

**Royal Trade Association for Nurserystock and Bulbs (ANTHOS)**  
**GENERAL CONDITIONS OF SALE AND DELIVERY**

**1. Applicability**

- 1.1. These terms and conditions only apply to agreements with regard to which one of the parties is a member of Anthos at the time of conclusion of the agreement, which – within the framework of these general terms and conditions – is also deemed to include other partnerships who are (in)directly affiliated to an Anthos member company (e.g. sister company, subsidiary or parent company of the member).
- 1.2. If an agreement refers to these terms and conditions and this agreement only involves non-members, the terms and conditions below do not apply, while it also constitutes a breach of the law and copyrights.
- 1.3. All offers made by the seller and all purchase agreements concluded with him and the execution thereof are governed by these terms and conditions.
- 1.4. The applicability of other terms and conditions, including those applied by the buyer, is explicitly excluded.
- 1.5. A deviation from these terms and conditions can be invoked only if the seller has explicitly given his written consent, and it applies solely to the agreement in question.
- 1.6. Insofar as these general terms and conditions are also available in a language other than Dutch, the Dutch text will prevail in the event of textual contradictions at all times.
- 1.7. In these terms and conditions, ‘in writing’ is understood to mean: by letter, fax or electronically.

**2. Offers and conclusion of agreement**

- 2.1 All offers and quotations from the seller are without obligation.
- 2.2 An agreement is concluded only when the seller has confirmed the instruction in writing and has also accepted an agreed security for payment, including an irrevocable (confirmed) letter of credit. Each agreement is concluded by the seller under the suspensive condition that the buyer - at the exclusive discretion of the seller's credit insurer - appears to be sufficiently creditworthy for the financial performance of the agreement.
- 2.3 Any additional agreements or changes made later, as well as any verbal promises made by the seller's staff or made on behalf of him by his agents or other representatives he employs only bind the seller from the moment he has confirmed them in writing.

**3. Prices**

- 3.1 All prices of the goods are determined in the agreed currency, exclusive of turnover tax and are based on ex works, (business address), the Netherlands (EXW, Incoterms 2010), unless otherwise agreed in writing.
- 3.2 If after confirmation of the order yet before delivery of the products, a change is made to one or more of the cost price-determining factors, the seller reserves the right to adjust the agreed prices accordingly.
- 3.3. The costs in relation to transport, packaging, insurance and inspection by the Food and Consumer Product Safety Authority (NVWa) and/or Naktuinbouw are payable by the buyer. All levies and/or taxes, payable in connection with the agreement concluded by the seller with the buyer, both direct and indirect, are payable exclusively by the buyer in full and cannot be set off against any amounts payable to the seller.
- 3.4 If the buyer and the seller agree that the price is in a currency other than the Euro, the Euro exchange rate as on the date of the order confirmation applies.

**4. Payment**

- 4.1 Unless the parties have agreed otherwise in writing, payment for the goods sold by the seller must be made in the agreed currency, within 30 days of the invoice date.
- 4.2 The payment date is the value date on which the seller receives the payment. In the event of payment by bank, the date on which the bank account of the seller is credited will be regarded as the date of payment.
- 4.3 The buyer is not entitled to any deduction, suspension or payment discount, and invocation

of setoff is also explicitly excluded, unless agreed otherwise. If the payment term is exceeded, the buyer is in default by operation of law the moment the payment term lapses. The seller is entitled to charge statutory interest for trade transactions from the due date, while all collection costs, both judicial and extrajudicial, are payable by buyer, with the extrajudicial costs amounting to at least 15% of the amount claimable, subject to a minimum of 250 Euros.

- 4.4 If an order is carried out in parts, the seller is entitled to demand payment for the partial deliveries before carrying out the other partial deliveries.
- 4.5 Upon or after concluding the agreement, the seller is entitled to demand a guarantee from the buyer that both the payment obligations and other obligations will be fulfilled, before delivering any (further) performance. Refusal by the buyer to provide the assurance that has been demanded, entitles the seller to suspend the performance of his obligations and to ultimately fully or partially dissolve the agreement without notice of default or legal intervention, without prejudice to his right to compensation for any losses suffered by him.
- 4.6 Despite the buyer giving his payment a different destination, the seller is entitled to set off payments against older debts first. If costs and interest have already been incurred, the payment will be set off against the costs first, then against the interest and finally against the principal sum.

