



## Terms and conditions of sale J.H. Wagenaar B.V. (version 1.0 dated 1 July 2015)

### 1. APPLICATION AND AMENDMENTS

- 1.1 These conditions of sale shall apply to all quotations, offers and agreements between J.H. Wagenaar B.V., hereafter referred to as "the Seller", and third parties, hereafter referred to as "the Buyer", unless otherwise agreed in writing.
- 1.2 To the extent that the application of any provision of these conditions of sale were to conflict with any provision in a written agreement - other than general conditions - between the Seller and the Buyer, such provision will not be applied. However the other provisions of these conditions of sale will remain in effect unabatedly.
- 1.3 The Seller shall reserve the right to revise these conditions of sale. Such revised conditions shall only come into effect after the Buyer has had a reasonable opportunity to take note of them.
- 1.4 The applicability of general terms and conditions of Buyer, explicitly including any possible assignment and/or pledge clause in respect of the receivables of Seller in respect of Buyer in said terms and conditions, is expressly excluded.

### 2. FORMATION OF AN AGREEMENT

- 2.1 The sale commences by an offer being submitted by the Seller to the Buyer. All offers made by the Seller shall be free of obligation. An order shall only be formed by the acceptance of an offer if the Seller does not recall the offer before or immediately after its acceptance. Offers and their acceptance can be communicated in writing or orally.
- 2.2 The Buyer may receive an order confirmation stating such details as the amount, the quality, the price and the packaging style of the goods destined for sale (hereafter referred to as: "the Products"). If an agreement is formed, the order confirmation may be made available to the Buyer at the time of or after delivery.
- 2.3 The prices stated in the agreement shall be exclusive of costs. Such costs may be in the form of shipping and transport costs, turnover tax and all governmental taxes and levies.
- 2.4 The Seller shall not be under the obligation to carry out an agreement at a quoted price that is obviously based on a printing and/or writing error.
- 2.5 If the Buyer requests an amendment to the agreement, all costs pertaining to such amendment shall be for the account of the Buyer.

### 3. PLACE AND METHOD OF DELIVERY

- 3.1 The Products shall be delivered at one of the Seller's locations, unless the Seller and the Buyer have expressly agreed otherwise. The Buyer shall receive the Products it has bought at the location or locations and times agreed.
- 3.2 If the Buyer fails to receive the Products on the day when the Products are offered to the Buyer for delivery, the Seller shall have the right to store the Products at the Buyer's risk and for the buyer's account, with the costs of storage of the Products being for the Buyer's account.
- 3.3 If the Products are stored by or on behalf of the Seller for the Buyer at the Seller's or a third party's premises, delivery shall be deemed to have taken place at the time of storing the Products.
- 3.4 No delivery delay, to the extent that such delay remains within reasonable limits, shall entitle the Buyer to rescind the agreement and/or to claim damages.
- 3.5 The Seller shall strive to deliver the Products on the day agreed. If an order confirmation covers more delivery days, a well-balanced distribution over several delivery days shall be aimed at, unless otherwise agreed.
- 3.6 In case delivery is not possible on the date specified in the order due to a situation of force majeure, the Seller is not liable for this. If deliver is possible, but only subject to different conditions, the delivery can only be made if the Seller and the Buyer have still reached written agreement on the changed conditions.



**4. PRODUCT TO BE DELIVERED**

- 4.1 As regards quantity and weight, as well as requirements according to public and/or private law, the amount delivered is expected to meet the agreement or the applicable regulations, unless the Buyer can produce evidence to the contrary.
- 4.2 If a sale is made on the basis of a sample, the properties of the Product inspected by a random check at the time of delivery shall be equal to the properties of the sample, without prejudice to the provisions of the previous paragraph. In the event of a sale on the basis of a sample, the Buyer is considered to have inspected the sample. The quality definition communicated by the Seller in advance shall be decisive when evaluating the quality of the Product. Where possible the Seller will store the sample until the Products to be delivered on the basis of such sample have been accepted without contest.
- 4.3 The Seller shall determine the quantity, the quality level and the sizing grade of the Products bought by the Buyer. The quality definition communicated by the Seller in advance shall be decisive when evaluating the quality of the Product. Such details shall be noted on the invoice. Subject to evidence to the contrary, the determination by the Seller shall be binding between the parties. The Buyer will be provided with a duplicate copy of the invoice or a printout of the relevant details from the computerized system.

