

## **GENERAL TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF FLOWER BULBS**

Koninklijke Handelsbond voor Boomkwekerij- en Bolproducten [The Royal Trade Association for Nursery Stock and Flower Bulbs] (ANTHOS)

### **1. Applicability of these terms and conditions**

- 1.1. These terms and conditions apply exclusively to agreements in which one of the parties is a member of Anthos at the time of concluding the agreement, whereby in the context of these general terms and conditions, the term 'membership' also covers other companies that are directly or indirectly affiliated with a company that is a member of Anthos.
- 1.2. If an agreement refers to these terms and conditions, and only non-members are involved in that agreement, the terms and conditions set out below are not applicable.
- 1.3. These terms and conditions apply to every offer and every agreement between the seller and a buyer.
- 1.4. The applicability of any general terms and conditions of the buyer is expressly rejected.
- 1.5. Any deviations from these terms and conditions are only valid if they have been expressly agreed between the buyer and the seller.
- 1.6. If these general terms and conditions are also drawn up in a language other than Dutch, the Dutch text will prevail in the case of a difference or conflict between the Dutch language and the other language.

### **2. Offers and conclusion of an agreement**

- 2.1. All offers and quotations made by the seller are without obligation.
- 2.2. An agreement is concluded after it has been confirmed by the seller in writing.
- 2.3. Any additional agreements or changes made at a later date, as well as verbal assurances by the seller's employees or made on its behalf by its agents or other representatives, are only legally valid after they have been confirmed in writing by the seller.

### **3. Prices**

- 3.1. All prices for the goods and services are quoted in Euros, excluding VAT and are based on Ex Works, the Netherlands (EXW, Incoterms 2010)
- 3.2. If one or more of the cost-determining factors changes after the order confirmation but before delivery of the goods, the seller reserves the right to adjust the agreed prices accordingly.
- 3.3. The costs relating to packaging and inspection by or on behalf of the Netherlands Food and Consumer Product Safety Authority (NVWA) are at the expense of the buyer. All levies and/or taxes that are or will be due as a result of the agreement concluded by the seller with the buyer, both directly and indirectly, are exclusively and fully at the expense of the buyer.

### **4. Payment**

- 4.1. Unless the parties have agreed otherwise in writing, payment for sold goods must be made within 30 days after the invoice date in the agreed currency.
- 4.2. The date of payment is the date when the seller receives the payment. In the case of a bank transfer, the date of payment will be the value date when the seller's bank account is credited.
- 4.3. The buyer is not entitled to any deduction, suspension or payment discount; the offsetting of claims or costs is expressly not permitted.
- 4.4. If the payment term is exceeded, the seller is entitled to charge the statutory interest from the due date and all judicial and extra-judicial costs of collection will also be at the expense of the buyer.
- 4.5. If an agreement is performed in parts, the seller is entitled to demand payment for the partial deliveries before making the other partial deliveries.
- 4.6. At the time of or after concluding the agreement, and before any (further) performance, the seller is entitled to demand security from the buyer that both the payment and other obligations arising from the concluded agreement are met. Refusal by the buyer to provide the required security entitles the seller to suspend its obligations and ultimately entitles it to,

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wholly or partly, terminate the agreement without formal notice or judicial intervention being required, without prejudice to its right to claim compensation for any damage suffered.

- 4.7. If the agreement has legitimately been partly dissolved or suspended, the remaining part of the agreement remains in full force, which means, among other things, that the buyer must pay the selling price of the delivered goods.

### **5. Delivery**

- 5.1. Unless otherwise agreed in writing, all deliveries take place Ex Works, the Netherlands (EXW, Incoterms 2010).
- 5.2. Although the specified delivery time will be taken into account as much as possible, this delivery time is only an approximation and can never be regarded as a final deadline. The seller will not be in default with regard to the delivery time until after it has received a written notice of default from the buyer, in which the buyer has given the seller the opportunity to deliver within a reasonable period and the seller has failed to do so.
- 5.3. The agreed delivery term starts as soon as the agreement has been concluded.
- 5.4. The seller is not liable for damage as a result of late delivery, if and to the extent that this late delivery is due to circumstances that are not for the risk and expense of the seller, including default on the part of the seller's suppliers.
- 5.5. The buyer's failure to comply (on time) with any payment obligation will suspend the seller's delivery obligation.

### **6. Force majeure**

In the event of force majeure - which includes but is not limited to, crop failure, viruses, natural disasters, industrial actions, fire, import and export restrictions - and other circumstances as a result of which fulfilment of the agreement or fulfilment by the stipulated date cannot reasonably be expected from the seller, the seller will have the right, at its discretion, without judicial intervention and without being obliged to pay any compensation and by mere written notification, to either dissolve the agreement fully or partially or to suspend the performance of this agreement until the situation of force majeure has come to an end.