## **5. Delivery**

- 5.1 Unless explicitly agreed otherwise, all deliveries take place ex works (business address), the Netherlands (EXW, Incoterms 2010).
- 5.2 Although the delivery date given will be observed as closely as possible, it is an approximate only and can never be regarded as a deadline. The seller will not be in default with regard to the delivery time before he has received a notice of default from the buyer that gives the seller the opportunity to deliver within a reasonable period of time thereafter and the seller has failed to do so.
- 5.3 The delivery term agreed on commences as soon as an agreement is concluded in accordance with article 2.2.
- 5.4 The seller cannot be held liable for damage or losses as a result of late delivery, if and insofar as this late delivery is caused by circumstances which are not at the expense and risk of the seller, including the suppliers' failure to perform (in a timely fashion).
- 5.5 The buyer failing to (timely) fulfil any of his payment obligations, will suspend the delivery obligations of the seller.
- 5.6 If no delivery dates have been agreed and the delivery is made on demand, the seller is entitled to make the autumnal deliveries before 15 December of the year in question, and the spring deliveries after 1 April.
- 5.7 Root crops must be delivered before 15 April, and pot and container plants before 15 May. Deviations must be announced in writing. In the case of deliveries on demand, the seller is at all times entitled to deliver seedlings and pot plants after 15 May. In the case of agreements concluded after 15 May, the seller is entitled to deliver within 14 days.
- 5.8 When a request is made to postpone the autumnal delivery until after 15 December, the price will be increased with 3%.
- 5.9 When a request is made to postpone the spring delivery until the autumn, all costs incurred to facilitate this will be payable by the buyer. In addition, the buyer will be charged a minimum of 50% of the invoice amount at that time.
- 5.10 The seller reserves the right to deliver the goods in partial shipments, in which case the terms (of payment) described in article 4 apply to each partial delivery separately.

## **6. Force majeure**

- 6.1 In the event of force majeure - which includes failed harvests, viruses, natural disasters, industrial action, fire, import and export obstructions - or in the event of other circumstances as a result of which the seller cannot be expected to fulfil the agreement or cannot be expected to do so in time, the seller is - at his discretion, without legal intervention and without being obliged to pay any compensation - entitled to either fully or partially dissolve the agreement or to suspend execution of this agreement until the situation of force majeure has ended.
- 6.2 If the seller has already executed part of the agreement, the buyer will pay the sales price of the

goods delivered.

## **7. Complaints**

- 7.1 Upon delivery, the buyer is obliged to check the goods for any visible and/or obvious defects. These include all defects that can be observed by means of detection by unaided senses or a simple random test. Furthermore, the buyer is obliged to check whether the goods supplied are in accordance with any other specifications of the order. Failure to fulfil the obligation to check means that the buyer loses any rights to submit claims against the seller.
- 7.2 If in terms of quantities, amount, dimensions and weight the delivery departs from what has been agreed upon by less than 10%, the buyer will nevertheless be obliged to accept the delivery.
- 7.3 Complaints about quality and quantity of the delivered goods must be submitted in writing, within eight calendar days of delivery. Defects that can be discovered only at a later stage (non-visible defects) must be reported to the seller immediately upon discovery, yet at least before the first growth season after delivery. As soon as these periods have lapsed, the buyer is expected to have approved of the delivered goods, and complaints will no longer be accepted.
- 7.4 The complaint must include a description of the defect and the seller must, on demand, be given the opportunity to investigate the complaint.  
The buyer must allow the seller to appoint an expert or independent inspection agency to inspect the goods in question. When the expert declares the complaint grounded, the inspection costs will be payable by the seller. When the complaint is declared unfounded, the costs are payable by the buyer.
- 7.5 If the buyer has submitted a complaint to the seller in time and the latter has acknowledged the complaint, the seller will at his discretion only be obliged to deliver the missing goods, to replace the delivered goods or to refund a proportionate part of the purchase price.
- 7.6 Lodging a complaint does not suspend the buyer's obligation to pay, unless the seller explicitly agrees to such suspension.
- 7.7 Goods are returned at the expense and risk of the buyer. They can be returned only after the prior written consent of the seller.

