

# *General terms and conditions of sale and delivery*

## Article 1 Definitions

1. The 'Seller' refers to Van Hemert & Co. BV.
2. 'Buyer' refers to: the natural or legal person with whom the seller enters into any agreement regarding the products indicated in part 3.
3. 'Product (s)' refers to: seeds, cultivation material and/or ornamental and horticultural plants as well as horticulture products in the broadest sense.

## Article 2 Applicability

1. These General Terms apply to all offers, sales and deliveries made by the seller and agreements concluded by the seller regarding the products as described in article 1 part 3 of these General Terms.
2. Any terms of the buyer, of any type and by any name are not applicable, unless expressly agreed in writing.
3. Any divergent provisions must be agreed expressly and in writing.
4. A copy of these General Terms will be provided to the buyer by the seller.

## Article 3 Prices, offers and agreements

1. All offers are non-binding unless otherwise agreed in writing. An offer will remain valid for a maximum of 30 days.
2. The agreement is considered to have been concluded by written confirmation of the offer by the buyer, unless the seller objects in writing within five days after the buyer has sent a confirmation.
3. Prices are exclusive of VAT and additional expenses, including: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties and government levies. If no price is agreed on, the seller's price in effect at the time of delivery will apply.
4. The seller is entitled to adjust the price, in accordance with the requirements of reasonableness and fairness, to a level to be determined by the seller, if his expenses have increased significantly since the price was set.
5. Prices are in euros (€) unless otherwise indicated.
6. If the buyer cancels the agreement, he will immediately owe 25% of the gross sale value of the to be delivered products as a cancellation charge.

## Article 4 Conditions of sale

1. Complete or partial failure of the cultivation or harvest of products or partial spoilage during storage or processing for any reason will release the seller from the obligation to deliver and his other obligations, unless attributable to an intentional act or gross negligence on the part of the seller.
2. If the delivery of a variety that has been ordered is not possible for any reason, the seller is entitled to deliver another variety, or to cancel the order. The seller shall, in consultation with the buyer, make an effort to deliver a variety that is equivalent as much as possible. If the buyer does not accept another variety, the buyer has the right to cancel the order of this variety. If delivery of another variety has been agreed, the buyer does not have the right to receive compensation for damages or to terminate the agreement.

## Article 5 Delivery, transport and packaging

1. Delivery is EXW (ex-warehouse) in accordance with the prevailing Incoterms, unless otherwise agreed. On delivery, the risk connected to the products in question, with all that is connected there to, is transferred to the buyer.
2. After consultation with the buyer, the seller will determine the delivery date. Delivery dates indicated are not considered deadlines. If a delivery date is agreed on, the seller will endeavor to maintain that date for delivery in as far as possible. If the seller cannot deliver on the agreed date, the seller will inform the buyer about this in the timeliest manner possible. Parties will determine a new delivery date.
3. Any extra costs due to taking earlier or later delivery of the products will be charged to the buyer.
4. If after a certain storage period that may be considered reasonable in view of the type of product, the buyer has not received the product and the risk of loss of quality and /or spoilage of the products leaves no other option, the order will be deemed to have been cancelled by the buyer. In that case, the buyer is obliged to pay the damage incurred by the seller as a result.
5. All products are packaged in the original packaging of the seller. Single-use packaging can be charged and will not be taken back.
6. The buyer may not use or allow third parties to use the packaging.

## Article 6 Payment

1. The seller is entitled to request an advance of 50% or 100% on the invoice amount from the buyer.
2. Payment must occur within thirty days after the invoice date, unless otherwise agreed.
3. The buyer is not entitled to reduce the purchase price by any counter-claim he may make.
4. The buyer is not entitled to suspend the fulfilment of his payment obligation in the event of a complaint submitted by him to the seller regarding the products delivered.
5. All payments will be made at the offices of the seller or transfer into a bank account to be indicated by the seller.
6. Payment must be made in Euros or the currency indicated on the invoice.
7. If the buyer does not fulfil his payment obligation, mentioned in part 2 of this article, in time, he will be deemed to be in default by operation of law. The seller will then be entitled to charge interest at 1% monthly as from the date that the buyer is in default of fulfilling the payment obligation indicated in part 2, with a partial month being counted as a whole month.
8. If the buyer is in default or otherwise falls short in fulfilling any of his obligations, all reasonable costs to obtain satisfaction, both legal and extra-legal, will be at his expense.
9. The seller reserves the right to not carry out, or no longer carry out, orders or agreements if previous deliveries have not been paid for by the buyer or the buyer has not fulfilled or is at risk of not fulfilling his obligations to the seller. The buyer is required to pay the damage suffered by the seller due to this. The seller is not responsible for any damage to the buyer as a result of not carrying out orders.
10. The buyer located in a different EU Member State than the Netherlands will inform the seller in writing of his correct VAT identification number. Furthermore, the buyer shall provide all necessary information and documents that the seller requires as proof that the products have been delivered in a different EU Member State than the Netherlands.

## Article 7 Force majeure and unforeseen circumstances

1. Force majeure refers to all unforeseen circumstance outside the direct sphere of influence of the seller, as a result of which fulfilment of the agreement can no longer reasonably be expected. This may include strikes, fire, extreme weather conditions or government measures and diseases and plagues on the one hand or faults in the materials supplied to the seller on the other hand.

