



## GENERAL TERMS AND CONDITIONS OF SALE

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

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### I GENERAL

1. These General Terms and Conditions apply to all offers made by a wholesaler (the 'Seller') to all agreements concluded between the Seller and a customer (the 'Buyer') and to the performance of those agreements. Unless otherwise explicitly agreed in writing, terms and conditions of the Buyer are excluded.
2. Any varying provisions must be expressly agreed in writing. 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 nevertheless revoke the offer within two working days of receipt of the acceptance.
2. Any details published by the Seller about the offered product, including but not limited to images, product specifications and similar communications, on the Seller's website or wherever else, serve only as indications. No obligation arises from them on the part of the Seller, and the Buyer cannot derive any rights from them, unless the Seller has explicitly stated in writing that the products in question correspond with the published details.
3. 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.
4. Offers are once-only and will not apply to repeat orders.

### III PRICES

1. The prices are ex works (EXW) Seller's.
2. Unless otherwise agreed, 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. The Seller shall charge the Buyer all increments to the cost price which are paid initially by the Seller and/or which the Seller is required to charge the Buyer on the basis of a legal arrangement. Transportation insurance will be taken out only at the explicit request and at the expense of the Buyer.
3. 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. The risk is transferred to the Buyer at the moment of delivery or, in the event of transportation, at the moment the products are handed over to the haulier or leave the delivery location to be transported, irrespective of whether the transportation takes place from the delivery location and/or whether the Buyer or the Seller pays the transportation costs.
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, if the Buyer has otherwise failed to fulfil his obligations or if, in the Seller's opinion, the Buyer is at risk of failing to fulfil his obligations to the Seller.
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. 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 fully or partly rescind the agreement or postpone delivery for the duration of the force majeure.
2. 'Force majeure' includes, but is not limited to, circumstances such as civil commotion, war, strikes, natural disasters, epidemics, pandemics, terrorism, weather conditions, traffic conditions such as roadblocks, road work or traffic jams, fire, government measures or the , such, also if these circumstances relate only to the execution of the agreement by enlisted third parties such as a supplier of the Seller or a haulier.
3. An example of force majeure explicitly includes the situation that the Seller's (main) bank applies or will apply regulations, which may result in the Seller's relationship with this bank being terminated or at risk of being terminated if the agreement between the Seller and the Buyer is maintained, such in the opinion of the Seller.

## **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 may be charged and is non-returnable.
3. If the products are delivered in reusable packaging (cardboard boxes) and/or on durable transport material (stacking trolleys, containers, pallets etc.), the Buyer shall return identical packaging material with the same registration (e.g. a chip or label) to the Seller within a week of delivery, also if a usage fee is charged, unless otherwise agreed in writing.
4. If return consignments are not sent on time or durable packaging and/or transport material that is loaned to the Buyer for the longer term is not returned within a reasonable time set by the Seller, the Seller reserves the right to a) charge the costs thereof to the Buyer and b) recover from the Buyer any further loss incurred by the Seller in connection herewith, such as extra rental costs.
5. Any costs initially paid by the Seller for the return transport will be charged separately to the Buyer unless otherwise agreed in writing. If a deposit is charged, that deposit will be refunded after the material in question has been returned in good condition.
6. The Buyer shall reimburse the Seller for the repair or replacement costs of reusable and/or durable packaging that is damaged or lost and for any further damage sustained by the Seller in connection herewith, such as extra rental costs.
7. In the event of a dispute between the Seller and the Buyer with regard to outstanding quantities of transport material the administrative records of the Seller shall prevail.

## VII COMPLAINTS

1. Notification regarding complaints concerning visible defects, including quantities, sizes and/or weight, must be received by 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 of receipt of the products. The Buyer or recipient of the products must also note any visible 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. If 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), supported by evidence in the form of, for example, photos or an expert report; 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, unless the Seller has explicitly agreed in writing to waive an investigation on location. The products must be kept in the original packaging.
5. Complaints that concern only a part of the products delivered will not entitle the Buyer to reject the entire delivery.
6. Once the time limits referred to in VII.1 and 2 have elapsed, the Buyer will be deemed to have accepted the products delivered and the invoice rendered. The Seller will then no longer be obliged to handle any claims submitted by the Buyer.
7. If a complaint submitted by the Buyer proves unfounded, the Buyer shall reimburse the Seller for any costs incurred in connection with the investigation.