### **7. Complaints**

- 7.1. The buyer is obliged to check the goods upon delivery for visible and/or immediately observable defects. These are considered to be all defects that can be detected by means of normal sensory observation or a simple random check. Furthermore, the buyer is obliged to check whether the delivered goods also comply with the order in other respects. Failure to comply with this obligation to check will result in the buyer losing any possible claims against the seller.
- 7.2. If the delivered goods differ in quantity, number and weight by less than 10% from what has been agreed, the buyer will nevertheless be obliged to accept the delivered goods.
- 7.3. Complaints regarding the quality and quantity of the delivered goods must be submitted in writing no later than seven calendar days after delivery. Defects that can only be discovered at a later stage (hidden defects) must be notified to the seller in writing immediately after they have been discovered. As soon as these terms are exceeded, the buyer is deemed to have approved the delivered goods and complaints will no longer be processed.
- 7.4. The complaint must contain a description of the defect and the seller must be given the opportunity to investigate the complaint upon first request.

The buyer must allow the seller to have the goods in question inspected by an expert or an independent body. If the expert declares the complaint to be well-founded, the costs of the inspection will be at the expense of the seller. In the event of an unfounded complaint, the costs will be borne by the buyer.

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- 7.5. If the buyer has reported a complaint to the seller in time and the seller has acknowledged the complaint, the seller will, at its discretion, only be obliged to deliver the missing goods, replace the delivered goods or refund a proportional part of the purchase price.
- 7.6. Submitting a complaint does not suspend the buyer's payment obligation, unless the seller expressly agrees in writing to such a suspension.
- 7.7. Returning the goods is carried out at the risk and expense of the buyer and can only take place with the seller's prior written consent.

### **8. Liability**

- 8.1. The seller will never be liable for flowering results of the delivered goods. It is at all times the responsibility of the buyer to assess whether the conditions are suitable for the goods, including but not limited to climatic conditions.
- 8.2. In the event of an attributable shortcoming in the performance of the agreement, the liability of the seller is at all times limited to a maximum amount equal to the net invoice value of the delivered goods or the part of the net invoice value in respect of which the claim for compensation is directly or indirectly related.
- 8.3. Except for legal liability on the grounds of mandatory provisions and except in the case of intent or gross negligence, any liability of the seller for any other form of damage is excluded, including any direct or indirect damage, consequential damage or damage due to lost profits.
- 8.4. The buyer indemnifies the seller against claims by third parties for compensation of damages for which the seller is not liable under these terms and conditions.
- 8.5. If the delivered goods contain latent infections, this is considered to be a non-attributable shortcoming on the part of the seller, unless the buyer proves a) that there is intent or gross negligence on the part of the seller who caused these latent infections or b) that the seller was aware of these latent infections prior to the sale, but nevertheless did not inform the buyer. The amount of seller's liability will never exceed the net invoice value.

### **9. Cancellation**

- 9.1. The seller has the right to cancel an order if, at the time of delivery, the buyer has not yet fulfilled its previous payment obligations towards the seller or towards other creditors. The seller can also exercise this right if the information concerning the buyer's creditworthiness is considered by the seller to be inadequate. The buyer cannot derive any rights from such cancellations and the seller can never be held liable by the buyer.
- 9.2. If the buyer cancels the agreement in whole or in part, as a result of whatever reason, the seller will only have to accept this if the goods have not yet been delivered to the carrier for shipment and on condition that the buyer pays compensation, which is at least equal to 50% of the invoice value of the cancelled goods. In that case, the seller will also be entitled to charge all costs incurred up to that time.
- 9.3. The buyer is obliged to take delivery of the goods at the moment when they are made available to the buyer. If the buyer refuses to do so, the seller is entitled to sell these goods elsewhere and the buyer will be liable for the price difference as well as for all other costs incurred by the seller as a result.

### **10. Reservation of title**

- 10.1. Title to the goods delivered by the seller does not transfer to the buyer until after full payment of all amounts invoiced by the seller plus any interest, penalties and costs as well as settlement of all claims arising from shortcomings on the part of the buyer in meeting its obligations arising from agreements with the seller.
- 10.2. The seller is entitled to immediately take back the sold goods if the buyer is in default in any way or fails to meet its payment obligation. In that case, the buyer is obliged to grant the seller access to its grounds and buildings.

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- 10.3. The buyer must store the goods that are subject to a reservation of title separately from the other goods in order to be able to continue to distinguish the seller's goods.
- 10.4. As long as the delivered goods are subject to a reservation of title, the buyer may not dispose, encumber, pledge or otherwise place them under the control of third parties outside the scope of its normal business operations. However, the buyer is not permitted to alienate the goods as part of its normal business operations, at the time when the buyer has requested a suspension of payments or when the buyer has been declared bankrupt.

