

**GENERAL TERMS AND CONDITIONS OF SALE
B.V. Boomkwekerij Udenhout**

General conditions

Art. 1. Definitions

1. Seller:
B.V. Boomkwekerij Udenhout
2. Buyer:
Any natural person or legal entity that purchases goods from the seller.
3. Supplier
Any natural person or legal entity that delivers goods to the seller.
4. Opposing parties:
Buyer and supplier.

Art. 2. Applicability

1. These general terms and conditions are applicable to all offers, quotations and / or all agreements made by the seller or entered into with opposing parties. Abnormalities concerning these general terms and conditions are only binding if and insofar these abnormalities have been explicitly agreed upon in writing by the seller and opposing parties.
2. These conditions also apply to agreements for which opposing parties need to involve third parties to implement such agreements.
3. General and / or special conditions of the buyer and / or supplier do not tie the seller, unless the seller has agreed to the applicability of such terms and conditions in writing with so many words.
4. If one or more articles in these term and conditions on any given time should be completely or partially declared null and void, or be annulled, then the remaining part of these terms and conditions continue to remain fully applicable.
5. If the seller does not continuously demand a strict compliance of these terms and conditions, this does not mean that the articles thereof are not applicable, or that the seller in any kind whatsoever loses the right to demand a strict compliance of the articles in these terms and conditions in other cases.

Entering into an agreement

Art. 3. Quotations and offers

1. All quotations and / or offers made by the seller are free of engagement, unless stated otherwise in the quotations and/ or offers. All quotations and offers are subject to interim sales and growth. Quotations and / or offers are confirmed in writing.

Art. 4. Agreement

1. The agreement of purchase and sales and additions and / or modifications referring to the agreement, only become binding following a confirmation in writing by the seller. The content of the confirmation is qualifying for the content of the agreement.
2. If the compliance (whether or not regarding subservient points) deviates from the in the quotation and / or offer stated supply, the seller is not tied thereto. Subsequently, the agreement is not established according to this deviating compliance, unless the seller states otherwise.
3. A combined price offer does not force the seller to carry out a part of the order to a corresponding part of the offered price. Offers and / or quotations do not automatically apply to future orders.
4. Any additional agreements and / or modifications, as well as verbal obligations made by personnel of the seller or made on his behalf by his agents or other representatives working for him, only tie the seller after these have been confirmed by him in writing.

Art. 5. Prices

1. All prices are stated in the agreed upon currency and do not include VAT and other governmental levies and are ex the seller's company premises (Ex Works) in Udenhout Nederland (EXW, incoterms 2010), unless otherwise agreed upon in writing.
2. Unless explicitly otherwise agreed, the costs for packaging and shipping, as well as all other costs including travel and subsistence expenses and administration costs, inflicted or levied by third parties for the products of the seller and transport, are for the account of the buyer.
3. In the event the seller and buyer agree upon the sales price being in a different currency than EURO, then the exchange course of the EURO on the same date as the order confirmation is applicable, unless otherwise agreed upon in writing.

Art. 6. Payment

1. Unless explicitly agreed otherwise, the amount on the invoice must be paid within 30 days after invoice date, without any deductions of discounts or other settlements.
2. All payments must be made without any further costs to a bank or giro account indicated by the seller.
3. Discountable bills will only be accepted by the seller, if explicitly agreed upon in writing. Costs and dues concerning the discounting are for the account of the buyer.
4. Payment will only be considered received when the seller can access the amount unhindered. The acceptance of bills and cheques is only valid as a method of payment and they will not be considered as actual payment.
5. Liberating payment may not be made to persons employed by seller who do not have an explicit mandate.
6. If at any given time the seller may have reason to doubt the creditworthiness of the buyer, the seller has the right before complying (further), to demand an advance on the purchase amount from the buyer, or that the buyer provides a valid security for the full amount that the seller still has to claim from the buyer.
7. The seller retains the right, in spite of other allocation for payment by the buyer, to first pay off the buyer's older debts. If costs and interests have already accumulated then the seller is entitled to first pay the costs, then the interest and only then settle the main claim.

