

GENERAL TERMS FOR ORNAMENTAL PLANT AND NUTRITIONAL HORTICULTURE PRODUCTION OF PLANTUM NL

General sales and delivery terms of Plantum NL for the sale and delivery of plants and cultivation material of ornamental plant products and plant material of nutritional horticulture products and horticulture material.

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Article 1 Area of application

These general terms apply to all offers, sales, deliveries and agreements made by the seller regarding plants and cultivation material of ornamental plant products and plant material of nutritional horticulture products, including the sale and delivery of fertilisers and crop protection, etc. (hereinafter: products). Any terms of the buyer of any type and by any name are not applicable unless expressly agreed in writing.

Divergent provisions must be agreed expressly and in writing. Inasmuch as they do not replace the provisions of these General Terms, they are deemed to supplement these terms.

A copy of these general terms will be provided to the buyer by the seller, free of charge.

Article 2 Definitions

'Seller' refers to: the natural or legal person engaged in delivering products as indicated article 1, part 1, and concluding transactions regarding such products, in the broadest sense, including the purchase and sale of products, the rental and/or sale of products he has cultivated himself, reproducing flowers or plants.

'Buyer' refers to: the natural or legal person with whom the seller enters into any agreement regarding the products indicated in article 1, part 1.

Article 3 Offers and prices

All offers are non-binding unless otherwise agreed in writing. An offer will be valid for a maximum of 30 days.

The agreement is deemed to have been created by written confirmation of the offer by the buyer, unless the seller objects in writing within five days after the buyer has sent confirmation.

If an agreement is created by the intervention of agents, travelling representatives and/or other intermediaries, these will bind the seller once they have been accepted in writing by the seller.

Prices are exclusive of VAT and additional expenses, including: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties, government and other official levies, and fees under breeders' rights and any other fees, unless otherwise agreed in writing. If no price is agreed on, the seller's price in effect at the time of delivery will apply.

The seller is entitled to adjust the price reasonably to a level to be determined by him, if his expenses have increased significantly since the price was set.

Unless otherwise indicated, prices are in euro (€)

If the buyer cancels the agreement, he will immediately owe 25% of the gross sale value of the products to be delivered as a cancellation charge.

In the event that the products in question prove to be unsaleable, or saleable only at a lower price, as a result of said cancellation, the buyer will be liable for any price differences and other damages incurred by the seller.

Both parties are obliged to limit damages as much as possible.

Article 4 Conditions of sale

Orders for plants and/or cultivation material that are not yet fully grown at the time of purchase will be accepted subject to the normal cultivation average of good plant material with a good appearance.

Partial or complete failure of the cultivation or harvest of starting material or partial spoilage during storage for any reason will release the seller from the obligation to deliver and his other obligations, unless attributable to gross negligence on the part of the seller.

The seller is also entitled to assure a replacement delivery, which will occur on the same terms as originally agreed.

If the delivery of a type that has been ordered is not possible for any reason, the seller will be entitled to deliver a type that is equivalent as much as possible or to cancel the order if the type ordered cannot be delivered, or the buyer does not accept a different type; the seller will endeavour to deliver a different type

Article 5 Delivery and transport

Delivery is ex works unless otherwise agreed. On delivery, the risk of the products in question is transferred to the buyer with

deadlines. If a delivery date is agreed on, the seller will endeavour to maintain that date for delivery. If the seller cannot deliver on the agreed date or within the agreed period, he will inform the buyer as quickly as possible. After consultation with the buyer, the seller will determine the delivery date.

If the buyer receives the products ordered before the agreed delivery date or period as indicated in part 2, the resulting risk is entirely for the buyer.

If the buyer receives or wishes to receive the products ordered after the agreed delivery date, the risk of any loss of quality resulting from longer storage will be entirely for the buyer.

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 which case the buyer is obliged to pay the damage incurred by the seller as a result.

Article 6 Packaging/carts/pallets

Single/use packaging will be charged at cost and returns not accepted.

All packaging except single/use packaging remains the property of the seller.

The seller is entitled to charge the buyer an agreed user fee for reusable packaging and other durable material, to be indicated separately on the invoice.

