

## **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 plant 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 these General Terms and Conditions. To the extent that the varying conditions are not compatible with these General Terms and Conditions, the varying provisions will have preference over the General terms.

### **II OFFERS/AGREEMENT**

1. All offers made shall not bind the Seller, unless they specify a time limit. If a non-binding 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.
3. Offers are once-only and will not apply to repeat orders.

### **III PRICES**

1. The prices are generally determined upon acceptance of the order.
2. The Prices are ex works (EXW) Seller's.
3. The Prices do not include value added tax (VAT), import duties, other taxes and charges, costs of quality inspection and/or phytosanitary testing, costs of loading and unloading, packaging, transport, insurance and any other costs.
4. The prices are in euros, unless another currency is stated in the invoice.

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

1. Any delivery times quoted are an indication only and may in no event be regarded as being of the essence, unless otherwise expressly agreed in writing. The Seller will not be liable for any loss incurred by the Buyer as a result of delays beyond the delivery time quoted.
2. Should the Seller not be able to perform (part of) an order, he will inform the Buyer as soon as possible. If the Seller is not able to deliver the ordered quantity, he may deliver a smaller quantity or postpone the performance and/or, by mutual arrangement with the Buyer, deliver other products that are similar or of the same value.

3. Unless otherwise expressly agreed in writing the Seller's warehouse or processing area or any other place indicated by the Seller 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 order confirmation.
5. The Seller reserves the right not to perform orders if the Buyer has not paid for previous deliveries within the agreed term of payment.
6. If the Buyer has not taken delivery of the products at the agreed time and place, the Buyer will be in default and 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.
7. 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 in the opinion of the Seller the risk of loss of quality and/or decay of the products so demands in order to limit loss, the Seller will be entitled to sell the products in question to a third party.
8. Non-performance by the Buyer does not relieve him of his obligation to pay the full price.
9. The Seller will not be liable for any loss incurred as a consequence of non-delivery.

## **V FORCE MAJEURE**

1. In the event of force majeure the Seller may rescind the agreement or temporarily postpone delivery.
2. 'Force majeure' includes, but is not limited to, circumstances such as civil commotion, war, strikes (even when at the Seller's), natural disasters, epidemics, terrorism, weather conditions, traffic conditions such as roadblocks, road work or traffic jams, fire, government measures or the such.

## **VI 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 in writing.
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.

## **VII 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. The moment of receipt of the complaint by the Seller is decisive. 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 upon delivery on the transport documents in question.
2. Complaints concerning non-visible defects in products delivered must be notified to the Seller immediately after discovery. When the complaint was not submitted in writing, it must be confirmed to the Seller in writing within 24 hours.
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. The Buyer is 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. The products must be stored in the original packaging.
5. Complaints in respect of a part of the products delivered will not entitle the Buyer to reject the entire delivery.
6. 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.

## **VIII LIABILITY**

1. The Seller is not liable for any loss incurred by the Buyer, unless and to the extent the Buyer proves, that the loss was caused by intent or gross negligence on the part of the Seller.
2. Defects concerning any possible phytosanitary and/or other requirements that are applicable in the country of importation do not entitle the Buyer to any indemnification or rescindment of the agreement, unless and to the extent that the Buyer has informed the Seller of these requirements beforehand in writing.
3. The Seller is never liable for any consequential loss suffered by the Buyer. Should the Seller nevertheless have to indemnify a loss, 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.
4. 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.

## **IX 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 or
  - c. by automatic withdrawal.Any possible bank charges will be for the account of the Buyer.
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. The Seller will then be entitled to rescind the agreement with immediate effect. The Seller is not liable regarding any consequence that this rescindment might entail.
4. If the Buyer is in default, the Seller will be entitled to charge interest of 1.5% per month or, should the legal rate be higher, the legal rate 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.

## **X 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. With respect to products destined for export, from the time of arrival in the country of destination, the law of the country of destination will apply to the property law consequences related to retention of title. From that moment, if permitted under that applicable law, the following provisions apply in addition to the provisions of points 1 to 3 above:
  - 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.

## **XI 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 acting according to the Rules of the Netherlands Arbitration Institute, whose decision will be accepted as binding by both parties.

## **XII 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. The parties will then act as if, should they have known of the invalidity of the provision, they had agreed to a valid provision that corresponds with the intentions of the invalid provision, or to a provision comes closest to those intentions.

Februari 2009

**This document is a translation. Should a dispute arise, the Dutch version of these General Conditions prevails.**