

General Terms and Conditions of Service2Fruit B.V. and Service2Trees B.V.

With its registered office in Geldermalsen and registered with the Chamber of Commerce under number 55535348 and 68255144.

Article 1 Definitions

The following definitions apply in these General Terms and Conditions:

S2F/S2T: Service2Fruit B.V. and/or Service2Trees B.V. and/or a party affiliated with them.

Payment Service Provider: the Stripe Payments Europe Ltd. payment service provider

Total Amount: The total amount the Customer owes to S2F/S2T and/or the Offeror and/or Service Provider.

Transaction: the transaction that takes place via de Auction and the Website.

Amount Received: The amount paid by the Customer pursuant to the Transaction into the Payment Service Provider's account provided by S2F/S2T.

User Agreement(s): An agreement between the Offeror and the Customer, which was concluded via the Auction or following intermediary activities on the part of S2F/S2T in any other way.

Service Provider Agreement(s): An agreement between a User and the Service Provider that was formed via the Auction or following intermediary activities on the part of S2F/S2T in any other way.

Auction: The S2F/S2T digital auction marketplace where Products are offered by the Offeror and can be purchased by the Customer by means of bids.

Offeror: The party that offers Products for sale via the Auction.

Customer: The party that purchased Products via the Auction or otherwise following intermediary activities on the part of S2F/S2T or the Party that places a bid at the Auction.

User(s): An Offeror and/or Customer.

Service Provider: The party that offers its Services via the Website or in any other way involving S2F/S2T. The Payment Service Provider is expressly not a Service Provider.

Service(s): Every service, in the broadest sense of the word, offered by a Service Provider via the Website.

Products: All possible agricultural products and trees traded by Users via the Auction, such as Harvested Crop, Unharvested Crop and Trees.

Harvested Crop: Fruits and crops harvested at the time of the Auction.

Unharvested Crop: Fruits and crops that grow or will grow in the fields, in greenhouses or on trees/shrubs at the time of the Auction.

Trees: Trees/shrubs.

In Writing/Written: Laid down in writing in any way, including by e-mail or in any other electronic manner. In Writing/Written also includes (digital) notes of a conversation drawn up by S2F/S2T.

Agreement with S2F/S2T: The agreement on the basis of which S2F/S2T allows User(s) and/or Service Provider(s) and/or other third parties to use the Auction.

Hidden Defect(s): A defect the Customer could not have discovered upon delivery of the Products and which defect the Customer should not have expected in view of the nature of the Products and the information provided by the Offeror.

Transaction File: A digital file made available by S2F/S2T and which may be used by Users and Service Providers to communicate with each other and S2F/S2T among other things.

Non-Working Days: Saturday, Sunday, New Year's Day, Good Friday, Easter Sunday and Easter Monday, King's Day, Ascension Day, Whit Sunday and Whit Monday, Christmas and Boxing Day.

Website: www.service2fruit.com of S2F and www.service2trees.com of S2T.

Article 2 Applicability

2.1 These general terms and conditions apply to all Agreements with S2F/S2T and to all (other) legal relationships with S2F/S2T.

2.2 These general terms and conditions also apply to all User Agreements and all Service Provider Agreements and every other agreement between the Users, and between Users and Service Providers, which are concluded via or with the assistance of the Auction, via the Website, or through the intermediary activities of S2F/S2T.

2.3 These general terms and conditions also apply to all legal relationships between Users and/or Service Providers with the Payment Service Provider. The Payment Service Provider's general terms and conditions also apply to the legal relationship with the Payment Service Provider.

2.4 These general terms and conditions have been drawn up in the Dutch language and have been translated into various other languages. The Dutch version is always binding and decisive in case of differences of interpretation of the text.

2.5 S2F/S2T reserves the right to change and/or supplement these general terms and conditions.

2.6 In the event Written agreements were concluded between S2F/S2T and Users and/or Service Providers, between Users themselves and Users and Service Providers, which deviate from these general terms and conditions, such deviating agreements will prevail. Deviating agreements between Users themselves and/or between Users and Service Providers must always be notified to S2F/S2T without delay. Deviating agreements can never result in the fee received by S2F/S2T being lower than the fee it would have received if the Users and/or the Service Providers had not concluded deviating agreements. In addition, deviating agreements cannot be invoked in case S2F/S2T has instructed the Payment Service Provider to carry out a transfer, as referred to in article 13, without taking account of those deviating agreements.

