

## GENERAL TERMS AND CONDITIONS OF DELIVERY

### Section 1: Applicability

1. These General Terms and Conditions apply to all offers and agreements between the company under Dutch law Gootjes-AllPlant B.V. (hereinafter: "AllPlant") and its customer.
2. Applicability of any (purchase) conditions of the customer is explicitly rejected by AllPlant.
3. Any differing stipulations and oral agreements are only applicable between the parties after they have been laid down in writing by the authorized representatives of AllPlant and the customer.

### Section 2: Offers, prices and order documents

1. All offers of AllPlant are without engagement, save they include a written time-limit for acceptance. An offer without engagement can be withdrawn by AllPlant up to five business days following receipt of the acceptance and/or placing of the order.
2. Save stated otherwise, the prices are expressed in Euros and excluding VAT, costs of package, costs of quality control and/or phytosanitary inspection, conditioning and/or storage costs, import and export duties, shipment, duties and taxes of government and agencies, (license) fees by reason of (intellectual) property rights, as well as any other fees and costs for delivery Ex Works (Heerhugowaard).
3. The customer shall state in writing with his order or at the first request of AllPlant which data, specifications and documents are required under the regulations of the country where delivery will take place, such as in regard of invoicing, phytosanitary requirements, international certificates and/or other import documents or import statements.
4. If an agreement with the customer is concluded by the intervention of agents, traveling salespersons and/or other intermediaries and/or resellers, then they will only bind AllPlant after they have been accepted in writing by AllPlant.
5. AllPlant is entitled to adjust the price as far as reasonable and fair to a level to be specified by it, if its costs have increased to a considerable level since the determination of the price.

### Section 3: Delivery, shipment, cancellation

1. Delivery will take place Ex Works Heerhugowaard save otherwise agreed. The risk of damage or loss of the ordered products will transfer to the customer on the moment that the products have come under his actual power of disposal (or of his staff or carriers or other assistants hired by him).
2. If the shipment is left up to AllPlant, then this will be carried out in the manner most suitable in the view of AllPlant. Additional costs as a result of special requirements of the customer relating to the shipment will be charged to the customer.
3. Any stated delivery times will never be a deadline, save explicitly agreed otherwise in writing. Upon non-timely delivery the customer should therefore send a notice of default to AllPlant and allow it a reasonable time-limit to perform the agreement as yet.
4. AllPlant will make its best efforts to supply the agreed quantities of products. However, the customer acknowledges that the plant materials to be produced and supplied by AllPlant are natural products the properties of which are not all known or apparent.
5. If the customer does not or not timely collect the ordered products, he will be in default without any notice of default being required. The customer bears the risk of any loss of quality or other disadvantageous effects occurring as a result. In that case AllPlant is entitled to store the products at the account and risk of the customer or sell them to a third party. The customer will still owe (by way of damages) the purchase sum, raised with interest and costs of inter alia shipment, storage and insurance, however, in the occurrence reduced with the net revenue of the sale to such third party.
6. In case of cancellation of the agreement (or a substantial part thereof) by the customer he will owe immediately 25% of the gross selling value of the products to be supplied as cancellation fees. In the event that the products in question appear to be sellable only at a lower price, the customer is liable for any price differences and other damage incurred by AllPlant.
7. If the customer collects the ordered products before the agreed time of delivery the resulting risk will be fully borne by the customer.

### Section 4: Payment

1. AllPlant is entitled to claim from the customer an advance on the invoice sum of 50%.
2. The customer will pay all sums charged, in the currency stated in the invoice, VAT included, without any discount, deduction, set-off or suspension, within 30 days following the date of invoice in a manner specified by AllPlant.
3. If the customer does not pay within the agreed time-limit, he is considered to be in default by law, without any notice of default being required, AllPlant will be entitled to charge the customer on all sums which have not been paid yet on the last day of the payment term, the variable rate of the European Central Bank as then applicable in Europe (basis: refinancing interest), raised with a fixed interest rate of 7% (rate for commercial transactions) as from the day of maturity.
4. If the customer is in default vis-à-vis AllPlant, he is obliged to pay to AllPlant both the extrajudicial and judicial costs in full. The extrajudicial costs to be paid by the customer amount at least to 15% of the sum unpaid, at a minimum of EUR 250.- to be raised with the VAT due on this.
5. Upon being asked so, the customer will give sufficient security for the performance of existing or future obligations resulting from the agreement concluded. AllPlant may, as long as such security has not been given, suspend its obligations resulting from the agreement. If such security has not been given within a reasonable time-limit set by AllPlant for this, AllPlant may dissolve the agreement by means of a written notice in full or in part, without being held to pay damages and without prejudice to the other rights of AllPlant.