Art. 7. Late or outstanding payments

1. Payment cannot be suspended on the grounds of claims of inferior shipment or on the grounds that the shipment is not yet complete or based on any other professed claim by the buyer. Neither is the buyer entitled to settlement or return for reimbursement of the purchase price nor discount of the purchase price unless the seller has given explicit written permission.
2. If the buyer remains in default of the required advance payment in accordance with the previous article under paragraph 6 and also fails to supply the required security, then the seller is entitled to dissolve the agreement, either in its entirety or partially.
3. From the moment that there is a question of non-compliance with the obligation to pay by the buyer, the buyer becomes liable to pay interest on the amount including VAT owing at a rate of 1% per month.
4. All costs, both judicial and extra judicial, with a minimum of € 250.00, related to late or outstanding payment of whatever the buyer owes, are for the account of the buyer. Extra judicial costs cover all costs for summonses and serving notice as well as the advances and fee of whoever has been assigned by the seller to collect the monies owing. If the bankruptcy of the buyer must be filed for, then he is not only liable for the principle sum and the extra judicial costs and contractual interest, but also the costs for the bankruptcy petition.

Art. 8. Delivery

1. Free deliveries are offered based on full loads. If the buyer only requests a partial delivery of part of his order, necessitating a partial load, then the seller is entitled to charge the buyer the extra costs this creates. Free deliveries that are not a full load are delivered when combination possibilities allow it.
2. For deliveries arranged by the seller, the buyer bears full responsibility for competent unloading unless explicitly agreed otherwise.
3. For these deliveries the maximum time for unloading a full load at one unloading address, unless explicitly agreed otherwise, is two hours. The unloading time for partial loads is maximum one hour per loading address. If the unloading time is exceeded or extra unloading addresses are added, then the seller is entitled to charge the extra unloading/waiting hours based on cost price. For unloading directly into the planting hole, the seller is entitled to charge the extra costs.
4. Packing material is charged to the buyer in accordance with the prices as published by the Foundation for Ancillary Materials (*Stichting Hulpmaterialen*). The customer may return the packing material during the same season, upon which the Foundation for Ancillary Materials (*Stichting Hulpmaterialen*) will reimburse a standard compensation.
5. Co-supplied ancillary materials like straps, chains, holsters etc. are charged by the seller and only credited if the buyer, at his own expense and in good condition, returns them within one month.
6. Transporting the goods, also when transported free of charge, is at the buyer's risk.
7. If the delivery period is brought forward or delayed by the buyer, then the buyer is responsible for any damage to the plants caused by premature or postponed delivery.

Art. 9. Delivery time

1. The delivery dates submitted by the buyer are without obligation, unless agreed otherwise, explicitly and in writing. The delivery times are subject to many circumstances beyond the control of the seller, therefore the seller is not responsible for any delays with the arrival of the goods.
2. Delivery "upon request" entitles the seller, if an earlier request for delivery has not been complied with, to deliver autumn deliveries at any time after 15 November of the same year, and in the spring to deliver at any time after 1 April of the same year.

Art. 10. Cancelling an order

1. If an order issued by the buyer is fully or partially cancelled, then the buyer must reimburse the seller for any damages caused hereby. The damage is calculated as 50% of the net amount invoiced for the cancelled order. The right to prove higher damages is reserved.
2. When delivery is refused, then the buyer is liable for all resulting costs and damages, unless refusal of delivery is the result of an erroneous delivery or transport damage, hindering or making impossible the use of the entire delivery or a great part thereof. Calculating damages is done on the basis of the contents of paragraph 1.
3. If delivery is refused without satisfying the abovementioned conditions, then the seller is free to sell the plants for the account of the defaulting buyer without prior notification and at a price that he thinks acceptable.

Liabilities

Art. 11. Force majeure

1. For exceeding the delivery time because of force majeure and other unforeseen circumstances that the seller cannot be held responsible for, making it exceedingly difficult or impossible for the seller to deliver – this includes growth damage or decay caused by unforeseen and/or weather damage, official prohibition on delivery and/or other orders, interruption of operations, strikes etc.- also if the circumstances occur at the suppliers of the seller – the seller can not be held liable in spite of binding delivery agreements. Such events give the seller the right to suspend the delivery for the duration of the obstruction plus an appropriate start-up time, or to dissolve, either partially or fully the not yet fulfilled part of the agreement.
2. Insofar as the obstruction lasts longer than four weeks and the seller cannot be held responsible for the obstruction, the buyer may only dissolve the agreement, after he has proposed a reasonable subsequent delivery period in writing to the seller, to which the seller has failed to comply.