2.7 General terms and conditions applied by the User or the Service Provider do not apply.

Article 3 Conclusion of Agreements with S2F/S2T

3.1 All statements made by S2F/S2T on its website are without obligation for S2F/S2T and do not bind S2F/S2T.

3.2 The Agreement with S2F/S2T is not concluded until S2F/S2T has confirmed acceptance on the part of the User or the Service Provider In Writing.

3.3 S2F/S2T is expressly not a party to User Agreements and Service Provider Agreements. If such an agreement is concluded, the Customer, the Offeror and the Service Provider will owe a fee in this connection to S2F/S2T, also in the event the User Agreement and/or the Service Provider Agreement is dissolved or annulled.

Article 4 Conclusion of User Agreement(s) via the Auction

4.1 A User Agreement is concluded between the Offeror and:

- The Customer who submitted the highest bid at the end of the bidding period, provided the bid is at least equal to any minimum price applied by the Offeror; or
- The Customer, if the Offeror applies a fixed price and the bid placed by the Customer is in accordance with the price asked;

provided the other conditions imposed within the context of the Auction have been satisfied.

4.2 An offer made by the Offeror at the Auction cannot be withdrawn by that Offeror during that bidding period. An offer can only be changed for as long as no bid has been made.

4.3 An offer cannot be withdrawn or changed during the bidding period.

4.4 S2F/S2T has the right to end or cancel a bidding period prematurely and/or declare one or more bids made invalid if there are circumstances that justify this in the opinion of S2F/S2T.

Article 5 Formation of Service Provider Agreement(s)

5.1 A Service Provider Agreement is concluded in the event the User and the Service Provider reach agreement concerning the purchase of a Service by the User and the User and the Service Provider notify S2F/S2T In Writing of the agreement that has been reached.

Article 6 Obligations when using the Auction

6.1 The User or the Service Provider declares that:

- a) he will not deliver data and/or information that is protected by copyright and/or that is encumbered by other rights of third parties without being authorised to do so;
- b) he does not use documents and certificates added to Auctions improperly, such as Global G.A.P., that were notified/delivered at an Auction;
- c) by participating in the Auction he does not infringe any intellectual property right or any other right (of ownership) of a third party and that he is the owner or the entitled party concerning all intellectual property rights which he uses within the context of the Auction;
- d) the Auction and the Website are not used for any purpose other than the purchase and sale of Products and Services;
- e) no payment method is used or accepted other than as set out in these general terms and conditions.

6.2 The User or the Service Provider is obliged to observe or comply with all measures and instructions that must be observed when using the Website and the Auction.

6.3 S2F/S2T has the right to deny the User or the Service Provider access to the Auction, the Website and other facilities and to block the account with immediate effect, in case of circumstances that justify this in the opinion of S2F/S2T, including for example the situation that the User and/or the Service Provider fails to comply with the provisions of the Agreement with S2F/S2T and/or these general terms and conditions or otherwise fails to comply with the instructions and directions issued by S2F/S2T. S2F/S2T also has the right to charge a higher fee to the User.

Article 7 Prices

7.1 All prices indicated by S2F/S2T and the Offeror and the Service Provider are exclusive of VAT.

7.2 The costs of any export documents are for the Customer's account. The Offeror is obliged to ensure that the documents required for import can be applied for.

7.3 The costs of any licences and sublicences are for the Offeror's account.

7.4 The Users are obliged to pay a fee to S2F/S2T as soon as a User Agreement has been concluded between them.

7.5 S2F/S2T has the right to change its rates at all times.

Article 8 Moment of payment of the Total Amount

8.1 After a User Agreement for a Harvested Crop and/or a related Service Provider Agreement has been concluded, the Customer will be obliged to pay the Total Amount to be paid by him within at most 48 hours in the manner set out in article 9, in which connection hours on Non-Working Days are not taken into account.

8.2 In case of an Unharvested Crop, the Customer will be obliged to perform a partial payment in respect of the Total Amount to be paid by him as soon as a User Agreement and/or a related Service Provider Agreement has been concluded. This partial payment amounts to 10% of the price to be paid to the Offeror for an Unharvested Crop and/or Trees, 10% of any fees to be paid to the Service Provider(s) and the full fee to be paid to S2F/S2T, and do so within at most 72 hours after conclusion of the User Agreement, in which connection hours on Non-Working Days are not taken into account.