The buyer is obliged to return the packaging to the seller at his own expense and in good condition, within 30 days from delivery or immediately after planting. If it has been agreed that the seller is to collect the packaging, the buyer must ensure that the packaging remains in good condition until the date indicated by the seller and store it so that the seller may collect it in a normal manner.

The buyer may not keep the packaging in use or allow it to be used by third parties.

Carts, rolling containers, reusable pallets must be returned immediately unless agreed otherwise. It is not permitted for the buyer to use them for his own purposes or give them to third parties.

In the event of damage to reusable packaging, carts, rolling containers, pallets, etc., the buyer is obliged to pay the cost of repairs or replacement and any additional rental charges resulting from late returns.

Article 7 Payment

The seller is entitled to request and advance of 50% on the invoice amount from the buyer.

Payment must occur within thirty days after the invoice date.

The buyer is not entitled to reduce the purchase price he is to pay by any counter-claim he may make.

The buyer is not entitled to suspend the fulfilment of its payment obligation in the event of a complaint he has submitted to the seller regarding the products delivered, unless the seller expressly agrees with the suspension in exchange for a guarantee.

All payments will be made at the offices of the seller or by deposit or transfer to a bank account to be indicated by the seller.

Payment must be made in euro (€) unless otherwise indicated on the invoice, in which the seller is entitled to charge rate fluctuations on to the buyer.

If the buyer does not fulfil his payment obligation in time, he will be deemed to be legally in default. The seller will then be entitled to charge interest at 1% monthly 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. The seller is also entitled to charge the buyer for the exchange rate loss incurred by the buyer's default.

If the buyer is in default or otherwise falls short in fulfilling one of his obligations, all reasonable charges in obtaining satisfaction, both legal and extralegal, will be at his expense.

The seller reserves the right not to carry out, or no longer to 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 seller is not responsible for any damage to the buyer as a result of not carrying out orders.

Article 8 Force majeure

Force majeure refers to any circumstance outside the direct sphere of influence of the seller in which fulfilment of the agreement can no longer reasonably be expected. This may include strikes, fire, extreme weather conditions or government measures and disease and plagues, or faults in the material supplied to the seller

If the seller cannot carry out the delivery 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 purchase agreement or complete or partial dissolution of the purchase agreement.

If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may then turn to a judge.

Article 9 Unforeseen circumstances for the buyer

In the event of unforeseen circumstances that are so serious that the seller may not reasonably expect that the purchase agreement concluded will remain in effect unchanged, the parties will agree a change to the purchase agreement or complete or partial dissolution of the purchase agreement.

If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question,

Article 10 Guarantees and complaints

The seller guarantees that the products 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.

The seller does not guarantee the genuineness of the products that are generally known to branch back.

The seller does not guarantee the growth and blossoming of the products delivered.

The buyer will at all times be provided with all requested cultivation information to the best of the seller's knowledge and abilities, by or on behalf of the seller, but without any liability on the part of the seller.

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.

Complaints must also be indicated to the seller at such time that the seller can check the plant material.

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A complaint must at least include:

An extensive and precise description of the defect;

The storage location of the cultivation material to which the complaint refers;

A listing of the facts on the basis of which it can be determined that the products delivered by the seller and those rejected by the buyer are the same.

If the products delivered are rejected by the buyer under the terms of this article and the buyer and seller do not immediately agree on an amicable settlement, the buyer must then appeal to an independent, officially accredited expert who will compile an expertise report. The cost of the expertise report will be for the seller if the rejection is justified and for the buyer if it is not justified. The cost in question must be prepaid by the buyer in any event.

Complaints regarding a portion of the products delivered cannot give rise to a rejection by the buyer of the entire delivery.

The buyer is obliged to check the quantity delivered of the shipment delivered, or have it checked, on receipt and to report a deviation in the quantity to the seller.

Issuing a complaint does not suspend the buyer's obligation to pay, regardless of any justification of a complaint.

Article 11 Liability

All liability regarding non-timely delivery is hereby excluded, unless the ultimate agreed delivery date 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, whereby the buyer set a reasonable period for the seller to fulfil his obligations nonetheless.

