



## **General Terms and Conditions for the Wholesale Trade in Floricultural Products**

drawn up by the Association of Wholesalers in Floricultural Products (VGB) and filed with the Amsterdam Chamber of Commerce and Industry under no. 40596609.

### **I GENERAL**

1. These General Terms and Conditions apply to all offers made by a wholesaler in flower and bulb nursery products (the 'Seller'), to all agreements concluded between the Seller and a customer (the 'Buyer'), and to the performance of those agreements.
2. Any varying provisions must be expressly agreed in writing and will be deemed to supplement and not to replace these General Terms and Conditions.

### **II OFFERS/AGREEMENT**

1. All offers made shall not bind the Seller, unless they specify a time limit. If an offer is accepted by the Buyer, the Seller may revoke the offer within two working days of receipt of the acceptance.
2. An agreement will be concluded at the moment of express acceptance of the order by the Seller in a manner that is customary in the sector.

### **III PRICES**

1. The prices are generally determined upon acceptance of the order. They are based on current market prices as realised through supply and demand.
2. The agreed price (or price limit) may not be varied without the Buyer's prior consent.
3.
  - a. All prices are to be determined by the Seller.
  - b. All prices are exclusive of value added tax (VAT).
  - c. The prices do not include import duties, other taxes and charges, costs of quality inspection and/or phytosanitary testing, and costs of loading and unloading, packaging, transport and insurance.
  - d. The prices are in euros, unless another currency is stated in the invoice.

### **IV DELIVERY AND DELIVERY TIME**

1. The Seller must deliver the agreed quantity, unless an event of force majeure necessitates a reduction in the quantity.
2. The Seller must immediately notify the Buyer of any event of force majeure and may in that case deliver a smaller quantity.
3.
  - a. The Seller's warehouse/processing area will be regarded as the place of delivery.
  - b. Contrary to the provisions of (a) above, in the event of shipment by means of the Seller's own means of transport, the place of destination will be regarded as the place of delivery.

c. Contrary to the provisions of (a) above, if a shipping agent/carrier is engaged, the place of departure of the third party engaged will be regarded as the place of delivery.

4. Delivery will be free only if and to the extent as so agreed and stated by the Seller in the invoice.

5. Any delivery times quoted may in no event be regarded as being of the essence, unless otherwise expressly agreed.

6. If the Buyer has not taken delivery of the products at the agreed time and place, the Buyer will be liable for any loss in quality suffered due to storage. The products ordered will be available to the Buyer during storage and will be stored to the Buyer's account and at the Buyer's risk. If, however, the Buyer has not taken delivery of the products after a limited storage period (that may be considered reasonable in view of the product type) and if the risk of loss of quality and/or decay of the products so demands, the order will be deemed to have been cancelled by the Buyer. The Seller will then be entitled to sell the products in question to a third party. The Buyer will account to the Seller for any reduction in price that has arisen on such sale and for any other costs and loss incurred by the Seller.

7. The Seller reserves the right not to perform orders if the Buyer has not paid for previous deliveries within the agreed term of payment. The Seller will not be liable for any loss incurred by the Buyer as a result of non-delivery.

## **V FORCE MAJEURE**

1. In the event of force majeure, after consultation with the Buyer, the Seller may rescind the agreement, or postpone delivery until such time as the event of force majeure has ceased to exist.

2. If delivery is delayed by more than two days in the event of postponement, the Buyer may give written notice that it considers the contract of sale rescinded.

3. For the purpose of these General Terms and Conditions, 'force majeure' means any circumstance beyond the Seller's direct control, as a result of which it can no longer reasonably be required to perform the agreement, such as war, war risk, strikes, fire, extreme weather conditions or government measures.

## **VI QUALITY AND HEALTH**

1. The products to be delivered must meet the customary quality standards for the flower and bulb nursery products in question.

2. The products to be exported must furthermore meet the phytosanitary government requirements that apply to the flower and bulb nursery products in question in the country of import. Any defects in this respect will not entitle the Buyer to damages or give it the right to terminate the agreement, unless the Buyer has informed the Seller of any special phytosanitary requirements prior to or at the date of the conclusion of the agreement.

## **VII PACKAGING**

1. The products will be packaged in the manner that is customary in the flower and plant wholesale trade in such a way as will be determined by the Seller in accordance with sound business practice, unless otherwise agreed.

2. Non-reusable packaging will be charged at cost.

3. Reusable packaging and other durable material (cardboard boxes, containers, stacking trolleys, etc.), which will remain the Seller's property, will also be charged at cost and must be returned to the Seller. The costs of the return shipment will be charged to the Buyer separately.

If the material is returned in good condition within thirty days after the invoice date, the costs charged will be credited, after deduction of any agreed amount for use, to the Buyer's account.

4. If the Buyer fails to return durable packaging material (stacking trolleys, containers, etc.), the Seller reserves the right to charge the costs of that material to the Buyer and to recover from the Buyer any further loss incurred.

5. If a deposit is charged, that deposit will be refunded after the material in question has been returned in good condition. The costs of the return shipment will be charged to the Buyer.

## **VIII TRANSHIPMENT AND TRANSPORT**

1. Transshipment and shipment must be carried out efficiently.
2. If the Buyer does not stipulate any means of transport, the Seller will choose the most customary manner of transport.
3. The costs of transport will be charged to the Buyer.
4. In the case of shipment by means of the Seller's own means of transport, the Seller will be liable for any damage incurred until the moment of delivery of the products to the Buyer.
5. Contrary to the provisions of paragraph 4, if a shipping agent has been engaged the Seller will be liable only for damage that occurs until the moment of transfer of the products to the shipping agent.

