

## **GENERAL SALES AND DELIVERY TERMS OF BOOMKWEKERIJEN J.D. VAN DE BIJL LIENDEN B.V.**

### **1. Scope**

1. These terms and conditions shall apply only to agreements between Boomkwekerijen J.D. van de Bijl Lienden B.V. and its affiliated companies pursuant to Section 2:24b of the Dutch Civil Code (e.g. sister companies, subsidiaries or parent companies).
2. All offers made by the seller and all purchase agreements concluded with him and the implementation thereof shall be governed by these terms and conditions.
3. The applicability of other terms and conditions, including the general terms and conditions used by the buyer, is expressly excluded.
4. A deviation from these terms and conditions can only be invoked if the seller has expressly agreed to this in writing and shall only apply to the agreement in question.
5. In these terms and conditions, "in writing" shall be understood to mean: by letter, fax or e-mail.

### **2. Offers and creation of agreement**

1. All offers and quotations made by the Seller are without obligation.
2. An agreement will not be concluded until the seller has confirmed the order in writing and has also accepted in writing any agreed security for payment, including an irrevocable (confirmed) letter of credit. Each agreement is entered into by the seller under the resolutive condition that the buyer – exclusively at the discretion of the seller's credit insurer – proves to be sufficiently creditworthy for the financial performance of the agreement.
3. Any additional agreements or amendments made at a later date, as well as any verbal promises made by the seller's staff or made on its behalf by its agents or other representatives working for it, shall only bind the seller from the moment that it confirms them in writing.

### **3. Prices**

1. Unless agreed upon otherwise in writing, all prices for the goods shall be determined in the agreed upon currency, exclusive of turnover tax.
2. If, after the order confirmation but before the delivery of the products, one or more of the cost-determining factors changes, the seller reserves the right to adjust the agreed upon prices accordingly.
3. The costs related to transport, packaging, insurance and inspection by the Netherlands Food and Consumer Product Safety Authority [Nederlandse Voedsel en Warenautoriteit, NVWA] and/or the Netherlands Inspection Service for Horticulture [Naktuinbouw] in Roelofarendsveen, the Netherlands, related to the agreement between the seller and the buyer shall be borne by the buyer. All levies and/or taxes that are or will become payable, both directly and indirectly, due to the agreement concluded by the seller with the buyer, shall be exclusively and fully at the buyer's expense and cannot be deducted from the amounts payable to the seller.
4. If the seller and the buyer agree that the price is in a currency other than euros, the exchange rate of the euro on the date of the order confirmation shall apply.

#### **4. Payment**

1. Unless the parties have agreed otherwise in writing, payment for the goods sold by the seller must be made in the agreed currency within 45 days of the invoice date.
2. The value date on which the seller receives payment shall apply as the date of payment. If payment is made by bank transfer, the date of payment shall be the date on which the bank account of the seller is credited.
3. The buyer shall not be entitled to any deduction, suspension or payment discount and any appeal to set-off shall also be expressly excluded unless agreed upon otherwise. If the term of payment is exceeded, the buyer shall be in default by operation of law from the expiry of the term of payment. The seller shall be entitled to charge the statutory interest for commercial transactions as of the due date, while all collection costs, both judicial and extrajudicial, shall be at the expense of the buyer, the latter being set at a minimum of 15% of the amount to be collected, this with a minimum of 250 euros.
4. If an order is carried out in parts, the seller shall be entitled to demand payment for the partial deliveries before carrying out the other partial deliveries.
5. Upon or after entering into the agreement, before performing or continuing to perform, the seller is entitled to demand security from the buyer that both payment and other obligations arising from this agreement will be fulfilled. Refusal by the purchaser to provide the required security shall entitle the seller to suspend his obligations and shall ultimately entitle him to dissolve the contract in whole or in part without notice of default or judicial intervention, without prejudice to his right to compensation for any loss suffered by him.
6. The seller shall be entitled, notwithstanding any other allocation of payment by the buyer, to set off payments against older debts first. If costs and interest have already been incurred, the payment shall first be used to offset the costs, then the interest and only then the principal sum.

#### **5. Delivery**

1. Unless agreed upon otherwise in writing, delivery of the goods within the Netherlands and the European Union shall take place in accordance with: EXW (ex works), Provincialeweg 1A, 4033 BP Lienden, the Netherlands, ICC Incoterms 2020 or by means of free of charge delivery.
2. Outside the European Union, delivery of the goods takes place in accordance with: FCA-A (Free Carrier), ICC Incoterms 2020 at the location agreed upon between the parties, unless agreed upon otherwise in writing.
3. Free of charge delivery, pursuant to Article 5.1, means that the seller handles the loading, transport and unloading of the goods at the location agreed upon with the buyer. Ownership of the goods passes from the seller to the buyer when they are unloaded at the agreed upon location.
4. Although the stated delivery time will be observed as much as possible, this delivery time is only approximate and can never be regarded as a deadline. The seller shall not be in default with regard to the delivery time until it has been given notice of default in writing by the buyer, the buyer has given it the opportunity as yet to deliver within a reasonable period and the seller has failed to do so.
5. The agreed upon delivery period shall commence as soon as an agreement has been concluded in accordance with Article 2.2.
6. The seller shall not be liable for damage as a result of late delivery, if and insofar as this late delivery is attributable to circumstances which are not at the seller's expense and risk, including late or non-fulfilment by suppliers.
7. The purchaser's failure to meet any payment obligation (on time) shall suspend the seller's obligation to deliver.
8. If a request is made to postpone the autumn delivery until after 15 December, the price will be increased by 3%.