**5. DELIVERY IN EURO POOL SYSTEM PACKING (EPS packing)**

- 5.1 If the Products are delivered to the Buyer in EPS packing, the following provisions in this article shall apply, unless otherwise agreed.
- 5.2 A deposit is charged for the delivery of EPS packing to the Buyer. The Seller shall not extend any guarantees as to the delivery of the EPS packing ordered.
- 5.3 The EPS packing shall remain the inalienable property of the Seller or of the third party who has made the EPS packing available to the Seller. The Buyer shall not allow any third parties to use any emptied EPS packing made available to it by the Seller and the Buyer must use the EPS packing only for the purchase, handling and transport of the Products sold from the Seller.
- 5.4 The Buyer shall use L-sections or other protective materials to secure the EPS packing to open vehicles. The Seller shall have the right to refuse to hand over the Products in the EPS packing, if the Buyer fails to use L-sections or other protective materials when loading the Products onto open vehicles. The use of forklift trucks that clamp the packing shall not be allowed to handle the Products in the EPS packing.
- 5.5 The Buyer must allow and enable its use of the EPS packing to be checked by the Seller or the owner.
- 5.6 If the Buyer returns EPS packing which is clearly and visibly polluted, or from which paper and vegetable remnants or other waste have not been removed, the Seller shall be entitled to refuse to accept the packing returned or to charge the costs of cleaning to the Buyer. The risk of the EPS packing made available to the Buyer being lost, destroyed or polluted or becoming unusable shall be for the Buyer's account. In such an event the Seller shall not be obliged to refund the deposit paid for the EPS packing.
- 5.7 The Seller will charge a deposit as a security for the EPS packing made available to the Buyer. The size of the amounts will be determined by the Seller, will be communicated separately and will be binding. The deposit shall be due and payable at the time of accepting the EPS packing. If the EPS packing is returned clean, empty and in a satisfactory state, the deposit will be returned to the Buyer.

**6. DELIVERY IN OTHER PACKAGING MATERIALS/RETAIL PACKAGING**

- 6.1 If the Products are delivered to the Buyer in packaging materials and/or retail packaging other than EPS packing, the following provisions in this article shall apply.



- 6.2 Packaging materials and/or retail packaging for which a deposit has been charged and that have been delivered via the Seller, shall be taken back at the invoice price applicable at the time of taking them back, possibly increased by a fixed packaging compensation in accordance with the applicable regulation to such effect. The packaging materials to be handed back must be returned clean, empty and in a satisfactory state, so that they are suitable for fresh horticultural produce.
- 6.3 If a certain type of packing or retail packaging is not available, the Seller shall have the right to offer the Products in another type of packing or retail packaging in consultation with the Buyer. The Seller will increase or decrease the invoice amount by the higher or lower costs as the case may be.
- 6.4 When returning the packaging materials using the Seller's own means of transport, the packaging materials must be made ready for transport in a sorted configuration.
- 6.5 Any packaging materials not delivered via the Seller shall only be taken back if the products concerned are included in the Seller's range.

## **7. COMPLAINTS AND RESERVATION OF TITLE**

- 7.1 The Buyer shall inspect the Products, packing and retail packaging immediately upon their being made available to the Buyer. Any shortages of or damage to the Products or the packaging materials identified during such inspection shall be noted on the delivery note by the Buyer, unless otherwise agreed or communicated by the Seller, in the absence of which the Buyer cannot make a claim for or rely on such shortages or damage.
- 7.2 If the Buyer discovers any defects that it could not have established at the time of the inspection referred to in the previous paragraph it shall notify the Seller in writing accordingly immediately upon discovering such defects. Nevertheless, all defects shall be reported within 24 (twenty-four) hours of the Products being made available to the Buyer or being deemed to have been made available to the Buyer. The defects must be reported via Purchaser's commercial contact. Purchaser cannot rely on defects if it has not submitted a written report in a timely manner. In the absence of timely notification in writing the Buyer shall not be entitled to make any claims regarding the defects.
- 7.3 If a report was made by Purchaser within the meaning of article 7.2 and the provided Products were collected by Purchaser, Purchaser must transport the Products back to Seller within 36 hours after the Products were made available to Purchaser or were deemed to have been made available, in which case the costs for the return transport are for the account of Purchaser. If Purchaser made a report within the meaning of article 7.2 and the Products were delivered to Purchaser by Seller, Seller is responsible for the return transport and Purchaser will grant its cooperation thereto. In case Products were wrongly returned by Purchaser, the costs made for the return transport are for the account of Purchaser and Seller is entitled to charge on these costs to Purchaser.
- 7.4 In case Products were wrongly returned by Purchaser, all costs made in this respect, including costs of the (re)inspection, KCB (Quality Control Agency) and handling, are for the account of Purchaser.
- 7.5 It is not possible for the Buyer not to accept the Products without first consulting the Seller accordingly. In the absence of such consultation, the Products shall be deemed to have been accepted. From the moment when the Products have been made available to the Buyer, or are deemed to have been made available to the Buyer, they shall be at the Buyer's risk.
- 7.6 All the Products delivered shall be subject to a prolonged and extended reservation of title. Title shall be reserved as a security for all entitlements owed to the Seller pursuant to the current or future trade relationship with the Buyer until the moment when all outstanding debts have been settled. The consequences of the prolonged and extended reservation of title under property law shall be governed by the law of the country of destination.
- 7.7 If the Products sold and delivered by the Seller are brought under German jurisdiction, the following provisions shall apply.
  - a. Das Eigentum an den gelieferten Waren bleibt zur Sicherung aller Ansprüche vorbehalten, die uns aus der gegenwärtigen und künftigen Geschäftsverbindung bis zum Ausgleich aller Salden gegen den Abnehmer und seine Konzerngesellschaften zustehen.
  - b. Unser Eigentum erstreckt sich auf die durch Verarbeitung der Vorbehaltsware entstehende neue Sache. Der Abnehmer stellt die neue Sache unter Ausschluss des eigenen Eigentumserwerbs für uns her und verwahrt sie für uns. Hieraus erwachsen ihm keine Ansprüche gegen uns.