The remainder of the Total Amount must be paid:

- in case of an Unharvested Crop: within at most 72 hours after the Offeror has informed both the Customer and S2F/S2T via the Transaction File and/or by e-mail that the Unharvested Crop has since been harvested and that the Products are ready for delivery to the Customer, in which connection hours on Non-Working Days are not taken into account.
- in case of Trees: at least 72 hours before the final collection date indicated by the Offeror.

8.3 The terms referred to in this article are strict deadlines, which means that default applies automatically if these terms are exceeded.

8.4 The fee owed to S2F/S2T for access to the Auction, the Website and other facilities is set off against the Total Amount paid by the Customer.

Article 9 Manner of payment of the Total Amount

- 9.1 Payment of the Total Amount to the parties entitled to payment must take place by means of payment into the bank account of the Payment Service Provider, in the manner prescribed by the Payment Service Provider, as communicated by S2F/S2T. The Payment Service Provider is an organisation not affiliated with S2F/S2T. The Payment Service Provider carries out the payments as agreed in the User Agreements and/or the Service Provider Agreements.
- 9.2 The Payment Service Provider may and will transfer the part of the Amount Received intended for S2F/S2T to S2F/S2T immediately after receipt.
- 9.3 The part of the Amount Received by the Payment Service Provider intended for the Offeror and/or the Service Provider will remain in the custody of the Payment Service Provider until the Payment Service Provider has been instructed by S2F/S2T, as referred to in article 13, to transfer all or part of the remaining part of the Amount Received to the Offeror and/or the Service Provider and/or pay all or part of this part back to the Customer.

Article 10 Moment of delivery and moment of provision of the Services

- 10.1 The Offeror will not be obliged to proceed with delivery of the Products in question and the Service Provider will not be obliged to provide the agreed Services until after the Payment Service Provider has received the Total Amount.
- 10.2 The Products purchased must be delivered by the Offeror and the Customer must take receipt of them at the latest on the final collection date indicated by the Offeror. Default will not apply by operation of law as a result of this term being exceeded.

Article 11 Subsequent calculation

- 11.1 In case of Unharvested Crops, the purchase price actually owed by the Customer is determined on the basis of the quantity of Products delivered to the Customer compared to the quantity sold. Subsequent calculation is performed by the Offeror and the result thereof must be shared with the Customer and S2F In Writing at the latest at the moment of delivery. The Customer will then have 24 hours, which does not include hours on Non-Working Days, to contest the correctness of the subsequent calculation and to share the results of his own subsequent calculation with the Offeror and S2F via the Transaction File or by e-mail. The fee owed by the Offeror and the Customer to S2F will not be recalculated.
- 11.2 In case of Harvested Crops, deviations from descriptions of the fruit size or weight may be at most 10%.
- 11.3 In case a deviation exceeds the 10% referred to in paragraph 2, the Customer will have the right to demand that the correct weight is delivered as yet or that the purchase price is adjusted to an amount that is reasonable to the Customer.