2. If the seller cannot fulfil its obligations because of force majeure, the seller must inform the buyer of the circumstances in writing as soon as possible. In the event of force majeure, the parties will agree a change to the agreement or complete or partial dissolution of the agreement.

#### Article 8 Guarantees and complaints

1. The seller guarantees that the products that are to be delivered on the basis of the order will comply with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time of concluding the agreement.
2. The seller does not guarantee the trueness to variety of the products that are generally known to branch back.
3. The seller does not guarantee the growth and blossoming of the products delivered.
4. The seller's seed varieties are for home garden use only and are not suited for productions of plants by professional growers, unless expressly agreed in writing.
5. Complaints regarding visible defects, including those regarding the quantity, size or weight of the products delivered, must be indicated to the seller within two days after delivery and the seller must be informed in writing within eight days.
6. Complaints regarding non-visible defects must be indicated to the seller immediately after detection and the seller must be informed in writing within eight days.
7. Complaints must also be indicated to the seller at such a time that the seller can check the product.
8. A complaint must at least include a detailed and accurate description of the defect.
9. Complaints regarding a portion of the products delivered cannot give rise to rejection by the buyer of the entire delivery.
10. The buyer is obliged to check the delivered quantity of the shipment delivered, or have this checked, on receipt and to report a deviation of the quantity to the seller.
11. Expressing a complaint does not suspend the buyer's obligation to pay, regardless of any justification of a complaint.

#### Article 9 Liability

1. The seller accepts no liability whatsoever, unless in one of the cases specified in this article. In such a case, the liability of the seller will be limited to no more than the amount of the invoice. In no event, whatsoever, shall the seller be liable for any form of consequential damage, loss of turnover or loss of profit.
2. The seller is not liable for damages due to force majeure as indicated in article 7.
3. All liability regarding non-timely delivery by the seller is hereby excluded, unless the agreed delivery date referred to in article 5 part 2 is exceeded by more than seven days. If the delivery date is exceeded by more than seven days, the seller must be given written notice of default, whereby the buyer must set a reasonable period for the seller to fulfil his obligations as yet.
4. Compensation in the event of a complaint can only take place if the complaint, submitted in accordance with article 8, proves to be justified and provided that there is a conscious negligence on the part of the seller. Moreover, the compensation shall be limited to the part of the delivered goods to which the complaint pertains.
5. In the event of a partial failure of the cultivation at the buyer as a result of the delivered products, then, if the seller is required to pay compensation for damages by virtue of part 4 of this article, the compensation of damages payable by the seller shall not exceed the percentage of the invoice value that equals the portion of the cultivation that failed at the buyer. If, when the damage is reported, the seller and the buyer jointly determine or a third party determines the percentage of deviating, diseased or weak plants, this percentage will determine the seller's maximum liability.
6. The buyer may not deduct damage compensation from any outstanding amounts payable to the seller and damage compensation does not entitle the buyer not to pay the invoice amount or not to pay this timely.
7. Both parties are obliged to ensure that any damage is limited as much as possible.
8. Each possible claim regarding compensation for damages pursuant to these General Terms expires, if and as soon as one year has passed since the delivery of the products in question when the claim has not been submitted to the seller in writing.
9. Any possible guarantees/warranties on the part of the seller will expire if the buyer of the products processed or has them processed, repackages or has them repackaged or has used the products incorrectly.
10. Product photos on the seller's website are provided for illustrative purposes only. No rights can be derived from the use of these photos. Photos can only be used to illustrate the original seller's varieties. All copyrights remain with the seller.
11. All description or information given, is without any commitment or liability whatsoever.

#### Article 10 Transfer of ownership

1. Except for the terms of part 2 of this article, ownership of the products is transferred to the buyer at the time of delivery under article 5 of these General Terms.
2. All delivered and to be delivered products, and the products arising therefrom, irrespective in which stage of the cultivation process, remain the sole property of the seller, until all claims that the seller has or acquires towards the buyer, including in any case the claims specified in Book 3, Section 92.2 of the Dutch Civil Code have been paid in full.
3. As long as the ownership of the products has not been transferred to the buyer, the buyer may not pledge the products or grant any other right to these products to third parties, except within the context of his normal business operations. The buyer undertakes upon the seller's first request to cooperate in establishing a pledge right on the receivables that the buyer acquires or shall acquire following the delivery of the products to his customers.
4. The buyer is obliged to store the products that have been delivered subject to retention of title with the necessary care and in such a manner that the products can be identified by the seller.
5. The seller is entitled to repossess the products delivered subject to retention of title and that are still located at the buyer if the buyer is in default with regard to the fulfilment of his payment obligations or is experiencing payment difficulties or threatens to experience payment difficulties. The buyer shall grant the seller free access to his premises and/or buildings for the inspection of the products and/or in order to exercise the seller's rights. If there is any doubt in the mind of the seller regarding the ability of the buyer to pay, the seller will be entitled to defer performances until the buyer has provided surety for the payment. If the buyer has not provided surety for the payment within fourteen days after being ordered to do so, the seller is entitled to terminate the agreement by cancellation. In this case, the buyer will be liable for the expenses incurred by the seller.

#### Article 11 Applicable law

1. Dutch law applies to all agreements to which these General Terms apply in whole or in part.
  2. All disputes regarding or arising from the agreements concluded between the seller and the buyer, to which these General Terms apply, can be settled by the Dutch court that is competent in the area in which the seller is established. In addition, the seller is entitled at all times to summon the buyer to appear before the court which is competent by law or by virtue of the applicable international convention.
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