9. If a request is made to postpone the spring delivery until the autumn, all costs incurred to make this possible shall be borne by the buyer. In addition, the buyer will already be charged at least 50% of the invoice amount at that time.
10. The seller reserves the right to deliver the goods in parts, in which case the (payment) conditions described in Article 4 shall also apply to each partial delivery.

## **6. Force Majeure**

1. In the event of force majeure, which includes cultivation failure, viruses, natural disasters, strikes, fire, import and export restrictions, terrorist attacks, civil war, riots, war, threat of or preparations for war, armed conflict, the imposition of sanctions, the imposition of a (trade) embargo or in the event of other circumstances as a result of which fulfilment of the agreement by the seller cannot be demanded or cannot be demanded on time, the seller has the right, at his discretion, without judicial intervention and without being obliged to pay any compensation, by means of a single written notification, either to dissolve the agreement in full or in part, or to suspend the implementation of this agreement until the situation of force majeure has ended, or to terminate the agreement with immediate effect.
2. If the agreement has already been partially fulfilled by the seller, the purchaser shall pay the selling price of the goods delivered.

## **7. Complaints**

1. The purchaser is required to inspect the goods on delivery for visible and/or immediately noticeable defects. All defects that can be detected by normal sensory perception or a simple random check shall be considered defects. Moreover, the purchaser is required to check whether the goods supplied are also in accordance with the order in other respects. By not complying with the duty of inspection, the buyer loses all possible claims against the seller.
2. If the number, quantity and weight of the goods delivered deviate less than 10% from what was agreed, the buyer shall nevertheless be required to accept the goods delivered.
3. Complaints concerning the quality and quantity of the delivered goods must be submitted in writing and at the latest within eight calendar days after delivery. Defects that can only be discovered at a later stage (non-visible defects) must be reported to the seller immediately after discovery and in any case before the end of the first growing season after delivery. As soon as these deadlines have been exceeded, the purchaser shall be deemed to have approved the delivery and complaints shall no longer be taken into consideration.
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.
5. The buyer must permit the seller to carry out an inspection of the goods concerned by an expert or an independent inspection body. If the expert declares the complaint well-founded, the costs of the inspection shall be borne by the seller. In the event that the complaint is found to be unfounded, the costs shall be borne by the buyer.
6. If the buyer has reported a complaint to the seller in time and the seller has acknowledged the complaint, the seller shall only be required, at his own discretion, to deliver the missing goods, replace the delivered goods or refund a proportional part of the purchase price.
7. The submission of a complaint shall not suspend the buyer's obligation to pay, unless the seller expressly agrees to such a suspension.
8. The return of the goods shall take place at the expense and risk of the buyer and can only take place after prior written consent of the seller.

## **8. Liability**

1. The seller shall never be liable for the regrowth or flowering of the delivered goods. It is the buyer's responsibility at all times to assess whether the conditions, including climatic conditions, are suitable for the goods.
2. The seller guarantees the authenticity of the type of goods he delivers.

3. The names will be described according to the Nomenclature of Woody Plants and the Nomenclature of Perennials published by Naktuinbouw or, in an international context, by the European Nursery Stock Association [European Nurserystock Association, ENA].
4. With the exception of the legal liability pursuant to mandatory statutory provisions and except in the case of intent or gross negligence, the seller shall never be liable for any damage suffered by the buyer. Moreover, liability for indirect damage, consequential damage, immaterial damage, trading loss, environmental damage, damage due to loss of profit or damage due to liability towards third parties is expressly excluded.
5. If and insofar as, despite the provisions in Article 8.4, the seller has any liability whatsoever, this liability shall be limited to the amount equal to the net invoice value of the goods concerned.
6. The buyer shall indemnify the seller against third-party claims for compensation of damages for which the seller is not liable pursuant to these terms and conditions.
7. The buyer shall indemnify the seller against any third-party claims for damages occurring in connection with products delivered to these third parties by the buyer, unless it is established by law that these claims are a direct consequence of gross negligence or intent on the part of the seller and the buyer also demonstrates that it is not at fault in this regard.

## **9. Cancellation**

1. The seller shall be entitled to cancel an order if, at the time of delivery, the buyer has not fulfilled his earlier payment obligations towards the seller or towards other creditors in a prompt manner. The seller can also exercise this right if the seller deems the information regarding the buyer's creditworthiness to be insufficient. The buyer cannot derive any rights from such cancellations and the seller can never be held liable by him.
2. Cancellation of an order by the buyer is in principle not possible. If the buyer nevertheless cancels an order wholly or partially, for whatever reason, the seller will only have to accept this if the goods have not yet been delivered in accordance with Article 5.1 and on the condition that the buyer pays a cancellation fee that is at least equal to 30% of the invoice value of the cancelled goods plus VAT. In that case, the seller will also be entitled to charge all costs incurred and to be incurred up to that time (including costs of preparation, care, storage and so on) and damages, without prejudice to the seller's right to compensation for loss of profit and other damages, without further notice of default.