## 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 part 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. In addition, moisture dripping from some products can cause damage to materials that it comes into contact with. 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 office of the Seller and at the Seller's option:
  - a. net cash on delivery; or
  - b. within the term indicated by the Seller or, if no term has been specified, within 30 days after the invoice date, by means of deposit or transfer to a bank account indicated 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 defer payment of the purchase price or deduct any amounts from the purchase price without explicit prior written permission from the Seller.
3. The Buyer will be in default upon the expiry of the term of payment. The Seller will then be entitled to rescind the agreement with immediate effect. The Seller is not liable regarding any consequences that this rescindment might entail.
4. If the Buyer is in default, the Seller will be entitled to charge interest of 1.5% on a monthly basis 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. If the Buyer is in default the Seller is further entitled to charge any exchange-rate losses incurred as a consequence thereof.
5. A Buyer based in an EU Member State other than the Netherlands shall inform the Seller correctly in writing of his VAT identification number. At the first request of the Seller the Buyer shall further provide the Seller with all the information and documents that the Seller requires to prove that the products have been delivered to an EU Member State other than the Netherlands. The Buyer shall indemnify the Seller against all claims and all adverse consequences arising from failure or partial failure to fulfil these obligations.
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 the Buyer has settled in full all amounts that are payable or will be payable to the Seller by the Buyer for products delivered by the Seller, including payments for any shortcomings by the Buyer in the fulfilment of his obligations.
2. The Buyer may not pledge the delivered products or use them as security in any other manner as long as ownership has not been transferred. 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, the ownership of which, should this occur, is transferred at this moment by the Buyer to the Seller, who accepts this transfer.
  - 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 SPECIAL WARRANTIES FROM BUYER TO SELLER**

### **A National and international sanctions**

1. The Buyer guarantees:
  - a) that it complies and will continue to comply with each relevant country's sanction regulations applicable to the execution of the concluded agreement ("Sanction Legislation"),
  - b) that it will not directly or indirectly sell, transfer, supply or otherwise make the purchased goods available to natural or legal persons, entities, groups or public-sector or other organisations that have been sanctioned pursuant to the Sanctions Legislation, and
  - c) that all obligations under a) and b) of this article will also be imposed on every party to which it sells on or supplies goods that it bought from the Seller.
2. If the Buyer does not fulfil its obligations arising from this article, or does not fulfil them in time or properly, the Seller will be entitled, without further notice of default being required, to suspend the execution of the agreement with immediate effect or to dissolve the agreement. The Seller will not be obliged to compensate the Buyer for any resulting damage, while the Buyer will be fully liable for any damage that may arise on the part of the Seller as a result of the Buyer's failure to comply with this article.

### **B National and international anti-corruption legislation**

1. The Buyer guarantees:
  - a) that it complies at all times and will continue to comply with each relevant country's anti-corruption regulations applicable to the execution of the concluded agreement ("Anti-Corruption Legislation"),
  - b) that it applies a strict prohibition with regard to any offer to and any acceptance by employees or members of the Board of Directors of the Buyer of any goods or services of monetary value such as gifts, trips, entertainment or whatever, insofar as apparently intended as an incentive to act in a certain way in connection with an agreement or the formation thereof.
  - c) that it will not offer, promise or give anything directly or indirectly to any political party, campaign, government agency, officer or public institutions, state-run enterprises, organisations, international institutions, etc., or their employees, with the purpose of acquiring or retaining improper advantage in connection with the agreement or the Seller.
  - d) in connection with the agreement or the performance thereof or the Seller, that it will not offer, promise or give anything to or accept anything from a business client, unless there is a reasonable ground to do so and it is reasonable to do so in the context of the daily course of affairs and, moreover, complies with local legislation.
  - e) that it will inform the Seller immediately if, in connection with the agreement or the execution thereof, the Buyer takes note of any situation that may be in conflict with the Anti-Corruption Legislation.
2. If the Buyer does not fulfil its obligations arising from this article, or does not fulfil them in time or properly, the Seller will be entitled, without further notice of default being required, to suspend the execution of the agreement with immediate effect or to dissolve the agreement. The Seller will not be obliged to compensate the Buyer for any resulting damage, while the Buyer will be fully liable for any damage that may arise on the part of the Seller as a result of the Buyer's failure to comply with this article.

## **XII DATA PROTECTION**

1. The Seller is entitled to place identification data and data regarding payment and the payment behaviour of the Buyer at the disposal of Floridata, a partnership of wholesalers in the floricultural sector.
2. The data referred to in XI.1 are processed by Floridata in a databank in order to gain insight into the markets in which the respective wholesalers sell their floricultural products on the one hand and the payment behaviour of individual buyers on the other.
3. The data on the sale of floricultural products are processed in aggregated figures from which no personal data can be derived. These data are published from time to time either by Floridata or via third parties.
4. The data on the payment behaviour of individual buyers are processed in order to estimate the debtor risk. Personal data may possibly be inferred from these. The data on payment behaviour are shared by Floridata only upon special request and provided that the request comes from a wholesaler who participates in Floridata and provided it serves to limit his own debtor risk.
5. Should the above activities of Floridata be carried out at any time by another party,
6. the Seller has the right to place the above-mentioned data at the disposal of the said other party, which will be subject to the same restrictions as Floridata in respect of these data.

## **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 Dutch court in the territory in which the Buyer has its registered office.
3. Contrary to the provisions of XII. 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.

## **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 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.

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