GENERAL TERMS FOR ORNAMENTAL PLANT AND NUTRITIONAL HORTICULTURE PRODUCTION OF PLANTUM

General sales and delivery terms of Plantum for ornamental and horticulture cultivation material and plants as well as horticulture materials.

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In case of any contradiction between the Dutch version and the translation, the Dutch version shall prevail.

Article 1 Definitions

1. 'Seller' refers to: the natural or legal person engaged in delivering products as indicated in article 1 part 3 and in concluding transactions regarding such products, in the broadest sense, including the purchase and sale of products, the rental and/or sale of products he has cultivated himself and reproducing flowers or plants.
2. 'Buyer' refers to: the natural or legal person with whom the seller enters into any agreement regarding the products indicated in article 1 part 3.
3. 'Product' or 'products' refers/refer to: cultivation material and/or ornamental and horticultural plants as well as horticulture materials, such as fertilizers and crop protection products.

Article 2 Area of application

1. These General Terms apply to all offers, sales and deliveries made by the seller and agreements concluded by the seller regarding the products as described in article 1 part 3 of these General Terms.
2. Any terms of the buyer, of any type and by any name are not applicable, unless expressly agreed in writing.
3. Divergent provisions must be agreed expressly and in writing. Inasmuch as these provisions do not replace the provisions of these General Terms, these provisions shall be deemed to supplement these terms.
4. A copy of these General Terms will be provided to the buyer by the seller.

Article 3 Offers and prices

1. All offers are non-binding unless otherwise agreed in writing. An offer will remain valid for a maximum of 30 days.
2. The agreement is deemed to have been concluded by written confirmation of the offer by the buyer, unless the seller objects in writing within five days after the buyer has sent confirmation.
3. If an agreement is concluded by the intervention of agents, travelling sales representatives and/or other intermediaries and/or retailers, this will only bind the seller once this has been accepted by the seller in writing.
4. Prices are exclusive of VAT and additional expenses, including: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties, government and other official levies, as well as fees under breeders' rights and any other fees, unless otherwise agreed in writing. If no price is agreed on, the seller's price in effect at the time of delivery will apply.
5. The seller is entitled to adjust the price, in accordance with the requirements of reasonableness and fairness, to a level to be determined by the seller, if his expenses have increased significantly since the price was set.
6. Unless otherwise indicated, prices are in euros (€).
7. If the buyer cancels the agreement, he will immediately owe 25% of the gross sale value of the to be delivered products as a cancellation charge.
8. In the event that the products in question prove to be unsaleable or saleable only at a lower price as a result of said cancellation, the buyer will be liable for any price differences and other damages incurred by the seller.
9. Both parties are obliged to limit the possible damage due to the cancellation as much as possible.

Article 4 Conditions of sale

1. Orders for products for which materials have to be purchased from the buyer that is not yet fully grown at the time of purchase will be accepted by the seller subject to the normal cultivation average of good plant material with a good appearance.
2. Complete or partial failure of the cultivation or harvest of products or partial spoilage during storage for any reason will release the seller from the obligation to deliver and his other obligations, unless attributable to an intentional act or gross negligence on the part of the seller.
3. If the delivery of a variety that has been ordered is not possible for any reason, the seller is entitled to deliver another variety, or to cancel the order. The seller shall , in consultation with the buyer, make an effort to deliver a variety that is equivalent as much as possible. This replacement delivery shall take place under the same conditions as originally agreed. If the buyer does not accept another variety, the buyer has the right to cancel the order of this variety. If the order of the undeliverable variety is part of a larger agreement, then the cancellation referred to above only pertains to the undeliverable variety and the other parts of the agreement remain in effect. If delivery of another variety has been agreed, the buyer does not have the right to receive compensation for damages or to terminate the agreement.

Article 5 Delivery and transport

1. Delivery is ex works, unless otherwise agreed. On delivery, the risk connected to the products in question, with all that is connected there to, is transferred to the buyer.
2. After consultation with the buyer, the seller will determine the delivery date. Delivery dates indicated are not considered deadlines. If a delivery date is agreed on, the seller will endeavour to maintain that date for delivery in as far as possible. If the seller cannot deliver on the agreed date or within the agreed period, the seller will inform the buyer about this in the timeliest manner possible. Parties will determine a new delivery date in consultation. This new delivery date will then immediately constitute the agreed delivery date.
3. If the buyer receives the ordered products before the agreed delivery date or period as indicated in part 2, the resulting risk is entirely for the buyer.
4. If the buyer receives or wishes to receive the ordered products after the agreed delivery date, the risk of any loss of quality resulting from longer storage will be entirely for the buyer.
5. Any extra costs due to taking earlier or later delivery of the products as referred to in part 3 or 4 of this article will be charged to the buyer.
6. If after a certain storage period that may be considered reasonable in view of the type of product, the buyer has not received the product and the risk of loss of quality and/or spoilage of the products leaves no other option, the order will be deemed to have been cancelled by the buyer. In that case, the buyer is obliged to pay the damage incurred by the seller as a result.

