

# General Terms and Conditions for the Webshop

May 2019

## GENERAL

1. These General Terms and Conditions for the Webshop (hereinafter referred to as 'General Terms and Conditions') govern any and all legal acts performed by our company, all use of the Webshop, any and all offers made by our company and any and all agreements concluded between our company and a customer (hereinafter referred to as 'Buyer'), as well as the performance of such agreements. Our company and Buyer will be referred to below jointly as the 'Parties'.
2. Our company explicitly rejects the applicability of any general terms and conditions (including general terms and conditions of purchase) applied by the Buyer.
3. Any provisions that deviate from the provisions contained in these General Terms and Conditions must be explicitly agreed by the parties in writing and will be deemed to supplement these General Terms and Conditions insofar as they do not replace the provisions contained in these General Terms and Conditions.
4. If and insofar as any provision contained these General Terms and Conditions prove to be void or unenforceable or for any other reason wholly or partially invalid, the remaining provisions contained in these General Terms and Conditions shall remain in full force and effect. Our company shall replace the invalid provision with a legally valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

## II WEBSHOP

1. The Webshop offers Buyer the opportunity to order products online from Our company. To be able to order products from Our company via the Webshop, Buyer must request a Webshop Login. Logins may only be requested by persons practicing a profession or operating a business. Consumers (natural persons, not practicing a profession or operating a business) are expressly not allowed to request a Login. A Login is to be used solely by Buyer practicing their own profession or operating their own business. It is not allowed to request a Login for, on behalf of and/or in the name of another person.
2. A Login can be requested by completing the Webshop registration procedure. During the Login registration procedure Buyer must provide the information required. Buyer guarantees Our company that the information Buyer provides is complete, correct and up to date. If and insofar as any information provided by Buyer is not or no longer complete, correct and up to date, for any reason whatsoever, Buyer shall amend such information immediately to ensure it is once again complete, correct and up to date.
3. It is Buyer's own responsibility to keep the Login Details confidential. Should Buyer know or have reason to suspect that any unauthorised person has obtained (access to) the Login Details, or know of or suspect misuse of the Login, Buyer will be obliged to notify Our company of such immediately, without prejudice to Buyer's own responsibility to take immediate and effective action, such as changing the Login Details. Buyer accepts and acknowledges that Buyer will be responsible and accountable at all times for all use of the Webshop made with Buyer's Login.

4. Buyer guarantees that he/she is authorised to request and use a Login, for example to order products from Our company.

### **III OFFERS/ AGREEMENT**

1. Offers and quotations submitted by Our company, either orally or in writing, are without obligation in all cases unless they contain a term for acceptance by Buyer. Offers and quotations are one-off and do not apply with respect to any repeat orders or future orders, unless the Parties have agreed otherwise.
2. If an offer or quotation contains an offer without engagement and Buyer accepts that offer, Our company will be entitled to revoke the offer within two (2) working days after it receives such acceptance. Should Buyer's acceptance deviate from the offer without engagement submitted by Our company (whether with respect to minor matters or otherwise), Our company will not be bound by such acceptance unless Our company has confirmed the amendment in writing.
3. Within the limits of the law, Our company may ascertain whether Buyer can meet its obligations as well as all facts and factors of relevance and importance to the responsible conclusion of a distance contract. If, on the grounds of such investigation, Our company has good reason not to enter the agreement or Buyer failed to collect any products previously ordered, Our company will be entitled to refuse an order or request or to attach special conditions to the execution thereof.
4. An agreement will be concluded at such time as Our company has explicitly accepted the order, placed using Buyer's Login, in the manner that is customary in the relevant branch of industry and will always include by email to Buyer. The content of the agreement will be exactly that represented in Our company's confirmation.
5. Each and every agreement is concluded subject to the suspensive condition of sufficient availability of the products concerned.

### **IV PRICES**

1. The prices of Our company's products published on the Webshop are determined on the basis of supply and demand and may consequently vary from day to day. The final prices for the products will be determined by Our company at the time at which the order is accepted and based on the current prices on the basis of supply and demand. Buyer will not be allowed to deviate from this fixed price on the grounds of price fluctuations after acceptance of the order by Our company.
2. The prices published in the Webshop are in euros and exclusive of VAT and other applicable taxation and charges such as commission, import duties, costs of quality control and/or phytosanitary inspection, costs of loading and unloading, packaging, transport and insurance, unless explicitly indicated otherwise or otherwise agreed by the Parties in writing.