- c. Bei einer Verarbeitung unserer Vorbehaltsware mit Waren anderer Lieferanten, deren Eigentumsrechte sich ebenfalls an der neuen Sache fortsetzen, erwerben wir zusammen mit diesen Lieferanten – unter Ausschluss eines Miteigentumserwerbs des Abnehmers - Miteigentum an der neuen Sache, wobei unser Miteigentumsanteil dem Verhältnis des Rechnungswertes unserer Vorbehaltsware zu dem Gesamtrechnungswert aller mitverarbeiteten Vorbehaltswaren entspricht.
- d. Der Abnehmer tritt bereits jetzt seine Forderungen aus der Veräußerung von Vorbehaltsware aus unseren gegenwärtigen und künftigen Warenlieferungen mit sämtlichen Nebenrechten im Umfang unseres Eigentumsanteils zur Sicherung an uns ab.
- e. Bei Verarbeitung im Rahmen eines Werksvertrages wird die Werklohnforderung in Höhe des anteiligen Betrages unserer Rechnung für die mitverarbeitete Vorbehaltsware schon jetzt an uns abgetreten.
- f. Solange der Abnehmer seinen Verpflichtungen aus der Geschäftsverbindung an uns ordnungsgemäß nachkommt, darf er über die in unserem Eigentum stehende Ware im ordentlichen Geschäftsgang verfügen und die an uns abgetretene Forderungen selbst einziehen.
- g. Bei Zahlungsverzug oder begründeten Zweifeln an der Zahlungsfähigkeit oder Kreditwürdigkeit des Abnehmers sind wir berechtigt, die abgetretenen Forderungen einzuziehen und die Vorbehaltsware zurückzunehmen.
- h. Scheck-/Wechselzahlungen gelten erst nach Einlösung der Wechsel durch den Abnehmer als Erfüllung.

## **8. PAYMENT, TERMS OF PAYMENT AND CREDIT LIMITS**

- 8.1 Purchaser is obliged to pay the purchase price within a payment period of seven days after the date of the invoice, unless another payment period was agreed upon or the invoice states a different payment term.
- 8.2 Claims and/or complaints shall not be grounds for suspending payment.
- 8.3 For payments Purchaser issues a European business collection under SEPA, unless otherwise agreed upon.
- 8.4 Possible inaccuracies in the invoice must be reported by Purchaser within seven days after the date of the invoice and in writing at the Seller's accounts receivable department.
- 8.5 All costs of payment shall be for the Buyer's account, also to the extent that a bank charges such costs to the Seller and also if such costs concern international payment transactions.
- 8.6 If the Buyer fails to make payment before the term of payment has lapsed the Buyer shall be considered to be legally in default without a notice of default being required. The Buyer shall then have to pay interest on the outstanding principal amount at 1% a month. If the Seller takes measures to ensure extra-judicial cash collection, the Buyer shall have to pay 15% of the amount owed in this respect.
- 8.7 Every payment by the Buyer shall be considered to have been made in settlement of the possible interest and extra costs and then in settlement of the longest outstanding principal amount.
- 8.8 Purchaser is not authorized to set off what he owes Seller against what Seller possibly owes Purchaser. In particular, Purchaser is not authorized to set off claims of Seller against claims of Purchaser in respect of Seller on the basis of shortcomings within the meaning of article 7.1 and 7.2. If Purchaser does not comply with the provisions in this article, Seller is entitled to charge EUR 25.- of administration costs to Purchaser by invoice of Seller which has been setoff without consultation with Seller and/or incorrectly so, regardless of the other claims that Seller can make applicable vis-à-vis Purchaser pursuant to the law, the agreement, or these sales conditions.
- 8.9 The Seller may assign a credit limit to the Buyer. A credit limit is the maximum balance of the aggregate of all outstanding claims at any moment.
- 8.10 The Seller shall be entitled to require advance payment by the Buyer if and to the extent that the Buyer has not conducted any previous transactions with the Seller, the payment behaviour in respect of the Seller and/or the size of the transactions by the Buyer or special circumstances give rise to such requirement, such to be determined at the Seller's sole discretion.
- 8.11 The Seller shall always be authorized to require sufficient personal or collateral security from the Buyer to the Seller's satisfaction for the fulfilment of the Buyer's obligations, irrespective of whether they are due and payable. The Buyer shall immediately provide such security.