The seller is not liable for damage caused by force majeure as indicated in article 8, part 1.

Compensation by the seller of any damage incurred by the buyer in the event of a complaint submitted under article 10 will not be higher than the invoice value of the products delivered referred to by the complaint that proves to be justified, provided there is culpability or conscious negligence on the part of the seller.

In the event of a partial failure of the harvest as a result of the products delivered for the buyer, the compensation owed by the seller for the damage incurred by the buyer will not exceed a percentage of the purchase price of the products delivered, which is at most equal to that portion of the harvest that has failed for the buyer. If, when damage is reported, the seller and buyer jointly or a third party determines the percentage of deviating, diseased or weak plants, this percentage will determine the seller's maximum liability. The buyer is obliged to ensure that the damage as a result of deviating, diseased or weak plants is limited as much as possible.

Damage compensation may not be deducted by the buyer from any outstanding account payable to the seller and does not entitle the buyer not to pay the invoice amount, or not to do so by the invoice payment date.

Article 12 Transfer of ownership, retention of ownership and surety

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.

The seller will retain ownership of the products he has delivered and will retain or acquire ownership of the products arising from them until the agreed price has been paid in full by the buyer and the buyer has completely fulfilled all his other obligations to the seller on any grounds.

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 seller has stood surety for payment or to terminate the agreement by cancellation, if the buyer has not provided surety for payment within fourteen days after being ordered to do so, notwithstanding the terms of article 4, part 1. In both cases, the buyer will be liable for the expenses incurred by the seller.

Article 13 Contractual protection or protection under breeders' rights of original species

Starting material and plant material of species protected by a breeders' right applied for or granted in the Netherlands or any other country or by a contractual transfer provision may not be used to produce or further reproduce the species, treated for the purpose of reproduction, brought into the realm of commerce, traded further,

or kept in stock for one of these purposes.

The starting material delivered may be used by the buyer only to cultivate end products at the buyer's business and may be used by the buyer only under the relevant species name and brand name if applicable.

The seller is entitled to access to the business of the buyer or lots under the buyer's control where the starting or plant material delivered by the seller is located to view and/or assess said material. The seller will inform the buyer of his arrival in a timely manner.

The buyer is obliged to provide immediate access to his business and the crops to inspection authorities carrying out inspections on behalf of the owner of a protected species delivered to him. The buyer must also provide immediate access to his records, e.g., invoices, that are relevant to such inspection.

If the buyer finds a mutant in the protected species, he must immediately inform the holder of the breeders' right by registered letter.

At the written request of the holder of the breeders' right, the buyer will provide the holder of the breeders' right, within two months of receiving the request, with test material of the mutant, free of charge.

The buyer is aware that the finder of a mutant, being a significant derived species, in the protected species, requires the permission of the holder(s) of the breeders' right regarding the 'parent species' to exploit the mutant.

In particular, the buyer is aware that the finder of a mutant requires the permission of the holder of the breeders' right regarding the 'parent species' to carry out the actions indicated in part 1 regarding all material of the species, including harvested material (hence also flowers, plants and/or plant parts).

The buyer is obliged to provide all co-operation desired by the seller, including co-operating in collecting evidence, in the event that the seller becomes involved in proceedings regarding breeders' rights or other industrial property rights.

Article 14 Dispute settlement

Dutch law applies to all agreements to which these general terms apply in whole or in part.

All disputes (even those deemed as such by only one party) regarding or arising from the agreements concluded between the seller and a buyer established abroad to which these General Terms apply may exclusively be settled by the Dutch judge who is competent in the area in which the seller is established.

Article 15 Applicability of the appendix

The parties may declare the 'regulations on supplement percentages to be charged in the event of divergent germination percentages' appended to these general terms to be applicable by agreement. The appendix will then be part of the agreement to which these general terms also apply.

Article 16 Final clause

If and inasmuch as any part or provision of these General Terms proves to be contrary to any compulsory provision of national or international law, it will be deemed not agreed on and these General Terms will otherwise bind the parties. The parties will then confer to arrive at a new provision corresponding as much as possible to what the parties intended.

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