### **V PAYMENT**

1. Payment must be made in (one of) the method(s) agreed between the Parties. Any related bank charges to Our company will be charged on to Buyer. If and insofar as Buyer has elected a method of payment involving an advance payment, Our company will not deliver the products as provided in Article VI until such time as full payment by Buyer has been received.

2. It is Buyer's own responsibility to provide and maintain complete, correct and up-to-date payment data. If, at any time, the payment data are no longer complete, correct and up to date, Buyer shall inform Our company of such immediately and also provide the updated, complete and/or correct payment data.
3. Buyer is not entitled to suspend the full or partial settlement of the purchase price payable due to a complaint concerning the products delivered, regardless of whether this has been reported to Our company as referred to in Article IX, or (the amount of) the invoice. Buyer is not entitled to deduct or withhold any amount from the purchase price payable on the grounds of a set-off or counterclaim.
4. Buyer will be in default merely as a result of the agreed payment term being exceeded. Our company will then be entitled to dissolve the agreement with immediate effect merely by giving notice to Buyer (express termination clause). Our company will not owe the Buyer any compensation whatsoever with respect to the consequences that such a dissolution may have for Buyer.
5. In the event of the liquidation or bankruptcy of Buyer, the award of an attachment against Buyer or a suspension of payments, Our company's claims against Buyer will be immediately due and payable.
6. In the event that Buyer is in default Our company will be entitled to charge 1.5% interest per month from the due date of the invoice until the date on which payment is made in full, or the statutory interest if that rate is higher.
7. In the event that Buyer is in default Our company will also be entitled to charge any exchange rate loss that is sustained as a result.
8. Our company is entitled to first apply payments made by Buyer against any costs (such as costs related to any exchange rate loss), subsequently against the interest on overdue amounts and finally against the principal amount and the accrued interest. Our company may refuse an offer to make payment, without itself being in default as a result, in the event that Buyer indicates a different order for the allocation of a payment. Moreover, Our company may refuse the full payment of the principal amount in the event that the interest on overdue amounts, accrued interest and costs are not also paid.
9. If it is necessary to engage a third party in order to obtain payment, the ensuing legal costs, enforcement costs and/or extrajudicial costs – subject to a minimum of 15% of the outstanding amount – will be immediately due and payable by Buyer. In the event that Our company has incurred higher costs and it was reasonably necessary to do so, such costs must also be reimbursed by Buyer. Buyer will owe interest on the costs incurred.

## **VI DELIVERY AND DELIVERY PERIOD**

1. Unless the Parties agree otherwise in writing, delivery shall be deemed to occur by Our company placing the products at the disposal of Buyer at Our company's warehouse or processing plant.
2. The delivery times stated by Our company are indicative and under no circumstances may they be deemed to be strict deadlines, unless the Parties have explicitly agreed otherwise. A delivery time being exceeded will not lead to an entitlement to dissolve the agreement or to any compensation, unless the Parties have agreed otherwise.

3. Our company will notify Buyer as soon as possible if Our company will be unable to comply with one or more of its (delivery) obligations in whole or in part. In the event that Our company is unable to deliver the entire quantity that has been ordered, Our company will be entitled to make partial delivery or to suspend the performance of the agreement and/or deliver equivalent or similar products in consultation with Buyer. Unless the Parties have agreed otherwise in writing, partial delivery, suspension and/or delivery of a substitute product as referred to in this article will not entitle Buyer to dissolve the agreement.
4. Unless agreed otherwise in writing the risk related to loss or damage of the products which are the subject of the agreement between Our company and Buyer will be transferred to Buyer at the time at which they are legally and/or actually delivered to Buyer and thereby come under the control of Buyer or a third party to be designated by Buyer.
5. In the event that Buyer fails to accept delivery of the products ordered at the agreed time and place, Buyer will be in default and will bear the risk related to any loss of quality due to storage. The products ordered will be at Buyer's disposal, pursuant to Article VI.1, and will be stored at Buyer's risk and expense.
6. However, if after a limited term of storage, which may be deemed to be reasonable considering the type of product, the Buyer has not taken delivery and Our company is of the opinion that the risk of loss of quality and/or spoilage of the products leaves no other option open, Our company will be entitled to sell the products in question.
7. Buyer's failure to comply will not relieve it from the obligation to pay the purchase price (in full). In the event that Our company sells the products as intended in Article VI.6, Buyer will be obliged to pay any difference in price ensuing from such sale in addition to any and all other costs incurred and/or damage sustained by Our company. In the event of a price difference in Our company's favour ensuing from a sale as referred to in Article VI.6, this will not entitle Buyer to reimbursement of this price difference or to any other form of compensation.
8. Delivery will be made carriage paid only if and insofar as this has been agreed and Our company has indicated such in the invoice or order confirmation.
9. Buyer is obliged to notify Our company in compliance with the provisions of Article IX in the event of any defects detected.