### Section 5: Reservation of title

1. The goods and/or products produced by the supplied goods, remain the property of AllPlant until the customer has paid the purchase sum. In case of non-payment AllPlant is entitled to reclaim the goods from the customer. The customer commits himself to allow so. The customer is not entitled to claim any form of compensation. Furthermore the reservation of title will apply to the claims which AllPlant may acquire against the customer by reason of failure of the customer in one or more of his obligations vis-à-vis AllPlant.
2. Goods supplied by AllPlant and/or produced by the supplied goods which on the basis of paragraph 1 fall under the reservation of title:
  - a) will at all times be stored and/or used in such manner that the goods and/or products are easy to identify as property of AllPlant, and
  - b) are only allowed to be resold or used within the context of normal conduct of business.
3. The customer is not allowed to pledge or vest any other right in the supplied products.
4. All Plant is entitled to (order to) remove, after default has occurred on the part of the customer as result of the non-performance of his payment obligations, all that (still) is its property from the company site, plots (pledged or not) and from the premises and/or green houses of the customer. The customer will cooperate in this.

### Section 6: Packaging

1. One-time packaging will be charged at cost-price and not be taken back.
2. All wrapping and packing will remain the property of AllPlant save one-time packaging.
3. AllPlant is entitled to charge compensation for use to the customer for reusable packaging and other durable materials, which will be stated individually in the invoice. If any deposit is charged, this will be set off, once the material in question has been returned in good condition. The costs of the return shipment will be charged to the customer.
4. The customer is not allowed to keep any wrapping and/or packing material for use by himself or third parties. In case of loss or damage of reusable packaging, pallets etc. the customer is held to pay any repair and/or replacement costs and additional lease costs by reason of overdue return.

### Section 7: Complaints

1. Complaints relating to visible flaws, including complaints about number, size or weight of the delivered goods, should be made known to AllPlant within two days following delivery and should be notified to AllPlant in writing within eight days .
2. Complaints about invisible flaws should be notified immediately (and in any case within two days) after detection to AllPlant, and within eight days to AllPlant in writing.
3. Complaints should moreover always be communicated to AllPlant in such manner that AllPlant can verify the plant material.
4. A complaint should include in any case:
  - a) a complete and accurate description of the flaw;
  - b) the storage place of the material, which the complaint relates to;
  - c) an account of facts by reason of which it can be established that products supplied by AllPlant and rejected by the customer are the same.
5. If delivered products are rejected by the customer under the provisions of this section and the customer and AllPlant do not immediately agree on an out-of-

court settlement, then the customer must appoint an independent officially recognized expert of Naktuinbouw or another expert to be decided in mutual consultation with AllPlant who will draw up a survey of damage. The costs of the survey of damage, if the rejection is legitimate, at the expense of AllPlant and if they are illegitimate, at the expense of the customer. The costs in question must be advanced in any case by the customer.

6. Complaints about part of the delivered goods cannot be reason for rejection by the customer of the entire delivery.
7. The customer has the duty to (order to) check the quantity delivered of the lot delivered upon receipt and to report any deviation in quantity to AllPlant.
8. Expressing a complaint does not suspend the payment obligation of the customer, regardless whether a complaint is founded or not.

#### **Section 8: Guarantee, limitation of liability and indemnification**

1. The plant material supplied by AllPlant meets common (Naktuinbouw) quality conditions which can be made to such plant material. However, the customer acknowledges that the plant material supplied concerns natural products the properties of which are not all known or apparent. The customer cannot expect that the supplied goods will meet all (growing) conditions.
2. The customer accepts that he will use the supplied plant material fully at his own risk. AllPlant does not guarantee growth and flowering of the supplied goods. AllPlant assumes that the customer has knowledge of the matter. The customer explicitly acknowledges that the level of growth of the plants, flowers, fruit, crops or other (harvest) materials depend, also in case of highest quality, for a substantial part upon the manner of cultivation, climate, weather and environmental conditions, condition of the soil/substrate used etc.
3. The customer further agrees that AllPlant cannot be held liable by him for:
  - a. any damage which is related in any sense to choices of the customer regarding the (mother) material, variety/ies, tools used in growing (including also auxiliary materials and means, natural or not) and the growing method.
  - b. reduced yield or damage resulting from or relating to disappointing growth and flowering of the supplied plant material, both as to quality and quantity, also if the flaws described above are a result of diseases, defects, somaclonal variations, backcrossing or any disorders whatsoever.
  - c. damage which may come about for the customer by reason of unfavorable variety properties unknown so far which present themselves no sooner but after some time after delivery or in further nursing or growing.
4. Full liability of AllPlant vis-à-vis the customer by reason of imputable defects in the performance of any obligation resulting from any agreement with the customer, or for any reason whatsoever, will be limited in all events to compensation of damage up to the maximum sum of the price stipulated for such agreement (VAT excluded). Liability of AllPlant for indirect damage, consequential damage, loss of profit, loss of economies, loss of goodwill, damage by reason of business stagnation, loss as a result of harm or loss of growing, harvested or other plant material being excluded.
5. All advices rendered by AllPlant are without engagement. (Growing) advices, descriptions, recommendations and illustrations, in any form whatsoever, are in conformity, as accurately as possible, with experiences in tests and practice. However, AllPlant is not liable in any case for following (or not following) the advices rendered and/or information given or for any differing results in the cultivated or grown (final/harvested) product. The customer himself should examine whether the products to be supplied by AllPlant and/or the (mother) material made available to him are suitable for the purposes intended by him.
6. The customer indemnifies AllPlant from all third-party claims for damage which has (allegedly) been caused by or is related otherwise to any product supplied by AllPlant including claims filed against AllPlant in its capacity of producer of the goods by reason of any for product liability regulation in any country whatsoever, save such damage is the result of intent or gross negligence of AllPlant.