Article 6 Packaging/carts/pallets

1. Single-use packaging can be charged and will not be taken back.
2. All packaging, except single-use packaging, remains the property of the seller.
3. The seller is entitled to charge the buyer an agreed user fee for reusable packaging and other durable material, which fee shall be specified separately on the invoice.
4. Within 30 days after delivery or immediately after planting, the buyer is obliged to return the packaging to the seller at his own expense and in good condition and under the proper hygienic conditions. If it has been agreed that the seller will collect the packaging himself, the buyer must see to it that the packaging remains in good state and under the proper hygienic conditions and store it so that the seller can collect it in a normal manner.
5. The buyer may not continue to use or allow third parties to use the packaging.
6. If carts, rolling containers or reusable pallets have been delivered with the products, then the buyer must return identical carts, rolling containers or reusable pallets with the same manner of registration (such as chip or label) within one week, unless agreed otherwise. The buyer may not keep these for his own use or allow third parties to make use of them.
7. In the event of damage or loss of reusable packaging, carts, rolling containers, pallets, etc., the buyer is obliged to repay the repair or replacement costs to the seller and also repay any extra rent as a result of late return.

Article 7 Payment

1. The seller is entitled to request an advance of 50% on the invoice amount from the buyer.
2. Payment must occur within thirty days after the invoice date, unless otherwise agreed.
3. The buyer is not entitled to reduce the purchase price by any counter-claim he may make.
4. The buyer is not entitled to suspend the fulfilment of his payment obligation in the event of a complaint submitted by him to the seller regarding the products delivered, unless the seller expressly agrees with the suspension in exchange for a guarantee.
5. All payments will be made at the offices of the seller or by deposit or transfer into a bank account to be indicated by the seller.
6. Payment must be made in euros (€) unless otherwise indicated on the invoice. In the last-mentioned case, the seller is entitled to charge exchange rate differences to the buyer.
7. If the buyer does not fulfil his payment obligation, mentioned in part 2 of this article, in time, he will be deemed to be in default by operation of law. The seller will then be entitled to charge interest at 1% monthly as from the date that the buyer is in default of fulfilling the payment obligation indicated in part 2, with a partial month being counted as a whole month. In the event of the buyer's default, the seller shall also be entitled to charge the exchange rate loss suffered as a result of that.
8. If the buyer is in default or otherwise falls short in fulfilling any of his obligations, all reasonable costs to obtain satisfaction, both legal and extra-legal, will be at his expense.
9. The seller reserves the right to not carry out, or no longer carry out, orders or agreements if previous deliveries have not been paid for by the buyer or the buyer has not fulfilled or is at risk of not fulfilling his obligations to the seller. The buyer is required to pay the damage suffered by the seller due to this. The seller is not responsible for any damage to the buyer as a result of not carrying out orders.
10. The buyer located in a different EU Member State than the Netherlands will inform the seller in writing of his correct VAT identification number. Furthermore, the buyer shall provide all necessary information and documents that the seller requires as proof that the products have been delivered in a different EU Member State than the Netherlands. The buyer will indemnify the seller for all claims resulting from and all negative consequences of the buyer not or not entirely complying with the provisions in this article. The seller reserves the right to increase the price payable by the buyer with the VAT rate that would apply to the delivery in question in the event of delivery within the Netherlands.

Article 8 Force majeure

1. Force majeure refers to any circumstance outside the direct sphere of influence of the seller, as a result of which fulfilment of the agreement can no longer reasonably be expected. This may include strikes, fire, extreme weather conditions or government measures and diseases and plagues on the one hand or faults in the materials supplied to the seller on the other hand.
2. If the seller cannot fulfil its obligations because of force majeure, the seller must inform the buyer of the circumstances in writing as soon as possible.
3. In the event of force majeure, the parties will agree a change to the agreement or complete or partial dissolution of the agreement.
4. If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may then apply to the court which is deemed competent by virtue of article 14.