Art. 12. Damage

1. Any liability on the part of the seller and his personnel for all damage, whatever sort of damage, directly or indirectly, including loss of profits, damage to movable property or real estate or to persons and prosecution damage is explicitly ruled out, except in the case of intent or negligence bordering on intent of the seller.
2. The seller accepts no responsibility for any damage resulting from the use of products from his suppliers; the same applies to transport. In any event the liability of the seller will be limited to at the most the amount stated on the invoice with regards to the individual sales agreement concerned with a maximum of € 40,000.00.

Art. 13. The buyer's obligation to provide information

1. The buyer is obliged to inform his customers, where necessary, about the correct treatment of the products supplied and in the applicable cases to advise them in particular of the dangers related to the products, like the degree of toxicity of the plants, intolerance upon ingestion of plants and/or parts of plants.
2. The buyer indemnifies the seller from every form of responsibility to third parties, in the case of damage being caused as a result of the buyer not fulfilling the abovementioned obligations.
3. The seller's guarantee is limited to the supply of products in accordance with the description in the order confirmation.
4. The seller retains the right to supply comparable and/or equivalent species, or thicker or thinner or larger or smaller species, and to charge accordingly for those species that cannot be supplied. Such a delivery is not considered in default. Unless explicitly agreed otherwise, if certain plants cannot be supplied then the seller may resort to supplying B-quality plants.

Art. 14. Right of complaint

1. Upon receipt, supplied products must immediately be checked for transport damage, incorrect delivery and/or incorrect quantities. These sorts of complaints must be noted on the delivery note; later complaints for these sorts of damages will not be accepted.

2. Other complaints must be submitted promptly and in writing, with a detailed description of the reason of complaint, to the seller, and under the condition that if it concerns visible flaws, that it be within eight days following receipt or acquisition of the product.
3. Complaints that are too late and/or not correctly submitted will not be dealt with. The date of the postmark or fax is qualifying.
4. If the right of complaint is exercised timely and the complaint is justified, then the seller will, at his own choice, either supply substitute products without charge or send a credit note for the amount of the invoice. If the complaint refers to the genuineness of the species of plants delivered, then the guarantee of the seller is limited to no more than the amount of the invoice.
5. The seller is not liable for the plants delivered by him not successfully taking root or growing. Unless explicitly agreed otherwise and in that case under the conditions of the growth guarantee supplied by the seller. The seller must be allowed a suitable period to be able to supply a replacement delivery.
6. The right of complaint expires at the very latest one month after a written statement by the seller declaring the complaint inadmissible, unless the buyer has submitted an objection in writing to this rejection. The seller is obliged in such a case to inform the buyer explicitly of the consequences of not responding.
7. Having submitted a complaint does not free the buyer of his obligation to pay. Only if the seller agrees in writing, may the buyer reduce the amount of the invoice with the amount of the contested products.
8. The right of complaint may only be exercised by the direct contracting party. The right of complaint is not transferable.
9. All rights of complaint lapse if the buyer does not treat the plants that he has rejected with the necessary care during the period that they are in his possession.

Art. 15. Condition of ownership

1. The ownership of the seller's goods only transfer to the buyer if the goods in question have been fully paid. The delivered goods may be reclaimed by the seller at any time until full payment has been received, and the buyer in that case is obliged to return these goods immediately upon receiving an initial request to do so.
2. The sold goods remain the property for the security of the seller as long as the seller has claims from previous or later similar agreements.
3. The buyer is not allowed to transfer in ownership the goods supplied either in title or actually to third parties, or to burden them with limited rights without the permission of the seller.

Art. 16. Disputes

All disputes, including those that are only considered as a dispute by one of the parties involved, with regards to an agreement to which these trading terms and conditions apply, agreements resulting from such an agreement or these trading terms and conditions themselves, will be settled by arbitration by the Netherlands Arbitration Board for Arboriculture (*Nederlands Scheidsgerecht voor de Boomkwekerij*)

Art. 17. Applicable law

1. All (legal) relationships between the seller and buyer are subject to Dutch law unless explicitly agreed otherwise.
2. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.