## **8. Liability**

- 8.1. The seller will never be liable for the re-growth or flowering of the goods delivered. It is, at all times, the buyer's responsibility to assess if the conditions, including climatic conditions, are suitable for the goods.
- 8.2. The seller guarantees the authenticity of species of the plants he has delivered.
- 8.3. Plant names are described in accordance with the List of Names of Woody Plants and the List of Names of Perennials issued by PPO of Lisse, the Netherlands.
- 8.4 Except in the event of statutory liability by virtue of mandatory statutory provisions, and except in the case of intent or gross negligence, the seller can never be held liable for any damage or losses suffered by the buyer. Liability for indirect damage, consequential damage, immaterial damage, trading losses, environmental damage, damage as a result of lost profits or damage as a result of liability towards third parties is also explicitly excluded.
- 8.5 If and insofar as, despite the provisions in article 8.4, the seller could be held liable, regardless of the reason, this liability is limited to the amount equal to the net invoice value of the goods in question.
- 8.6 The buyer indemnifies the seller against third-party claims for compensation of damage for which the seller cannot be held liable by virtue of these terms and conditions.
- 8.7 The Buyer indemnifies the Seller against any third-party claims for damage or losses caused by products supplied to these third parties by the Buyer, unless it is proven in court that these claims are a direct result of the gross neglect or intent of the Seller and the Buyer also proves that he cannot be blamed for anything in that respect.
- 8.8. If an infection was latently present in the plant, this shall be considered a non-attributable shortcoming on the part of the vendor unless the buyer can demonstrate that a) the latent infection was the result of wilful conduct or gross negligence on the part of the vendor or b) the vendor was aware of this latent infection previous to the sale but, despite this, did not inform the buyer of this.

## **9. Cancellation**

- 9.1. The seller is entitled to cancel an order if at the time of delivery the buyer has not fulfilled his earlier payment obligations towards the seller or other creditors in time. The seller may also exercise this right if the seller deems the information about the buyer's creditworthiness insufficient. The buyer cannot derive any rights from such cancellations, and he can never hold the seller liable.
- 9.2. In principle, the buyer cannot cancel an order. Nevertheless, when the buyer fully or partially cancels an order for whatever reason, the seller will only have to accept this when the goods have not yet been transferred to the haulier for shipment, and on the condition that the buyer pays the cancellation costs, which are at least equal to 30% of the invoice value of the cancelled goods, plus VAT. Furthermore, the seller is in that case entitled to set off any costs (to be) incurred (including the costs of preparation, care, storage, etc.), without prejudice to the seller's right to compensation for loss of profits and other damage or losses.
- 9.3. The buyer is obliged to take possession of the purchased goods from the time they are made available to him. If the buyer refuses to accept them, the seller is entitled to sell these goods elsewhere, and the buyer is liable to pay the price difference as well as all other costs incurred by the seller because of this, including storage costs.

## **10. Retention to title**

- 10.1. Ownership of the goods delivered by the seller will not transfer to the buyer before full payment of all amounts invoiced by the seller, plus any interest, penalties and costs, as well as all claims in relation to the buyer's failure to fulfil his obligations from this or other agreements. Issuing a cheque or other negotiable instruments can in this context not be regarded as payment.
- 10.2. The seller is entitled to immediately take possession of the goods sold if the buyer in any way continues to fail to fulfil his (payment) obligations. In that case, the buyer is obliged to grant the seller access to his premises.
- 10.3. The buyer must store the goods that are subject to retention of title separated from the other goods, in order to continue to be able to distinguish the goods of the seller.
- 10.4. As long as the goods delivered are subject to a retention of title, the buyer is not allowed to dispose of, encumber, pledge or otherwise place the goods within the power of third parties outside his ordinary business operations. However, the buyer is not allowed to dispose of the goods within the framework of his ordinary business operations once the buyer has applied for a moratorium or when the buyer has been declared bankrupt.

## **11. Sanctions**

- 11.1. The buyer guarantees that it complies with and will continue to comply with the obligations and limitations that ensue from all applicable sanction regulations of the United Nations, the United States of America, the European Union, the Netherlands and of any other country that is or may become relevant for the execution of the agreement that has been concluded ("Sanctions Legislation").
- 11.2. In particular, the buyer guarantees that it will not directly or indirectly sell, transfer, supply or otherwise make the purchased goods available to natural or legal persons, entities, groups or public-sector or other organisations that have been sanctioned pursuant to the Sanctions Legislation.
- 11.3. The buyer ensures that all obligations from this article will be imposed equally on every party to which it sells on or supplies goods that it bought from the seller.
- 11.4. If the buyer fails to comply with the obligations that ensue for it from this article, or fails to comply with them in a prompt or proper manner, the seller is entitled to suspend or terminate the agreement immediately without further notice of default, without being obliged to pay any compensation for damage and with the buyer being fully liable for compensation vis-à-vis the seller, at the seller's discretion.