Article 12 Term for assessing Products and Services and for reporting compliance

- 12.1 The Customer is responsible for having the Products inspected for his own account after the Products have been delivered. This inspection must take place within the following terms:
- in case of Harvested Crops and Unharvested Crops within 24 hours after delivery, in which connection hours on Non-Working Days are not taken into account.
 - in case of Trees within 7 days (168 hours) after delivery.
- 12.2 The inspection referred to in paragraph 1 may be carried out by the Customer himself or it may have it carried out by an inspection body. In the event the Customer has not inspected the Products or did not have them inspected within the term set and did not share the findings of the inspection In Writing with S2F/S2T within the term referred to in paragraph 1, the Customer will no longer be able to invoke the fact that the Products do not meet its legitimate expectations on the basis of the information that was provided. The consequence is that non-conformity can no longer apply.
- 12.3 Paragraph 2 does not apply insofar as it concerns a Hidden Defect that is not the consequence of the Customer's conduct, such as excessively long or incorrect storage. Paragraph 2 does not apply either if and insofar as the Offeror knew or should reasonably have known that the Products to be delivered/delivered by it did not comply with the User Agreement and it nevertheless did not make any mention thereof.
- 12.4 If Trees were planted following delivery, the Customer can no longer complain about defects relating to their appearance.
- 12.5 In case of Trees, the Offeror is not liable for Nectria infections, unless these occur on the rootstock and/or the upper stem of the Products within one (1) year after delivery. This applies as a Hidden Defect as referred to in paragraph 3. In such cases, the Customer will only be able to claim compensation of the cost price or the delivery of new Products.
- 12.6 Following provision of a Service by the Service Provider, the User will be obliged to notify any complaints regarding the Service to S2F/S2T In Writing within 24 hours, in which connection hours on Non-Working Days are not taken into account. If the Customer fails to perform this notification within the prescribed period, the Customer will no longer be able to rely on the fact that the provision of the Service failed to comply with the Service Provider Agreement.
- 12.7 Without prejudice to the obligations referred to in the previous paragraphs, the Customer will be obliged to inform S2F/S2T by e-mail or via the Transaction File whether it was actually able to take receipt of the Products and whether the Service was provided within 24 hours after delivery or, in the event delivery did not take place, within 24 hours after the final collection date, in which connection hours on Non-Working Days are not taken into account in both cases.

Article 13 Instructions to the Payment Service Provider to transfer the Amount Received

- 13.1 As soon as S2F/S2T has received the notification referred to in paragraph 7 of article 12, S2F/S2T will instruct the Payment Service Provider, provided this notification is positive, to transfer the (remainder of the) Amount Received to the bank account(s) of the parties entitled to payment (the Offeror and/or the Service Provider). S2F/S2T has the right in this connection to forward information concerning the Agreement with S2F/S2T, the User Agreement, the Service Provider Agreement and any other information S2F/S2T deems necessary regarding the Users and/or Service Providers, to the Payment Service Provider.

- 13.2 The instruction referred to in paragraph 1 will also be issued if S2F/S2T has not received notification within the term referred to in paragraph 7 of article 12.
- 13.3 In the event the Customer reports in accordance with paragraph 7 of article 12 that it was unable to take receipt of the Products or was unable to have this done and the notification is therefore negative or in the event the Customer, in time and in accordance with paragraph 2 of article 12, reports that the inspection referred to in paragraph 1 of article 12 revealed quality problems, or if the Customer reports in time and in accordance with article 11.1 that the subsequent calculation is incorrect, or the Customer reports in time and in accordance with paragraph 6 of article 12 that the Service was not performed or was not performed correctly, S2F/S2T will only instruct the Payment Service Provider to transfer that part of the Amount Received to which the dispute does not relate. No instruction to transfer will be issued in respect of the part of the Amount Received to which the Dispute does relate until the Customer and/or the Offeror and/or the Service Provider have reached agreement on further settlement. This means that this part remains in the bank account of the Payment Service Provider.
- 13.4 The agreement referred to in paragraph 3 must be reached and notified to S2F/S2T within at most twenty-four (24) after the notification referred to in paragraph 3. In the event the Customer and the Offeror and/or the Service Provider fail to reach agreement within 24 hours, they will notify S2F/S2T thereof without delay in the Transaction File and/or by e-mail, and they will also indicate the term within which they consider they will be able to reach a solution. However, if the Customer and/or the Service Provider fail to send the message referred to in the previous sentence to S2F/S2T without delay, S2F/S2T itself will have the right, but it will never be obliged, to have the quality of the Products delivered inspected, or to assess the Service, and issue a binding opinion in this regard to the Offeror and the Customer, or to designate a third party that will act as binding advisor. The costs of the inspection and the binding advice will be borne by the unsuccessful party (the User or the Service Provider). Based on the binding advice, S2F/S2T will instruct the Payment Service Provider to transfer the Amount Received to the bank account(s) of the parties entitled to payment according to the binding opinion.
- 13.5 If in addition to the price for the Products the Offeror also charges a deposit for the materials in which the Products are delivered and those materials have been designated as return materials by the Offeror in the offer, no issue to transfer will be issued by S2F/S2T for that part of the Amount Received such in derogation from paragraph 1. The Payment Service Provider will not be instructed to transfer with respect to this part until ninety (90) days after delivery of the Products, unless the Offeror has informed S2F/S2T In Writing at that time that the Customer did not return the materials concerned or did not return them in good condition. The provisions of paragraphs 3 and 4 apply accordingly to such notifications.

