligations for the period unless there is both the possibility and an agreement to substitute deliveries after the ending of the ban.

5.2. Failure to fulfil the contract

5.2.1. If there is a breach of contract, the injured party has the right to rescind the contract or to demand compensation, without giving formal notice. The injured party is to inform the other party.

5.2.2. If this information is not given to the party in breach within 72 hours, the right to damages of the injured party will be limited to 7.5 % of the value of the contract.

5.2.3. If a contracting party does not request the fulfilment of the contract within a fortnight as from the prescribed delivery date, the contract is deemed to be rescinded. Fixed date delivery contracts are excluded from this rule.

6. Damages

6.1. Damage claims

6.1.1. The buyer must inspect and accept the contractual goods upon arrival at the agreed place of destination.

6.1.1.1. 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. This is only in relation to the load actually to be delivered to that address.

6.1.1.2. The buyer or his representative is obliged to inspect the goods 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. If damages are presumed to be more than 500 EURO, an average adjuster must be employed to examine the matter.

6.1.1.3. The claim must be addressed to the contracting party or an appropriate agent. 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.

6.1.2. Faults determinable before unloading, following a quality control, must be reported at that time.

6.1.2.1. Faults that were not discovered, despite appropriate inspections, until unloading must be reported upon discovery and the unloading must be halted and a communication of the claim must take place. The unloading may then recommence. In the case of successive deliveries, each delivery should be considered separately.

6.1.2.2. The claim is to be raised immediately in all cases. For category I goods, the claim is to be made within 6 hours as from time of delivery. For category II goods, the claim is to be made within 8 hours as from time of delivery (see annex 2).

6.1.2.3. If the delivery is at an unusual time, the time mentioned in 6.1.2.2. above will run from the moment when the quality control examination can be made in accordance with the usual trade and local customs.

6.1.3. 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.

6.1.4. The claim should be made as follows:

6.1.4.1. from the loading point of departure, orally or by telephone,

6.1.4.2. from the delivery point or unloading point, by telephone, fax, telex or telegram.

6.1.5. All oral or telephone claims must be confirmed immediately in writing.

6.1.6. The claim must contain:

6.1.6.1. information as to the means of transport.

6.1.6.2. a detailed and exact description of the faults.

6.1.6.3. detailed proof that the delivered goods are identical to the rejected goods.

6.1.7. For claims based on weight, paragraphs 3 (3.1.6.) and 4 (4.3.) apply.

6.1.8. These conditions also apply to products delivered on palettes.

6.2. Procedure following a claim

6.2.1. If a claim is made about a delivery in accordance with 6.1. 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.

6.2.2. The expert's report must comply with the following guidelines:

6.2.2.1. The form No. 3 annexed hereto must be used and should be fully completed.

6.2.2.2. The seller or his agent must 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.

6.2.2.3. 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.

6.2.2.4. The expert must not sell or buy the goods that are the subject of the dispute.

6.2.2.5. The expert should, inter alia, report on whether the goods could be salvaged by re-selection.

6.2.2.6. The seller 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.

6.2.3. If the claim is justified, the buyer has the right to a price reduction or to refuse acceptance of delivery or to compensation (including obtaining substitutes, from another supplier, if necessary).

6.2.3.1. A reduction in price is only possible if the rates resulting from annex 1, column 1, are exceeded. 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.

6.2.3.2. A right to reject the goods is only possible if the rates resulting from annex 1 are exceeded. If the buyer makes use of his right of rejection, he is obliged to inform the seller correspondingly by telephone or any other customary method in trade within the period set for the claim. In addition, the buyer may request the seller to make other arrangements. The buyer/consignee of the goods is obliged to protect the goods at his expense for a certain period. This period for highly 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 seller does not dispose of the goods elsewhere, the 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 highly perishable, the buyer must attempt to market the goods immediately, if necessary after informing the seller. A comment of the expert stating that the goods are highly perishable ought to be included in the expert's report.

6.2.3.3. The buyer's claim for compensation by way of damages is subject to the general statutory law and the following conditions:

6.2.3.4. Without prejudice to the full compensation, the seller must be given the option of providing a substitute delivery if this does not inconvenience the buyer. If the seller 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.

6.2.4. Controls or examinations made under EU market regulations will be disregarded for the purposes of the party's claims and will not replace an expert's report unless both parties agree to such a replacement.

6.2.5. 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. Payment

7.1. If no other specific arrangement has been made, the payment must be made immediately after the delivery of the goods, or when the buyer has received the documents enabling him to claim the goods. The seller may make the payment for the goods dependent on the delivery of the goods, or on the supply of the necessary documentation.

7.2. The buyer is not obliged to pay before he has had the opportunity to examine the goods unless the contract between the seller and the buyer states the contrary.

7.3. In the case of successive deliveries, if the buyer has not paid in accordance with the contractual terms, the seller has the right to suspend further deliveries until the buyer has paid or to rescind the remaining part of the contract or to claim compensation.

8. Place of performance / jurisdiction / venue

8.1. A special arbitration court will be competent for the settlement of any disputes between the contracting parties (see the enclosed rules of arbitration, annex 4). The competence of an arbitration court must be expressly agreed about in writing between the contractual parties.

8.2. The contractual parties are advised to agree on the following written arbitration clause:

8.3. “The parties hereby agree to accept the binding decision of the “Chambre Arbitrale Internationale pour les Fruits et Légumes”, in the case of any dispute which may arise as a result of this contract.”