



**GENERAL TERMS AND CONDITIONS OF PURCHASE** for the purchase of movable property.

drawn up by the **Vereniging van Groothandelaren in Bloemkwekerijprodukten** (the Dutch Association of Wholesalers in Floricultural Products, to be referred to below as the 'VGB'), filed with the Chamber of Commerce and Industry in Amsterdam, the Netherlands, under number 40596609

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## **I GENERAL**

1. In these General Terms and Conditions of Purchase, **The Buyer** is taken to mean the party that applies these General Terms and Conditions of Purchase and **the Supplier** is taken to mean the Buyer's other contractual party.
2. These General Terms and Conditions of Purchase (to be referred to below as the 'Terms and Conditions') govern all applications, quotations and offers, orders and agreements with respect to the supply of goods between the Buyer and the Supplier.
3. Any derogation from these Terms and Conditions will bind the Buyer only if it has been explicitly agreed in writing.
4. Any General Terms and Conditions used by the Supplier do not apply. Even if the Supplier uses general terms and conditions, the Buyer's Terms and Conditions always will prevail.
5. The General Terms and Conditions as drawn up by the VGB will be amended from time to time. That most recent version of these Terms and Conditions always will be the version to be applied. In the event that one or more of the terms and conditions are nullified, the provision in question will be replaced by a provision that is as close as possible, in terms of content and consequences, to the provision that has been nullified.

## **II QUOTATIONS / AGREEMENT**

6. An agreement that follows from a quotation/offer from the Supplier will be deemed to have been concluded at the time at which the Buyer sends the written acceptance of the quotation. In the event that the Buyer places an order without the Supplier making an offer in advance, the agreement will be deemed to have been concluded in the event that the Supplier confirms the order without making any changes or, if no written response is sent, in the event that the Supplier starts carrying out the order.
7. Every quotation that the Supplier makes is irrevocable and non-negotiable. The Buyer will be entitled to accept it up to 60 days after the Buyer has received the quotation, unless the quotation in question stipulates a different term.

## **III PRICE and PAYMENT**

8. The agreed price is fixed, unless the agreement stipulates the circumstances that can lead to a price adjustment and the manner in which the adjustment will be calculated. The price will be based on the delivery condition DDP (Delivered Duty Paid, 2020 Incoterms), at the delivery location indicated by the Buyer.

9. Unless the parties explicitly agree otherwise the price will be denominated in euros and will be exclusive of VAT.
10. The Buyer applies a payment term of 30 days after it receives the invoice, provided that the goods, in addition to the installation and assembly of them, if applicable, have been approved. The Buyer will be entitled to set off a purchase price against any claim that the Buyer has against the Supplier, on any ground whatsoever and regardless of whether or not it is due and payable.

#### **IV TERM OF DELIVERY**

11. Delivery on the agreed date or within the agreed term of delivery is essential for the Buyer and is to be deemed a fixed term or subject to a final deadline. In the event that the Supplier has failed to deliver at the agreed time or within the agreed term it will be in default without any further notice of default being required.
12. Delivery may be made before the agreed delivery date or term only if the Buyer has given prior permission to do so in writing and such a delivery will not lead to any change in the time at which payment must be made.
13. The Supplier must notify the Buyer in writing immediately in the event that the Supplier expects that it will not be able to deliver at the agreed time; in that context the Supplier must state the reasons for the delay.
14. In principle the Buyer will not accept any goods that are delivered late; the agreement in question will be deemed to have been dissolved as a result of the term of delivery being exceeded. However, in all such cases the Buyer will be entitled to choose to demand that the agreement nonetheless be complied with in whole or in part.
15. Goods that are delivered at the Buyer's place of business late, in spite of the fact that the Buyer has not explicitly accepted them, will remain at the Supplier's risk and expense until the Buyer has explicitly accepted the delivery, if it chooses to do so. The Buyer may or may not place the good in cold stores, at its own discretion; the Supplier will continue to fully bear any related risk. In the event that the Supplier fails to pick up the goods that have been delivered late (or fails to have them picked up) immediately upon request, the Buyer will be entitled to return the goods (or have them returned) at the Supplier's risk and expense, or to sell the goods in order to recover all or part of its damage from the proceeds of the sale. Immediately upon request by the Buyer the Supplier will compensate any other damage that the Buyer has sustained.
16. The Buyer will be entitled to request that the delivery be postponed or that delivery be made in consignments. In the event that the delivery of the goods is postponed at the Buyer's request, the Supplier will store them in a manner that properly separates them and ensures that they are recognisably intended for the Buyer, in which contexts the ownership of the goods will be transferred to the Buyer. The Supplier will store the goods at its own risk and expense, with the exception of the risk of normal decrease in the quality of the goods, unless the decrease in quality has been caused by the fact that the Supplier has failed to store the goods with due care and diligence.