Article 14 Circumstances and Force majeure on the part of the Offeror

- 14.1 In case of a circumstance as a result of which the Offer cannot deliver the Products or cannot deliver them in time or the Products do not or will not comply with the provisions of the User Agreement, the Offeror will be obliged to notify this circumstance to S2F/S2T and the Customer within seven (7) days after it became aware of this circumstance.
- 14.2 In case of force majeure in accordance with Article 6:75 of the Dutch Civil Code (DCC) on the part of the Offeror, the Offeror will have the right, at its discretion, without judicial intervention and without being obliged to pay any compensation, to dissolve the User Agreement in whole or in part, or to suspend performance of the User Agreement until the situation of force majeure has ended.
- 14.3 In the event the Offeror sells Trees or Unharvested Crops, a situation of force majeure on the part of the Offeror as referred to in the previous paragraph includes in any event growth failure, frost, hail damage, floods, viruses, natural disasters, fires, import and export restrictions, or other circumstances as a result of which performance of the User Agreement cannot be demanded or cannot be demanded in time.

Article 15 Force majeure on the part of S2F/S2T

- 15.1 Force majeure on the part of S2F/S2T is defined as any circumstance beyond S2F/S2T's control, even if this circumstance was already foreseeable at the time of the formation of the Agreement with S2F/S2T, which prevents performance of the Agreement with S2F/S2T in whole or in part permanently or temporarily. This also includes: fires, accidents, government measures, company lockouts, serious interruptions to S2F/S2T's business, such as strikes, excessive absence due to illness, machine breakdowns, interruptions in the supply of energy, as well as the impossibility of mobile and/or data communication on the part of S2F/S2T, as well as the impossibility of performance of the Agreement with S2F/S2T as a result of failures on the part of suppliers of S2F/S2T or on the part of persons or items engaged by S2F/S2T in the performance of the Agreement with S2F/S2T.
- 15.2 In case of force majeure on the part of S2F/S2T and provided S2F/S2T invokes this, the parties will have the right to suspend compliance with their obligations under the Agreement with S2F/S2T. In the event the situation of force majeure lasts longer than three (3) months, each party will have the right to dissolve all or part of the Agreement with S2F/S2T unilaterally by means of a Written notification addressed to the other party, without the parties being obliged to pay any compensation to each other.

Article 16 Liability on the part of S2F/S2T

- 16.1 S2F/S2T is not responsible in any way for information, whether or not incorrect or incomplete, placed on the Website and/or the Auction by Users and Service Providers or the fact that this information was not placed on the Website. This means that S2F/S2T is not obliged in any way to check this information.
- 16.2 S2F/S2T is not responsible in any way for any act or omission on the part of the Payment Service Provider. S2F/S2T can only instruct the Payment Service Provider to transfer the Amount Received, but it cannot ensure that the Payment Service Provider actually proceeds with the transfer. S2F/S2T does not have any influence either on the manner in which the Payment Service Provider administers the Amounts Received. S2F/S2T is therefore not responsible in any way for any loss of the Amount Received.
- 16.3 The User or, as the case may be, the Service Provider acknowledges that S2F/S2T merely organises the Auction and enables Service Providers to offer Services and enables Users to conclude User Agreements, and that S2F/S2T is not obliged in any way to check advertisements, the Products or Services offered or the Users or

Service Providers and S2F/S2T will not do so either. Users and Service Providers cannot derive any right towards S2F/S2T from the fact that an advertisement was placed at the Auction and/or the S2F/S2T website.

- 16.4 The User or, as the case may be, the Service Provider is responsible for the use of and for keeping secret its password for gaining access to the Auction and/or the S2F/S2T website.
- 16.5 The User or, as the case may be, the Service Provider indemnifies S2F/S2T against claims from other Users, Service Providers and third parties that are related in any way to the Agreement with S2F/S2T. In addition, the User or, as the case may be, the Service Provider is obliged to reimburse to S2F/S2T all damage and legal and other expenses actually incurred by S2F/S2T as a result of such a claim.
- 16.6 S2F/S2T is not liable for damage, unless the damage in question was caused by intent or wilful recklessness on the part of the board of S2F/S2T or supervisors who part of its management.
- 16.7 S2F/S2T is never liable for direct trading loss, consequential and/or indirect loss, including but not limited to lost profit and sales, goodwill, environmental damage and intangible loss on the part of the User or the Service Provider.
- 16.8 Without prejudice to the provisions above, S2F/S2T's liability is limited in all cases to the fee received by and intended for S2F/S2T in connection with the specific purchase at the Auction or the specific Service that was provided.
- 16.9 Without prejudice to the provisions above, S2F/S2T's liability is limited in all cases to the amount covered by S2F/S2T's liability insurance and that is actually paid out in the case in question.