Article 9 Unforeseen circumstances

1. In the event of unforeseen circumstances on the part of one of the parties that are so serious that, in view of the requirements of reasonableness and fairness, the other party may not expect that the concluded agreement will remain in effect unchanged, the one party will inform the other party about the unforeseen circumstances in writing and the parties will consult about a change of the agreement or about the complete or partial dissolution of the agreement.
2. If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may apply to the court deemed competent by virtue of article 14.

Article 10 Guarantees and complaints

1. The seller guarantees that the products that are to be delivered on the basis of the order will comply with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time of concluding the agreement.
2. The seller does not guarantee the trueness to variety of the products that are generally known to branch back.
3. The seller does not guarantee the growth and blossoming of the products delivered.
4. The buyer will at all times be provided with all requested cultivation information to the best of the seller's knowledge and abilities, by or on behalf of the seller, but without any liability on behalf of the seller.
5. The seller registers the crop protection products that he uses in his own records. Copies of this registration will be made available to the buyer upon request.
6. Complaints regarding visible defects, including those regarding the quantity, size or weight of the products delivered, must be indicated to the seller within two days after delivery and the seller must be informed in writing within eight days.
7. Complaints regarding non-visible defects must be indicated to the seller immediately after detection (within two days at the latest) and the seller must be informed in writing within eight days.
8. Complaints must also be indicated to the seller at such a time that the seller can check the product.
9. A complaint must at least include:
a. A detailed and accurate description of the defect;
b. The storage location of the product to which the complaint refers;
c. A specification of facts on the basis of which it can be determined that the products delivered by the seller and those rejected by the buyer are the same.
10. When the products delivered are rejected by the buyer under the terms of this article and the buyer and the seller do not immediately agree on an amicable settlement, the buyer must then appeal to an independent, officially accredited expert who will compile an expertise report. The costs of the expertise report will be for the seller if the rejection is justified and for the buyer if it is not justified. In any case, the buyer shall advance the costs in question.
11. Complaints regarding a portion of the products delivered cannot give rise to rejection by the buyer of the entire delivery.
12. The buyer is obliged to check the delivered quantity of the shipment delivered, or have this checked, on receipt and to report a deviation of the quantity to the seller in accordance with part 6 of this article.
13. Expressing a complaint does not suspend the buyer's obligation to pay, regardless of any justification of a complaint.

Article 11 Liability

1. The seller accepts no liability whatsoever, unless in one of the cases specified in this article. In such a case, the liability of the seller will be limited to no more than the amount of the invoice. In no event whatsoever, shall the seller be liable for any form of consequential damage, loss of turnover or loss of profit.
2. The seller is not liable for damages due to force majeure as indicated in article 8 part 1.
3. All liability regarding non-timely delivery by the seller is hereby excluded, unless the agreed delivery date referred to in article 5 part 2 is exceeded by more than seven days. If the delivery date is exceeded by more than seven days, the seller must be given written notice of default, whereby the buyer must set a reasonable period for the seller to fulfil his obligations as yet.
4. Compensation in the event of a complaint can only take place if the complaint, submitted in accordance with article 10, proves to be justified and provided that there is culpability or conscious negligence on the part of the seller. Moreover, the compensation shall be limited to the part of the delivered goods to which the complaint pertains.
5. In the event of a partial failure of the cultivation at the buyer as a result of the delivered products, then, if the seller is required to pay compensation for damages by virtue of part 4 of this article, the compensation of damages payable by the seller shall not exceed the percentage of the invoice value that equals the portion of the cultivation that failed at the buyer. If, when the damage is reported, the seller and the buyer jointly determine or a third party determines the percentage of deviating, diseased or weak plants, this percentage will determine the seller's maximum liability.
6. The buyer may not deduct damage compensation from any outstanding amounts payable to the seller and damage compensation does not entitle the buyer not to pay the invoice amount or not to pay this timely.
7. Both parties are obliged to ensure that any damage is limited as much as possible.
8. Each possible claim regarding compensation for damages pursuant to these General Terms expires, if and as soon as one year has passed since the delivery of the products in question when the claim has not been submitted to the seller in writing.