## **10. Retention of title**

1. Ownership of the goods delivered by the seller shall not pass to the buyer until all amounts invoiced by the seller, along with any interest, penalties and costs, as well as all claims for non-compliance with the buyer's obligations under this agreement or other agreements, have been paid in full. The issuing of a cheque or other commercial paper does not constitute payment in this context.
2. If the buyer is in any way in default of fulfilling his (payment) obligations, the seller shall be entitled to immediately take back the sold goods. In that case, the buyer shall be required to grant the seller access to its premises.
3. The buyer shall store the goods subject to retention of title separately from the seller's other goods to make it possible to continue to distinguish the goods.
4. As long as the delivered goods are subject to retention of title, the purchaser shall ensure that they are not disposed of, encumbered, pledged, sold, mixed, delivered or otherwise brought under the control of third parties or destroyed by accession, mixing or creation.

## **11. Dissolution, suspension and breach of contract**

1. In the event that the buyer does not, not timely or not adequately fulfil his obligations arising from the concluded agreement, or if there is a well-founded fear of this occurring, as well as in the event of an application for suspension of payments, bankruptcy or liquidation of the buyer's business, as well as in the event of his death and/or dissolution or termination, if the buyer is a company, or if there is a change in the form of undertaking or in the management of the company or in the contribution of the company's activities to the business, the seller is entitled, without notice of default or legal intervention being required, to suspend the agreement for a reasonable period or to dissolve it without any obligation to pay compensation or to terminate the agreement with immediate effect.
2. The seller's claim in respect of the part of the agreement already implemented, as well as the damage arising from the suspension or dissolution, including lost profit, shall be immediately due and payable.
3. In the event of non-compliance with its obligations under the agreement, including the failure to take delivery of the ordered goods or to do so on time or in full, the buyer shall be in default without further notice of default being required, and the seller shall be entitled, without judicial intervention being required, to recover from the buyer all its losses and costs, including but not limited to the costs of storage, transport, sale of the goods,

reduced value of the goods and loss of profit. In such a situation, the seller also has the right to suspend or dissolve the agreement without legal intervention.

4. If the buyer does not accept the goods, or does not accept them on time or in full, the seller has the right to sell these goods to a third party. In that case, the seller shall be liable for all costs and shall not be indemnified in any way.
5. If a financial institution, pursuant to the provisions of the Money Laundering and Terrorist Financing (Prevention) Act [Wet ter voorkoming van witwassen en financieren van terrorisme, Wwft], or any related or replacing legislation and/or regulations, seizes the seller's bank account or other assets, or conducts any investigation into the origin of the monies paid or to be paid by the buyer, this shall be regarded as a breach of contract on the part of the buyer, and Article 11.3 shall apply accordingly.
6. If a situation as described in Article 11.5 has arisen in the past in the relationship between the seller and the buyer, the seller shall have the right to require the buyer to pay 100% of the agreed upon purchase price including taxes, costs and other financial liabilities in advance. In that case, the goods shall be delivered after it has been confirmed that the bank account or other assets of the seller are not or are no longer attached, or after any investigation which the financial institution is conducting or has conducted into the origin of the funds has been completed and it has been confirmed that the assets are lawfully in the seller's possession.

## **12. Intellectual property rights**

1. The seller reserves all rights which the seller has in the field of intellectual property in connection with goods supplied by the seller.
2. In those cases in which the catalogue used by the seller or the agreement concluded between the parties shows that a variety is protected by plant breeders' rights – as indicated with the notification (R)/PBR after the name of the variety concerned – the buyer shall be bound by all obligations related to that right. Violation of this provision shall result in the buyer being liable for all damages incurred by the seller and third parties as a result.

## **13. Conflict with legal provisions**

1. If any provision of these General Terms of Sale and Delivery be inapplicable or in conflict with public order or the law, only the relevant provision shall be deemed not to have been written, but the terms and conditions shall otherwise remain in full force.
2. The seller reserves the right to change the contested passage(s) into legally valid ones.

## **14. Competent court / applicable law**

1. All disputes, even if only designated as such by one of the parties, will be subject to the judgement of the competent court in the district in which the seller has its registered office, without prejudice to the seller's authority to submit the dispute to another competent court if required.
2. The provisions of Article 14.1 shall not affect the seller's rights to obtain a decision by means of arbitration by the International Chamber of Commerce in accordance with the Rules of Arbitration of the International Chamber of Commerce, by a single arbitrator. The place of arbitration will be Amsterdam, the Netherlands. The arbitration proceedings will be conducted in English.
3. All offers and quotations submitted by the seller as well as all agreements concluded between the buyer and the seller shall be exclusively governed by Dutch law.