Article 17 Intellectual property rights

- 17.1 All intellectual property rights, including copyrights, patent rights, design rights and tradename rights, concerning the Auction, the Website and other facilities are vested in full in S2F/S2T.

Article 18 Term, Suspension and termination of the Agreement with S2F/S2T

- 18.1 The Agreement with S2F/S2T is concluded for an indefinite term.
- 18.2 S2F/S2T, the User and the Service Provider are free to terminate the Agreement with S2F/S2T In Writing with due observance of a notice period of two (2) months. Any termination does not affect any User Agreement(s) and Service Provider Agreement(s) already concluded or the mandatory manner of payment following from these.
- 18.3 Without prejudice to its other rights, S2F/S2T has the right at its discretion to suspend its obligations towards the User or the Service Provider on any basis whatsoever until the User or the Service Provider has complied in full with its obligations towards S2F/S2T or to dissolve all or part of the Agreement with S2F/S2T.
In both cases without requiring judicial intervention and without requiring any notice of default. This right on the part of S2F/S2T arises as soon as and insofar as one of the following circumstances arises:
 - a) The User or the Service Provider fails to comply with one or more of its obligations under these general terms and conditions and/or under the Agreement with S2F/S2T, or fails to do so in time or properly;
 - b) Third parties allege rights with respect to the property of the User or Service Provider or an attachment is levied against its assets;
 - c) Suspension of payment or bankruptcy is or has been applied for by or against the User or the Service Provider, the User or the Service Provider agrees a payment arrangement with one or more of its creditors or otherwise creates the impression that it is or will become insolvent;
 - d) The User or Service Provider dies, is placed under guardianship or in the event he indicates that he wishes to qualify for the debt restructuring scheme;
 - e) The User or Service Provider dissolves or liquidates its business, whether or not on a voluntary basis, the business is continued in a different legal form or its registered office or place of business is moved to a different country and/or direct or indirect control over the User is transferred to a third party.

Article 19 Notification of complaints and other provisions

- 19.1 The User or, as the case may be, the Service Provider is obliged to inform S2F/S2T In Writing of any complaints regarding the performance of the Agreement with S2F/S2T within five (5) working days after the moment at which the complaint arose, while accurately stating the nature and grounds of the complaints, failing which all claims on the part of the User or the Service Provider related to the complaint will lapse.
- 19.2 All claims against S2F/S2T lapse as a result of the passage of one (1) year after the claim in question arose.
- 19.3 A possible complaint as referred to in this article never gives the User or the Service Provider the right to suspend compliance with its obligations under any Agreement with S2F/S2T.
- 19.4 S2F/S2T has the right to transfer its rights and obligations pursuant to the Agreement with S2F/S2T and/or these general terms and conditions to third parties.
- 19.5 The User and/or the Service Provider cannot transfer their rights and obligations to a third party.
- 19.6 User(s) and/or Service Provider(s) cannot set off their claims against S2F/S2T and/or User(s) and/or Service Provider(s).

Article 20 Choice of law and forum and evidence

- 20.1 All obligations between S2F/S2T and the User, between S2F/S2T and the Service Provider, between Users themselves and between Service Providers and Users and all contractual and non-contractual obligations that arise therefrom or that are related thereto are governed by Dutch law, to the exclusion of the provisions of international conventions such as the Vienna Sales Convention.
- 20.2 All disputes in connection with, arising from or relating to an Agreement with S2F/S2T and/or a User Agreement, as well as all contractual and non-contractual obligations arising therefrom or relating thereto, will be submitted for settlement exclusively to the competent court of the Gelderland District Court, Arnhem location, unless a different manner of dispute resolution applies pursuant to these general terms and conditions.
- 20.3 The version of communication stored by S2F/S2T constitutes irrefutable evidence thereof.

* * *