Article 12 Transfer of ownership, retention of ownership and surety

1. Except for the terms of part 2 of this article, ownership of the products is transferred to the buyer at the time of delivery under article 5 of these General Terms.
2. All delivered and to be delivered products, and the products arising therefrom, irrespective in which stage of the cultivation process, remain the sole property of the seller, until all claims that the seller has or acquires vis-à-vis the buyer, including in any case the claims specified in Book 3, Section 92, Subsection 2 of the Dutch Civil Code have been paid in full.
3. As long as the ownership of the products has not been transferred to the buyer, the buyer may not pledge the products or grant any other right to these products to third parties, except within the context of his normal business operations. The buyer undertakes upon the seller's first request to cooperate in establishing a pledge right on the receivables that the buyer acquires or shall acquire following the delivery of the products to his customers.
4. The buyer is obliged to store the products that have been delivered subject to retention of title with the necessary care and in such a manner that the products can be identified by the seller.
5. The seller is entitled to repossess the products delivered subject to retention of title and that are still located at the buyer if the buyer is in default with regard to the fulfilment of his payment obligations or is experiencing payment difficulties or threatens to experience payment difficulties. The buyer shall grant the seller free access to his premises and/or buildings for the inspection of the products and/or in order to exercise the seller's rights.
6. If there is any doubt in the mind of the seller regarding the ability of the buyer to pay, the seller will be entitled to defer performances until the buyer has provided surety for the payment. If the buyer has not provided surety for the payment within fourteen days after being ordered to do so, the seller is entitled to terminate the agreement by cancellation. In this case, the buyer will be liable for the expenses incurred by the seller.

Article 13 Protection under breeders' rights or contractual protection of varieties

1. The delivered products may only be used by the buyer to cultivate end products at the buyer's business premises. The end product may only be sold by the buyer under the relevant variety name and trademark if applicable.
2. Starting material and plant material of species protected by a breeders' right applied for or granted in the Netherlands or any other country or by a contractual transfer provision may not be used to further reproduce the variety. Furthermore, illegally reproduced starting material and plant material may not be:
a. treated for the purpose of reproduction,
b. brought into the realm of commerce,
c. traded further,
d. exported,
e. imported,
or kept in stock for one of these purposes.
3. The seller is entitled to access to the business premises of the buyer or lots under the buyer's control where the starting or plant material delivered by the seller is located to view and/or assess said material. The seller will inform the buyer of his arrival in a timely manner.
4. The buyer is obliged to provide immediate access to his business and the crops to inspection authorities carrying out inspections on behalf of the owner of a variety delivered to him. Upon request, the buyer must also provide immediate access to his records, such as invoices, that are relevant to this inspection.
5. If the buyer finds a mutant in the protected variety, he must immediately inform the holder of the breeders' right and/or his representative by registered letter.
6. At the written request of the holder of the breeders' right and/or his representative, the buyer will provide the holder of the breeders' right and/or his representative, within two months of receiving the request, with test material of the mutant, free of charge.
7. The buyer is aware that the finder of a mutant, being an essentially derived variety, in the protected variety requires the permission of the holder(s) of the breeders' right regarding the 'parent variety' to exploit the mutant.
8. In particular, the buyer is aware that the finder of a mutant requires the permission of the holder of the breeders' right regarding the 'parent variety' to carry out the actions indicated in part 2 regarding all material of the mutant, including harvested material (therefore also flowers, plants and/or plant parts).
9. The buyer is obliged to provide all cooperation desired by the seller, including cooperating in collecting evidence, in the event that the seller becomes involved in proceedings regarding breeders' rights or other intellectual property rights.
10. The buyer grants permission to wholesalers, auctions, importers and/or exporters to provide information to the holder of the breeders' rights and/or his representative regarding the quantity of harvested product that the buyer trades of the variety of the holder of breeders' rights. In addition, the buyer grants specific permission to the auctions to provide information to the holder of the breeders' rights and/or his representative regarding the quantity of his product that is traded at the auction under the code 'other'.

Article 14 Dispute settlement

1. Dutch law applies to all agreements to which these General Terms apply in whole or in part.
2. All disputes (even those deemed as such by only one party) regarding or arising from the agreements concluded between the seller and the buyer, to which these General Terms apply, can be settled by the Dutch court that is competent in the area in which the seller is established. In addition, the seller is entitled at all times to summon the buyer to appear before the court which is competent by law or by virtue of the applicable international convention.

Article 15 Final clause

If and insomuch as any part or provision of these General Terms proves to be contrary to any compulsory provision of national or international law, it will be deemed not agreed on and these General Terms will otherwise bind the parties. The parties will then confer to arrive at a new provision corresponding as much as possible to what the parties intended.