

## GENERAL TERMS AND CONDITIONS OF MULLER BLOEMZADEN

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### Muller Bloemzaden B.V.

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### I Definitions

Seller: Muller Bloemzaden B.V.

Buyer: the enterprise buying Products from the Seller

Terms and Conditions: these General Terms and Conditions of the Seller

Products: the seeds and other plant material offered by the Seller

Order Confirmation: the written registration by the Seller of the Buyer's order

Agreement: the arrangements concerning the sale and delivery of Products by the Seller to the Buyer, recorded in the Order Confirmation and the Terms and Conditions of the Seller, as accepted by the Buyer

### II Applicability/Duty to Provide Information

1. The Terms and Conditions apply to the Agreement and its realisation.
2. In the interests of providing information, the Seller sees it as its duty to send or hand over the Terms and Conditions to the Buyer on request and/or following initial contact about the Products and/or with the initial Order Confirmation. The Terms and Conditions can also be found in the Seller's catalogues and on its website [www.mullerseeds.com](http://www.mullerseeds.com).
3. The Seller's duty to provide information is confined to the initial Order Confirmation to the Buyer or the initial Agreement between the parties and to revised Terms and Conditions. Otherwise, the Buyer is deemed to be familiar with the applicability and content of the Terms and Conditions.
4. The Seller advises users of its catalogues and website to read the Terms and Conditions prior to ordering Products.
5. The Buyer's general terms and conditions are not applicable to the Agreement.
6. If the Buyer does not accept the Terms and Conditions or stands by its own general terms and conditions, an Agreement will not be realised (see IV.5).

### III Offer (incl. Catalogues and Website)

1. The Seller's offer of Products is without obligation and does not commit the parties to anything.
2. The Seller does not deliver to natural persons who are not acting in a professional capacity or representing a company. The consequences of a lack of clarity in this regard or concerning the (form of the) enterprise of the Buyer are at the expense and risk of the Buyer and its board personally, jointly and severally. The rules of law relating to consumer purchases are not applicable to the Agreement or its realisation.
3. The designation of the Products in the Seller's offer is decisive. The consequences of any deviation therefrom by the Buyer are at its expense and risk.

### IV Order Confirmation/Agreement/Deviations

1. An order from the Buyer for Products is registered by the Seller in an Order Confirmation.

2. The Order Confirmation sets out the Products, quantities, varieties, prices, delivery dates, delivery addresses and special details relating to the order.
3. The Order Confirmation is handed over or sent to the Buyer immediately (see II.2). The Buyer must sign and return (a copy of) this Order Confirmation to indicate its acceptance.
4. An Agreement is realised through the Buyer's return of the signed Order Confirmation, but also through any other written confirmation of the Order Confirmation by the Buyer and even through the Buyer's acceptance of the ordered Products (see IV.6).
5. If the Buyer does not want an Agreement to be realised (see II.6), it must notify the Seller of this in writing within 2 working days of the receipt of the Order Confirmation and/or Products and must return the ordered Products in full, unused and unopened to the Seller by registered post or haulage. The Seller will confirm receipt of the return delivery and, if necessary, amend and/or credit the Order Confirmation and invoice.
6. If the Seller has not received a return delivery of the ordered Products within 5 working days, an Agreement will still be realised (see IV.4).
7. Deviations from the Agreement are only applicable if laid down in writing, dated and signed by both Seller and Buyer.
8. The Buyer's board personally, jointly and severally guarantees that the Buyer will discharge its obligations under the Agreement.
9. An invalid or nullified provision in the Terms and Conditions will be replaced by a valid provision which, as far as possible, is of the same intent, while the other Terms and Conditions will remain effective.

### V Delivery/Haulage

1. The Products are delivered to the Buyer as quickly as possible.
2. The Seller will make every effort to deliver in accordance with the Agreement, but deviations are not ruinous.
3. Products under one Agreement may be delivered and invoiced in parts.
4. All costs of (registered return) delivery of the Products, by post or haulage, are at the expense and risk of the Buyer and will, if necessary, be passed on by the Seller to the Buyer.
5. The Buyer is obliged to take delivery of the Products it has ordered.
6. The Buyer is responsible for the Products, as though it were the owner, from the moment they leave the Seller (see X.1).
7. In the event of default (see IX.6), the Seller may suspend or cease delivery of the Products to the Buyer.

### VI Product Quality/Defects/Quality Disputes

1. The Products will be of acceptable quality and will satisfy current quality requirements for experts.
2. Immediately upon delivery, the Buyer will check whether the Products conform to the Agreement.
3. The Buyer will provide the Seller with written notice of any visible defects within 2 working days of the delivery, and of any invisible defects within 2 working days of discovery and, in any case, within no more than 2 months of the delivery (see VIII.4).

4. The Buyer will store and photograph or video all the available evidence of alleged defects. Any plantings will be preserved for inspection. The Seller will indicate to the Buyer how and where the alleged defective Products and the evidence will be inspected. The Buyer will assist with any external examination of the evidence.
5. Disputes regarding the quality of the Products will be submitted to Naktuinbouw (the Netherlands Inspection Service for Horticulture). The verdict of Naktuinbouw will be binding between the parties. The party judged to be in the wrong will pay Naktuinbouw's costs.
6. In the event of defective Products, the Agreement will remain in force and the Seller will deliver replacement Products to the Buyer as quickly as possible.

## **VII Force Majeure**

1. Force majeure is any circumstance beyond the Seller's control that (partly) prevents the Seller from performing the Agreement or makes it seriously difficult for the Seller to do so and/or which gives reason to invoke the harvest and cultivation proviso that is usual in the seed industry, on the basis of which the Seller is entitled to deliver a pro rata quantity of the order to the Buyer.
2. Force majeure entitles the Seller to suspend performance of the Agreement in part or in full without recourse to the courts until force majeure is no longer present, or to dissolve all or part of the Agreement, without any obligation to compensate the Buyer.