## **VII PACKAGING**

1. Unless the Parties have agreed otherwise, the products will be packaged in the manner customary in the flower and plant wholesale trade industry and determined by Our company in accordance with good business practice.
2. Costs will be charged for non-returnable packaging in addition to the purchase price. If and insofar as nonreturnable packaging is returned the cost price thereof will not be credited or refunded.
3. Returnable packaging and other sustainable materials remain the property of Our company and will be loaned to Buyer subject to payment of a deposit and usage fee. Returnable packaging must be returned to Our company in its original condition within four (4) weeks of collection of the products as provided in Article VI. The costs of return transport will be payable by Buyer.

4. If and insofar as the returnable packaging is duly returned in good condition within the period specified in Article VII.3, the costs charged will be credited, possibly less an agreed amount for usage.
5. If and insofar as Buyer fails to return returnable packaging within the specified period and/or the returnable packaging is damaged upon return, Our company reserves the right to charge the full cost of the said packaging materials to Buyer and to recover any other loss or damage caused by Buyer.

#### **VIII     LOADING AND TRANSPORT**

1. Any loading and/or shipment of the products agreed by the Parties must take place in an efficient manner. If Buyer does not stipulate a particular means of transport Our company will choose the most customary means of transport. The transport costs will be charged to Buyer. Parties may agree any further specifications with regard to loading and/or transport.
2. If a forwarding agent is engaged, Our company will be liable for any damage that arises only until the time at which the products have been handed over to the forwarding agent.
3. Buyer will provide Our company in good time with any information Our company specifies as being required, or which Buyer may reasonably be expected to assume is required, for the execution of the agreed loading and/or transport. If the information necessary for the execution of the agreed loading and/or transport is not submitted to Our company in good time, Our company will be entitled to suspend the execution of the loading and/or transport and/or to charge to Buyer any costs ensuing from the delay.

#### **IX COMPLAINTS**

1. Complaints relating to visible defects in the products delivered must be reported to Our company immediately upon discovery of the defect(s) and in any event within 24 hours after receipt of the products. This is to be done by e-mail or by telephone. Any such telephone report must be confirmed by Buyer in writing within two (2) days of receipt of the products. The time at which Our company receives the written confirmation is determinative in this respect. The Buyer or the receiver of the products must also note the complaint on the relevant transport papers in order to confirm that the complaint existed at the time at which the products were delivered.
2. The complaints submitted must at least include: a. a detailed and precise description and photographs of the defect; and b. a statement of any further facts from which it can be inferred that the products delivered and the products that Buyer has rejected are identical.
3. Our company must at all times be able and allowed to inspect the products on site to verify the accuracy of the complaints in question (or to have such inspected and verified) and/or to recover the products delivered. The products must be kept available in the original packaging.
4. Complaints relating to only part of some of the products delivered will not give cause to reject the entire delivery.
5. Upon expiry of the periods specified above, Buyer will be deemed to have approved the products delivered as well as the invoice, in which case Our company will no longer accept any complaints.