## **IX COMPLAINTS**

1. Complaints concerning visible defects in products delivered must be notified to the Seller by fax, telex, e-mail or telephone immediately after discovery but at the latest within 24 hours of receipt. Notification by telephone must be confirmed in writing by the Buyer within two days after receipt of the products. The Buyer or recipient of the products must also note the complaint on the transport documents in question, as confirmation that the complaint existed at the time of delivery of the products.
2. Complaints concerning non-visible defects in products delivered must be notified to the Seller immediately after discovery but must in any event be submitted to the Seller in writing in such good time as to enable the Seller to investigate, or instigate an investigation of, the validity of the complaints on location and/or to take back the products delivered.
3. A complaint must in any event contain:
  - a. a detailed and accurate description of the defect(s); and
  - b. a statement of any other facts from which it can be inferred that the products delivered and the products rejected by the Buyer are one and the same.
4. Complaints in respect of a part of the products delivered will not entitle the Buyer to reject the entire delivery.
5. Once the time limits referred to above have elapsed, the Buyer will be deemed to have accepted the products delivered or the invoice rendered. The Seller will no longer be obliged to handle any claims submitted by the Buyer.

## **X LIABILITY**

1. The liability of the Seller for any loss incurred by the Buyer will not exceed the invoice value of the products delivered to which the claim applies, unless the Buyer proves that the loss was caused by intent or gross negligence on the part of the Seller.
2. Unless otherwise expressly stated, the products delivered are intended exclusively for decorative purposes and are not suitable for internal consumption. The Seller notes that the products may have harmful effects on humans and/or animals in the event of incorrect use, consumption, contact and/or hypersensitivity. The Buyer must pass on this warning to its customers and indemnifies the Seller against any and all claims from third parties, including end users, in respect of these consequences.

## **XI PAYMENT**

1. Payment must be made, at the Seller's option:
  - a. net cash on delivery; or
  - b. within 14 days after the invoice date by means of deposit or transfer to a bank or Postbank account stated by the Seller.

2. The Buyer may not deduct any amounts from the purchase price to be paid on the grounds of an alleged claim. The Buyer may not suspend the payment of the purchase price on the grounds of a complaint about the products delivered.
3. The Buyer will be in default upon the expiry of the agreed term of payment.
4. If the Buyer is in default, the Seller will be entitled to charge interest of 1.5% per month on the amount outstanding, as from the due date of the invoice until the date of payment in full.
5. If the Buyer is in default, the Buyer shall also account to the Seller for any loss suffered owing to a change in the exchange rate.
6. If third parties are instructed to collect overdue payments, the Buyer shall account to the Seller for any court and/or out-of-court costs involved, subject to a minimum of 15% of the outstanding sum, and such sums will fall due immediately.

## **XII RETENTION OF TITLE**

1. Title to all products delivered will continue to vest in the Seller until all amounts payable by the Buyer to the Seller have been paid in full.
2. The Buyer may not pledge the products or use them as security in any other manner until payment has been made. If third parties levy or intend to levy an attachment on those products or otherwise wish to dispose of them, the Buyer must immediately inform the Seller accordingly.
3. The Buyer must always fully cooperate, at the Seller's first request, in the Seller's exercising of its retention of title. The Buyer will be liable for all costs incurred by the Seller in connection with its retention of title and any related actions, as well as for any direct and indirect loss incurred by the Seller arising therefrom.
4. If so permitted under the laws of the country in which the Buyer has its registered office and/or in which the products have been delivered to the Buyer, the following will furthermore apply:
  - a. In the event of breach of contract by the Buyer, the Seller will have the right to immediately take possession of the products delivered and of the relevant packaging and transport materials, and to dispose of them at its discretion. If so prescribed by law, this will imply termination of the agreement in question.
  - b. The Buyer will be entitled to sell the products in the ordinary course of its business. It hereby assigns all claims that it may acquire against third parties pursuant to such sales. The Seller hereby acknowledges this assignment and reserves the right to pursue any such claims as soon as the Buyer fails to fulfil its payment obligations.
  - c. The Buyer may process the products in the ordinary course of its business, whether or not the products are mixed with other products not supplied by the Seller. The Seller will acquire joint title to the new goods, in the proportion in which the Seller's products form part of those new goods.
  - d. If the Seller is required by law to surrender part of the stipulated security on request (if the security exceeds the value of any outstanding claims by a certain percentage), it will do so as soon as the Buyer so requests and if it is also apparent from the Seller's accounting records.

## **XIII APPLICABLE LAW/DISPUTES**

1. All agreements to which these General Terms and Conditions apply in full or in part are governed by Dutch law. The provisions of the Vienna Sales Convention are expressly excluded.
2. The Buyer may only submit claims in respect of or arising from agreements, to which these General Terms and Conditions apply, to the competent Dutch Court in the territory in which the Seller has its registered office. The Seller may submit such claims either to the competent court in the territory in which the Seller has its registered office or to the competent court in the territory in which the Buyer has its registered office.
3. Contrary to the provisions of paragraph 2, the Seller and the Buyer may agree to submit any dispute to an arbitral tribunal, whose decision will be accepted as binding by both parties.

## **XIV FINAL PROVISION**

1. Any cases for which these General Terms and Conditions do not provide will also be governed by Dutch law.
2. If and to the extent that any part or provision of these General Terms and Conditions is found to be contrary to any mandatory rule of national or international law, that part or that provision will be regarded as not having been agreed and these General Terms and Conditions will otherwise continue to bind the parties.