## **VIII Liability**

1. If the Seller is liable for defects in the Products, its obligation to provide compensation is limited to a maximum of the invoice value of the corresponding Product and corresponding delivery, from which the liability stems.
2. The Seller accepts no liability for:
  - a. damage due to untimely or incorrect delivery of the Products;
  - b. damage during delivery by post or haulage;
  - c. damage as a consequence of incorrect and/or inexperienced cultivation/use of the Products by or on behalf of the Buyer;
  - d. limitations/deviations in the varietal purity, growth and bloom of the Products, whether or not stemming from varietal properties;
  - e. damage associated with Products of acceptable quality and/or with varietal properties that are generally known or communicated by the Seller to the Buyer and/or properties with which the Products are credited by the Buyer but which have not materialised;
  - f. indirect damage, consequential damage and/or lost profits on the part of the Buyer.
3. The Buyer is liable for damage to and the loss of the Products during (return) delivery by post or haulage.
4. Any claims on the part of the Buyer will expire if the obligations and deadlines in VI.3, VI.4, IX.7 and X.1 have not been met and/or the Products have been damaged.
5. The Buyer indemnifies the Seller and its representatives against any third-party claim associated with (advice/information about) the Products.
6. Any holding the Seller liable by the Buyer or liability on the part of the Seller will not release the Buyer from its (payment) obligations under the Agreement.

## **IX Price/Payment**

1. The price of the Products is in euros and excludes VAT.
2. The price is exclusive of postage and/or costs for (registered return) delivery by post or haulage.
3. The Seller will send the Buyer an invoice for each Product delivery with a payment term of 30 days and details of the Seller's bank account (see IV.8).

4. The Buyer is not permitted to offset an invoice from the Seller with a counterclaim.
5. Payments made by the Buyer will serve first to reduce any interest and collection charges owed in accordance with the Agreement and then to reduce the outstanding principal of the oldest invoice from the Seller.
6. Late payment will lead immediately and automatically, thus without further notice, to default on the part of the Buyer and to an obligation to pay penalty interest of 1% for every (portion of a) month (interest on interest per year) and (extra)judicial collection charges amounting to 15% of the outstanding invoices including VAT, with a minimum of € 750 per invoice (see IV.8).
7. Objections to invoices must be received by the Seller in writing within 5 working days of the invoice date and will not release the Buyer from its (payment) obligations under the Agreement (see VIII.4).
8. In the event of default, the Seller may suspend or cease all Product deliveries to the Buyer.
9. The Seller may require the Buyer to pay (part of) an invoice in advance or to provide security for the performance of its (payment) obligations under the Agreement.

## **X Retention of Title**

1. Until the Buyer has satisfied its (payment) obligations under the Agreement, the Products will remain the Seller's property and the Buyer will hold these Products for the Seller without the right to transfer them to third parties as security or property, to deliver them to third parties or to make them its property by accession (see V.6 and VIII.4).
2. In the event of reasonable fear that this provision will be violated, the Seller is entitled to take back the Products from the Buyer or from third parties, or to arrange for this to be done. This will not release the Buyer from its (payment) obligations under the Agreement.
3. Any violation of this provision will lead automatically to the applicability of IX.6 and XII and to an obligation on the part of the Buyer to pay the Seller an immediate extra penalty of 50% of the outstanding invoices from the Seller.

## **XI Intellectual Property**

1. The Buyer is prohibited from establishing, implying or using any intellectual property rights in respect of the Products, either in the verbal and written designation of the Products or on the designated packaging (see III.3).
2. If the Buyer finds a mutant in a protected variety, the Buyer must notify the Seller and the holder of the plant breeder's rights immediately in writing.

## **XII Agreement Monitoring**

1. In the interests of monitoring correct performance of the Agreement by the Buyer and of assessing the Products
  - a. the Seller is entitled, during normal business hours and without notice, to enter the Buyer's company and other companies, parcels of land and premises where the Products are located;
  - b. the Buyer will allow an inspection of its books at the Seller's request.

## **XIII Dissolution/Termination of the Agreement**

1. The Agreement may be dissolved by the Seller with immediate effect and without recourse to the courts if the Buyer fails to discharge its (payment) obligations even after notice has been served and a reasonable time limit specified for doing so.
2. Dissolution of the Agreement as referred to in the previous paragraph will be effected by means of a registered letter to the Buyer.

3. If the Buyer fails to discharge one or more of its obligations, if the Buyer is declared bankrupt or is granted a moratorium on payments or submits a petition to this effect, or if the Buyer's business is wound up and/or some or all of its assets are seized, the Seller is entitled, immediately and without serving notice, to suspend the Agreement or to dissolve it in part or in full by means of a written statement.
4. This will not release the Buyer from its (payment) obligations under the Agreement and will render these immediately demandable for the Seller, without prejudice to the Seller's right to full compensation and the exercise of its retention of title (see X).

#### **XIV Applicable Law/Jurisdiction/Translation**

1. Dutch law applies to the Agreement, including the Terms and Conditions and the Order Confirmation, as well as to issues relating to subject-matter and territorial jurisdiction, even if submitted to a court abroad.
2. Any disputes associated with the Agreement, save for those concerning the quality of the Products (see VI.5), will be brought before the competent court in The Hague, unless the Seller chooses a different court.
3. Despite this English translation of the Terms and Conditions, the Dutch version of the Terms and Conditions will remain decisive for the interpretation of the text.