#### **V PACKAGING, GUARANTEE and INSPECTION**

17. Unless the parties have agreed otherwise in writing, the Supplier will be obliged to sort, load and package the goods that it is to supply in accordance with the

product specifications as drawn up by the VBN (the Vereniging van Groothandelaren in Bloemkwekerijprodukten: the Dutch Association of Wholesalers in Floricultural Products), which can be found in both Dutch and English on the VBN's website ([www.vbn.nl](http://www.vbn.nl)).

18. The Supplier guarantees that the goods that are delivered will have the characteristics that normally can be expected of similar goods of good quality; in that context, among other things, they must be in compliance with the applicable requirements stipulated by the government (such as phytosanitary and environmental requirements) and they must be accompanied by the proper, required documentations (such as, if applicable, a CITES certificate, a phyto certificate and/or a plant passport). As proof that this obligation has been complied with the Supplier must retain copies of the required documentation for the duration of the statutory term and must show them to the Buyer immediately upon request.
19. The Supplier guarantees that the goods that have been delivered cannot have any harmful effects for people and animals and that they cannot cause any harmful effects to materials, other than those that the Supplier has indicated explicitly in the product specification or otherwise. Insofar as the Supplier has failed to supply any information or the information that it has supplied is incomplete or incorrect, or in the event that the Buyer is of the opinion that the information that has been supplied is poorly accessible for third parties, the Supplier indemnifies the Buyer against any and all claims brought by third parties, including end users, in respect of such consequences.
20. The Supplier guarantees that the goods that are delivered will be free of any exceptional charge or restriction that the Buyer has not accepted explicitly and in writing. The Supplier indemnifies that Buyer against any claim in that respect.
21. At the Buyer's request the Supplier will be obliged to enable the Buyer to inspect the goods to be delivered (or to have them inspected) prior to the delivery. In the event that that is the case:
  - a. the Supplier will keep the goods ready to be inspected at such a time that the agreed terms of delivery can be complied with;
  - b. if it is requested to do so, the Supplier will cooperate with the inspection, without any costs for the Buyer, and will make a suitable space and reasonable staff and materials available to the Buyer; and
  - c. if the Supplier so wishes, the inspection will be conducted in its presence or in the presence of an expert whom it designates. The related costs will be paid by the Supplier.
22. In the event that the Buyer rejects the goods to be delivered, the Supplier will be obliged, without prejudice to all the Buyer's other rights or claims, to offer the missing or the repaired or replacement goods as quickly as possible for a new inspection, at its own risk and expense. A rejection of goods by the Buyer in connection with an earlier inspection will not lead to any extension of the agreed term of delivery.

## **VI APPROVAL/ACCEPTANCE**

23. The delivery will not be deemed to have been accepted by the Buyer until the Buyer has explicitly approved the goods.
24. Approval of the delivered goods by or on behalf of the buyer does not constitute the Buyer's recognition that the product is in compliance with the guarantees stipulated in Article V.

25. The Buyer will be entitled to reject and/or refuse the goods within a reasonable term after it has discovered a defect. Any payment of the invoice that it has made prior to that time with respect to those goods, or onward supply of those goods to third parties, will not affect that right.
26. The Buyer will always cooperate with a request by the Supplier to investigate the complaint (or to have it investigated), provided that such investigation takes place within a reasonable term and subject to reasonable conditions.
27. Goods that have been rejected and/or refused by the Buyer will be kept at the Supplier's risk and expense. In the event that the Supplier fails to pick up goods that have been rejected or refused from the Buyer (or to have such goods picked up) immediately upon request, the Buyer will be entitled to return the goods (or to have them returned) at the Supplier's risk and expense or to sell the goods in order to recover its damage from the proceeds from the sale. In the event that the proceeds from the sale of the goods are not sufficient to cover the Buyer's damage, the Supplier will be obliged to reimburse the Buyer for the remainder of the damage immediately upon request, including the costs that the Buyer was forced to incur in order to obtain a replacement delivery.
28. Without prejudice to its power to dissolve the agreement in whole or in part by means of an extrajudicial notification in the event that goods have been rejected and/or refused, the Buyer will be entitled – in the event that non-perishable goods have been delivered – to grant the Supplier a reasonable term in which to remedy the defect in the goods; in the event that the Supplier fails to do so, the Buyer will be entitled to have a third party remedy the defect at its own discretion, but at the Supplier's risk and expense.
29. The provisions stipulated in the foregoing subsections will not affect the other rights and claims that the Buyer can derive from a breach on the part of the Supplier.