## **12. Anti-Corruption**

- 12.1. The buyer will at all times comply with the obligations and limitations that ensue from all applicable anti-corruption regulations of the United States of America, the United Kingdom, the Netherlands and of any other country that is or may become relevant for the execution of the agreement that has been concluded (“Anti-Corruption Legislation”).
- 12.2. Each offer to and each acceptance by employees or members of the client's board of money, gifts, presents, trips, entertainment or other compensation that relates to the agreement or the seller and that is intended as, or can be seen as, an incentive to act in a certain way is strictly prohibited.
- 12.3. The client will make not offer, promise or give anything directly or indirectly to any political party, campaign, government agency, officer or public institutions, state-run enterprises, organisations, international institutions, or their employees, with the purpose of acquiring or retaining goods or any other improper advantage in connection with the agreement or the seller.
- 12.4. In connection with the agreement or the seller, the buyer will not offer, promise or give anything to or accept anything from a business client, unless there is an honest reason to do so and it is reasonable to do so in the context of the daily course of affairs and, moreover, complies with local legislation.
- 12.5. The buyer will inform the seller immediately if, in the execution of the agreement, it takes note of any situation that may be in conflict with the Anti-Corruption Legislation.
- 12.6. If the buyer fails to comply with the obligations that ensue for it from this article, or fails to comply with them in a prompt or proper manner, the seller is entitled to suspend or terminate the agreement immediately without further notice of default, without being obliged to pay any compensation for damage and with the buyer being fully liable for compensation vis-à-vis the seller, at the seller's discretion.

## **13. Dissolution and suspension**

- 13.1. In the event that the buyer fails to fulfil his obligations from the agreement, fails to do so in time or in a proper manner, if there is a well-founded reason to suspect this, and in the event of an application for a moratorium, bankruptcy or liquidation of goods of the buyer, as well as in the event of his death or dissolution or termination of the buyer if it is a company, or when changes are made to his form of enterprise, the company's management board or the contribution of activities to the company, the seller - without the need for a notice of default or legal intervention - is entitled to suspend the agreement for a reasonable term or to dissolve the agreement without being obliged to pay any compensation.
- 13.2. The seller's claim for that part of the agreement that has already been executed, as well as the damage, including lost profits, resulting from the suspension or dissolution will be immediately due and payable.

## **14. Intellectual property rights**

- 14.1. The seller reserves all his intellectual property rights in relation to goods delivered by him.
- 14.2. In those cases where the catalogue used by the seller or the agreement concluded by the parties demonstrates that a species is protected under plant breeders' rights - which is indicated by means of an (R)/PBR after the name of the species in question - the buyer is bound by all obligations in connection with those rights. Violation of this provision means that the buyer is liable for all damage or losses which the seller and third parties may suffer as a result.

## **15. Contradiction with statutory provisions**

If any provision of the General Terms and Conditions of Sale and Delivery does not apply or contradicts public order or the law, only the provision in question will be regarded as not having been written. The other provisions will remain in full force.

The seller reserves the right to change the provision in question into a legally valid provision.

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

- 16.1. All disputes, including those regarded as such by only one of the parties, will be settled by the

Dutch competent court in the jurisdiction where the seller has his registered office, this without prejudice to the right of the seller to submit the dispute to another competent court, if so desired.

- 16.2 The provisions in article 16.1 are without prejudice to the seller's rights to obtain a judgement by means of arbitration by the International Chamber of Commerce in accordance with the Arbitration Regulations of the International Chamber of Commerce, by a single arbitrator. The place of arbitration is Amsterdam, the Netherlands. The arbitration proceedings are conducted in the English language.
- 16.3 All offers and quotations made by the seller, as well as all agreements concluded between the seller and buyer are governed solely by Dutch law. The applicability of the Vienna Convention ('the United Nations Convention on Contracts for the International Sale of Goods' (CISG)) is expressly excluded.

Versie feb 2019