### **11. Sanctions**

- 11.1. The buyer guarantees that it complies with and will continue to comply with the obligations and limitations that ensue from all applicable sanction regulations of the United Nations, the United States of America, the European Union, the Netherlands and of any other country that is or may become relevant for the execution of the agreement that has been concluded ("Sanctions Legislation").
- 11.2. In particular, the buyer guarantees that it will not directly or indirectly sell, transfer, supply or otherwise make the purchased goods available to natural or legal persons, entities, groups or public-sector or other organisations that have been sanctioned pursuant to the Sanctions Legislation.
- 11.3. The buyer ensures that all obligations from this article will be imposed equally on every party to which it sells on or supplies goods that it bought from the seller.
- 11.4. If the buyer fails to comply with the obligations that ensue for it from this article, or fails to comply with them in a prompt or proper manner, the seller is entitled to suspend or terminate the agreement immediately without further notice of default, without being obliged to pay any compensation for damage and with the buyer being fully liable for compensation vis-à-vis the seller, at the seller's discretion.

### **12. Anti-Corruption**

- 12.1. The buyer will at all times comply with the obligations and limitations that ensue from all applicable anti-corruption regulations of the United States of America, the United Kingdom, the Netherlands and of any other country that is or may become relevant for the execution of the agreement that has been concluded ("Anti-Corruption Legislation").
- 12.2. Each offer to and each acceptance by employees or members of the client's board of money, gifts, presents, trips, entertainment or other compensation that relates to the agreement or the seller and that is intended as, or can be seen as, an incentive to act in a certain way is strictly prohibited.
- 12.3. The client will make not offer, promise or give anything directly or indirectly to any political party, campaign, government agency, officer or public institutions, state-run enterprises, organisations, international institutions, or their employees, with the purpose of acquiring or retaining goods or any other improper advantage in connection with the agreement or the seller.
- 12.4. In connection with the agreement or the seller, the buyer will not offer, promise or give anything to or accept anything from a business client, unless there is an honest reason to do so and it is reasonable to do so in the context of the daily course of affairs and, moreover, complies with local legislation.
- 12.5. The buyer will inform the seller immediately if, in the execution of the agreement, it takes note of any situation that may be in conflict with the Anti-Corruption Legislation.
- 12.6. If the buyer fails to comply with the obligations that ensue for it from this article, or fails to comply with them in a prompt or proper manner, the seller is entitled to suspend or terminate the agreement immediately without further notice of default, without being obliged to pay any compensation for damage and with the buyer being fully liable for compensation vis-à-vis the seller, at the seller's discretion.

**13. Dissolution and suspension**

- 13.1. In the event that the buyer fails to fulfil, fails to fulfil on time or fails to fulfil properly the obligations that have arisen from the concluded agreement, or if there is a well-founded fear of this, as well as in the event of an application for suspension of payments, bankruptcy or liquidation of the buyer's goods as well as in the event of the buyer's death or if the buyer is a company, its dissolution or termination, or if there is a change in its corporate form or in the management of the company or in the activities to which the company contributes, the seller has the right, without notice of default and without judicial intervention, to suspend the agreement for a reasonable term or to dissolve the agreement without any obligation to pay damages.
- 13.2. The seller's claim in respect of the already performed part of the agreement, as well as the damage resulting from the suspension or dissolution, including loss of profit, will be immediately due and payable.

**14. Intellectual property rights**

- 14.1. The seller reserves all rights that the seller has concerning intellectual property in connection with goods delivered by the seller.
- 14.2. In those cases where it appears from the seller's catalogue or the agreement concluded by the parties that a variety is protected by plant breeder's rights - which is indicated by an (R) after the name of the variety in question - the buyer will be bound by all obligations relating to that right. Violation of this provision means that the buyer will be liable for all damage incurred by the seller and third parties as a result.

**15. Conflicts with legal provisions**

Should any provision of these General Terms and Conditions of Sale and Delivery be non-applicable or in conflict with public order or legislation, then only the relevant provision will be considered as not being written, but the other conditions will remain fully in force.

The seller reserves the right to change the challenged provision into a legally valid one.

**16. Competent court/applicable law**

- 16.1. These terms and conditions and all offers made by the seller and agreements between the buyer and the seller are governed exclusively by the law of the Netherlands. The applicability of the Vienna Convention ('the United Nations Convention on Contracts for the International Sale of Goods' (CISG)) is expressly excluded.
- 16.2. All disputes that may arise between the seller and the buyer, even those considered as such by only one of the parties, will be settled exclusively by the court that has jurisdiction in the area in which the seller has its registered office, without prejudice to the seller's right to submit the dispute to the court that has jurisdiction in the location where the buyer has its registered office.

December 2020