#### **Section 9: Multiplication by order of the customer**

1. If the customer makes (mother) material available to AllPlant for multiplication or breeding purposes or for any other services and/or activities to be performed by AllPlant, the customer will indemnify AllPlant from all and any third-party claims for compensation of costs, damage or otherwise which are directly or indirectly related to the performance of the agreement by AllPlant and from all third-party claims by reason of (alleged) infringement of intellectual property rights (such as plant breeders' rights and patent rights) by AllPlant.
2. If there is an agreement for exclusive multiplication or breeding, then the (mother) material to be used/processed will remain the property of the customer. AllPlant will preserve and return the mother material made available by the customer, as far as it still exists, at the request of the customer and at his expense. However, AllPlant is not liable for the mother material, as made available, getting lost in full or in part.
3. The customer is held to give all relevant information relating to the (mother) material made available by him, which may be important to the performance

of the agreement by AllPlant. The customer is liable for any damage resulting from any incorrect and/or incomplete information given by him within this context.

4. AllPlant is entitled to have (part of) the agreement performed abroad and/or by any third parties to be contracted by it.

#### **Section 10: Force Majeure and dissolution**

1. Force majeure is understood to mean: any circumstance falling outside the direct control of AllPlant, as a result of which performance of the agreement can no longer be expected in reasonableness, such as strikes, fire, extreme weather conditions or government measures, force majeure at suppliers of AllPlant, plant diseases, plagues, growth disorders which are hard to explain during the breeding and/or production process at AllPlant, including also crop failure in tissue culture breeding, seedling production, seed production and/or poorly sprouting seeds, as well as falling out during rooting in tissue culture or rooting in green houses both at its own site, and at the site of a third party or supplier contracted by AllPlant, or any other force majeure situations common in the industry.
2. In case of force majeure the performance of an agreement will be suspended for the part in question. If it is not possible for AllPlant in case of force majeure to deliver the ordered quantities, then it is also entitled to reduce the quantities to be delivered and/or to dissolve the agreement (in full or in part). In case of partial performance by AllPlant the customer will owe a proportionate part of the agreed price.
3. If suspension as referred to above has lasted for over 3 (three) months or if in the view of both parties it is already a fact beforehand that it will last for over 6 (six) months, either party may dissolve the agreement as far as the force majeure situation justifies, by registered letter taking effect immediately, without the other party being held to pay any compensation.
4. AllPlant is not liable for the damage which the customer incurs as a result of non-delivery or not timely delivery as a result of force majeure, nor in case of any subsequent (partial) dissolution by AllPlant.
5. If the customer does not, not duly or not timely perform one or more of his obligations, is declared bankrupt, applies for (temporary) suspension of payment, proceeds to wind up his company, as well as if his assets are attached in full or in part, AllPlant is entitled to stay the performance of the agreement or to dissolve the agreement without any prior notice of default, in full or in part, all this at its own discretion and always while preserving any entitlement of it to compensation of costs, damage and interest.

#### **Section 11: Intellectual property rights**

1. Plant material of varieties which enjoy protection by reason of any intellectual property right (such as national or Community plant variety rights and/or patent rights, or applications for this) or by means of a contractual (perpetual) clause, shall not a) be used for the propagation or further breeding of the variety, b) be treated for the sake of breeding, c) be marketed, d) be resold, e) be exported, f) imported, or kept in stock for any of the acts referred to in a) to f), save prior written approval. The customer will include this provision as written perpetual clause in further transactions with third parties regarding such protected varieties.
2. The varieties marked by R,C,P or A by AllPlant are protected by intellectual property rights. However, AllPlant is not liable for any incorrect information provided relating to the status of such protection. In case of non-grant, lapse, annulment or invalidation of any intellectual property right relating to any variety or other product, the customer is not entitled to refund of sums or royalties already paid to AllPlant, or any other form of damages or compensation.

#### **Section 12: Other provisions**

1. If and to the extent that any part or any provision of these General Terms and Conditions appear to be contrary to any compulsory provision of national or international law, it will be considered not to have been agreed and these General Terms and Conditions will continue to bind the parties as to the rest. In that case the parties will consult each other in order to reach agreement on a new provision which is in conformity with the law in question, and which meets the intention of the parties as much as possible.
2. The Dutch version of these General Terms and Conditions shall prevail for interpretation purposes (or conflicts).

#### **Section 13: Applicable law and choice of forum**

1. To these General Terms and Conditions as well as to any agreement between AllPlant and the customer Dutch law applies. The Vienna Convention on Contracts for the International Sale of Goods does not apply in any case.
2. All and any disputes resulting from an agreement or the present General Terms and Conditions will be presented to the competent court in The Hague.