## **X LIABILITY**

1. Our company is not liable for any damage sustained by Buyer, except and insofar as Buyer demonstrates an intentional act or omission or gross negligence on the part of Our company.
2. Under no circumstances will Our company be liable for any trading loss, loss due to delay, loss of profit, loss due to business interruption or other indirect or consequential damage sustained by Buyer. Should Our company nevertheless be obliged to compensate such damage (in any form whatsoever), Our company's liability will be explicitly limited to the amount of the invoice, exclusive of VAT, with respect to that part of the delivery to which the damage relates.
3. Any defects concerning a phytosanitary requirement and/or other requirements that apply in the importing country will not entitle Buyer to any compensation or to dissolve the agreement unless Buyer had informed Our company of such requirements in writing prior to the time at which the agreement was concluded, and Our company had confirmed in writing that the requirements in question would be complied with.
4. Under no circumstances will Our company be liable for, and Buyer will indemnify Our company against any damages or claims whatsoever which may arise due to Our company acting on the basis of inaccurate and/or incomplete information provided by Buyer pursuant to Articles II.2, II.3, V.2 and X.3 unless such inaccuracy or incompleteness may be deemed to have been known to Our company.
5. Under no circumstances will Our company be liable for any damages of whatever nature which, may arise due to technical failures or any other non-availability of the Webshop or failure of the Buyer's, Our company's or a third party (telecommunication) network.
6. Under no circumstances will Our company be liable for, and Buyer will indemnify Our company against any damages or costs of whatever nature, which may arise from or relate to any use of the Webshop by third parties via Buyer's Login.
7. Unless explicitly indicated otherwise, the products that delivered are intended exclusively for decorative purposes and are not suitable for internal use. Our company would note that incorrect use, ingestion or handling of the products and/or hypersensitivity or allergy could have harmful consequences for humans and/or animals. Buyer is obliged to communicate this warning to its customers and indemnifies Our company against any and all claims brought by third parties, including end users, with respect to such consequences.

## **XI FORCE MAJEURE**

1. In the event of a situation of force majeure Our company will be entitled to dissolve the agreement in whole or in part or to suspend delivery until the time at which the situation of force majeure has been alleviated.
2. Force majeure is taken to mean: any circumstance beyond Our company's direct control as a result of which it would be unreasonable to demand that the agreement be performed, including but not limited to riots, war, threat of war, terrorism, strikes, fire, extreme weather conditions, natural disasters, epidemics, traffic conditions (including roadworks and traffic jams), government measures, staff illness, failures in the Webshop or Buyer's and/or Our company's (telecommunication) network.

## **XII RETENTION OF TITLE**

1. All products delivered will remain the property of Our company until all Our company's claims against Buyer have been paid in full.
2. Until the products have been paid for Buyer may not pledge them or otherwise furnish them as security. Buyer must notify Our company immediately in the event that third parties levy an attachment (or wish to levy an attachment) on these products or otherwise wish to levy execution against them.
3. When Our company exercises its rights pursuant to the retention of title Buyer will fully cooperate in all cases immediately upon request and at its own expense. Buyer is liable for any and all costs incurred by Our company in connection with its retention of title and the related actions it must take and for any and all direct and indirect damage that Our company sustains.
4. Moreover, if it is possible to apply them pursuant to the laws of the country where Buyer has its registered office and/or where the products have been delivered to Buyer, the following provisions will apply:
  - a) In the event of a breach of contract on the part of Buyer, Our company will be entitled to immediately take possession of the products delivered and the related packaging and transport materials and to have disposal of such at its discretion. This implies a dissolution of the agreement in question if the law so provides.
  - b) Buyer is entitled to sell the products in the normal operation of its business (but not to use them as a means of payment). Buyer transfers any and all future claims it acquires as a result of the sale to a third party. Our company accepts such transfer and reserves the right to collect the claim itself should Buyer fail to duly comply with its payment obligations and, insofar as necessary, is in default.
  - c) Buyer is entitled to process the products in the course of its normal business operations, possibly together with products which were not acquired through Our company. Our company will obtain ownership (or co-ownership) of the new resulting goods proportional to the ratio in which Our company's products constitute part thereof, which ownership Buyer hereby transfers to Our company and which Our company hereby accepts.
  - d) If and insofar as the law provides that Our company must upon request waive part of the stipulated security in the event that the security exceeds the value of the outstanding claims by a certain percentage, Our company will comply with such request as soon as Buyer requests it to do so and such is evident in Our company's accounts.

## **XIII APPLICABLE LAW / DISPUTES**

1. These General Terms and Conditions, all agreements between Buyer and Our company and any disputes between Buyer and Our company are governed by Dutch law, and the provisions contained in the Vienna Sales Convention are explicitly excluded.
2. Buyer will be entitled to submit any disputes with respect to or arising from any offers, quotations and/or agreements governed by these General Terms and Conditions exclusively to the competent Dutch court in the judicial district in which Our company has its registered

office. Our company is entitled to submit any disputes to both the competent court in the judicial district in which it has its own registered office and the competent court in the judicial district in which Buyer has its registered office.

3. Notwithstanding the provisions contained in Article VIII.2., Our company and Buyer may agree to submit a dispute to an arbitration tribunal acting in accordance with the arbitration rules of the Netherlands Arbitration Institute (*Nederlands Arbitrage Instituut*) and both Parties will accept the decision of that tribunal as binding.

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