## **VII INTELLECTUAL PROPERTY and PAYMENT OF ROYALTIES**

30. With respect to goods in which intellectual property rights are vested that are subject to an obligation to pay royalties, the Supplier guarantees the Buyer that it has paid the related royalties or that the party from which it has purchased the goods has done so.
31. The Supplier will warn the Buyer in writing in the event that no royalties were due yet on the goods, but that the royalties will be owed when the goods are imported into the Netherlands.
32. The Supplier indemnifies the Buyer and its customers with respect to the goods that the Supplier has delivered in respect of each and every claim related to the intellectual property rights of third parties, including plant breeders' rights, copyrights and rights with respect to patents, trademarks and trade names.
33. The information that is made available to the Buyer in connection with an offer or the delivery of goods, such as drawings, designs, calculations and equivalent information, will remain freely available to the Buyer for internal use, even if the offer in question is not followed by an agreement.

## **VIII FORCE MAJEURE**

34. In addition to the statutory rules regarding force majeure, force majeure also includes the situation in which:

- a. the Buyer is confronted with measures or conditions set by third parties (such as, but not limited to, governments, national or international organisations or the Buyer's (main) bank) as a result of which the Buyer may no longer deliver to the buyers for whom the goods ordered from the Supplier are directly or indirectly intended, or as a result of which a possible delivery does not remain without a consequence that is unacceptable to the Buyer. The determination whether a consequence is unacceptable to the Buyer is entirely at the discretion of the Buyer.
- b. the Buyer is confronted with the withdrawal or restriction of (export) credit insurance directly or indirectly related to the delivery or deliveries to the intended buyer of the goods.
- c. the Buyer is confronted with a refusal by its buyer to accept the goods intended for it, as ordered by the Buyer from the Supplier, whether or not on the grounds of force majeure.

## **IX LIABILITY**

35. The Supplier is liable for any and all damage that the Buyer sustains as a result of a failure to make delivery, a failure to deliver on time or deficient delivery.
36. The Supplier is liable for and indemnifies the Buyer against any and all damage that the Buyer sustains:
  - due to the presence of undesired substances (or undesired quantities of substances) in the goods that it delivers, for example as a result of a claim brought by a third party on the ground of Dutch Pesticides Act (Bestrijdingsmiddelenwet);
  - as a result of one or more characteristics of the good that the Supplier knew – or should have known – could cause harm to persons, animals or goods with normal use, in the event that it has failed to notify the Buyer explicitly in writing in that respect prior to the conclusion of the agreement, describing the risks related to the possible release of dangerous substances during maintenance, breakdowns or emergencies or when removing, relocating, transporting or carrying out destruction of the goods, and to affix proper warnings on the goods that it has delivered;
  - as a result of acts and/or omissions on the part of the Supplier's staff and/or on the part of auxiliary persons, auxiliary staff or agents that the Supplier has engaged in connection with the performance of the agreement; and
  - as a result of the disclosure, in any manner whatsoever, of information (including business information) concerning the Buyer, in respect of which the Supplier knew or should have known that the information was confidential, unless it is obliged to divulge the information on the ground of a statutory obligation.
37. The Supplier's liability towards the Buyer also comprises any damage that the Buyer's customers might sustain as a result of the causes of damage listed in this article, insofar as such customers can claim compensation of their damage from the Buyer.
38. The Buyer will be liable towards the Supplier, its staff, and the auxiliary persons, auxiliary staff or agents that the Supplier has engaged only for direct damage as a result of an intentional act or omission or gross negligence on the part of the Buyer.

## **X DISSOLUTION**

39. In addition to the grounds for dissolution included in these General Terms and Conditions of Purchase, the following applies: If
- the Supplier fails to comply with one or more of its contractual obligations or fails to do so properly and in a timely manner;
  - the Supplier applies for a suspension of payments or files for bankruptcy, is declared bankrupt, is allowed to enter into a debt rescheduling arrangement or is placed under administration, in receivership or control;
  - an attachment is levied on all or part of the Supplier's goods; and/or
  - the Supplier shuts down, liquidates or transfers to a third party all or part of its business,
- the Supplier will be deemed to be in default by operation of law, and as a result the Buyer will be entitled, without any further notice of default being required, to dissolve the agreement in whole or in part effective immediately simply by giving notice.
40. The Supplier will be obliged to compensate any damage that the Supplier sustains as a result of the complete or partial dissolution.

## **XI APPLICABLE LAW**

41. All the agreements that are concluded with the Buyer and any and all disputes that ensue from it or that are related to it are governed exclusively by Dutch law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Sales Convention). In the case of any disputes with respect to the interpretation of these General Terms and Conditions of Purchase in connection with a translation of them, the Dutch text will be normative.
42. In the event that the Supplier wishes to submit a dispute to the court, the court that has jurisdiction in the district in which the Buyer has its registered office will have jurisdiction, to the exclusion of any other forums. The Buyer will be entitled to submit a dispute to either the competent court in the district in which it has its own place of business or in the district in which the Supplier has its place of business.