- 8.12 The Buyer shall be in default if:
- a. the (required advance) payments have not been made in time or insufficient security is provided;
  - b. the amount of any credit limit assigned has been exceeded;
  - c. the Buyer otherwise fully or partly fails to fulfil the agreement.
- 8.13 If the Buyer is in default, the Seller will have the authority to suspend performance of all obligations it has in respect of the Buyer and any possible rights of the Seller that are not due and payable will immediately become due and payable.

## **9. LIABILITY**

- 9.1 The Buyer shall be liable for all damage or loss, of whatever nature, caused by the Buyer, its staff or agents employed by the Buyer to persons and/or goods located on any business premises of the Seller, irrespective of whether such damage or loss could be foreseen by the Buyer.
- 9.2 The Seller, its staff and/or agents employed by the Seller shall not be liable in respect of the Buyer, its staff or agents employed by the Buyer for damage or loss of any nature inflicted on the Buyer, its staff or agents employed by the Buyer, including but not limited to personal injury, damage to property, damage to crops, damage or loss resulting from selling or not selling or the destruction of the Products and damage or loss occurring during transport, loading or packaging, irrespective of whether the Buyer bases any duty by the Seller to pay damages on an attributable shortcoming, a wrongful act or unjustified enrichment on the part of the Seller, or on any other ground.
- 9.3 If the Seller, in spite of its liability having been excluded, is obliged to pay damages to the Buyer, its staff or any agents employed, its obligation to pay compensation shall never amount to more than € 10,000 (ten thousand euros), or the amount of the insurance cover that the Seller has taken out with regard to such liability.
- 9.4 The Buyer shall indemnify the Seller, its staff and any agents employed by the Seller against all claims by its staff or the agents employed by it as described in article 9.2.
- 9.5 The Buyer shall indemnify the Seller, its staff and any agents employed by the Seller for all (damage) claims made by third parties resulting from or in any way connected to the sale or the delivery of Products by the Seller or the Buyer, including claims pursuant to (a violation of) intellectual property rights, such as grower's rights, and liability resulting from any defect to any Product delivered.
- 9.6 The Seller shall not be liable for damage or loss, including trading loss or consequential loss incurred by the Buyer and/or third parties due to the Products, a certain type of packing or retail packaging not being available or not being available in time, save in an event of wilful default or gross negligence. The Buyer shall take this into consideration in its dealings with third parties and it shall indemnify the Seller against any third-party claims with respect to the damage or loss or the causes of such damage or loss referred to above.

## **10. TERMINATION**

- 10.1 The Seller and the Buyer shall have the authority to terminate one or several agreements between them with immediate effect if:
- a. the other party has provided incorrect or incomplete information with the objective of obtaining a benefit from this for itself;
  - b. the other party is declared bankrupt, put into liquidation, granted a suspension of payment or if a petition for such has been filed;
  - c. the other party decides to cease or transfer (other than by a legal merger or a division) all or a part of its business.
- 10.2 Termination for any ground or grounds stated in the previous paragraph shall not entitle the other party -which is given notice of termination- to damages.



**11. FINAL PROVISIONS**

- 11.1 Without permission in writing from the Seller, the Buyer shall not have the right to transfer its rights or obligations under any agreement with the Seller to a third party as a whole or in part.
- 11.2 All disputes between the Seller and the Buyer resulting from or in connection with an agreement negotiated between them, including such disputes as require urgent settlement, shall exclusively be adjudicated by the competent court in The Hague, but without prejudice to the Seller's authority to apply to the competent court for the Buyer's domicile if it so requires.
- 11.3 These conditions of sale and all other agreements between the parties shall be governed exclusively by Dutch law. The application of the United Nations Convention on Contracts for the International Sale of Goods (1980) [CISG] or of any other international treaty or convention on the sale of movable assets shall be excluded to the extent that such exclusion is possible pursuant to such treaties or conventions.

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