

**GENERAL TERMS AND CONDITIONS OF SALE  
B.V. BOOMKWEKERIJ UDENHOUT 15-3-2023****Art. 1. Definitions****1. Seller:**

Boomkwekerij Udenhout B.V.

**2. Buyer:**

Any natural person or legal entity that purchases goods from the seller.

**3. Supplier**

Any natural person or legal entity that delivers goods to the seller.

**4. Other parties:**

Buyer and supplier.

**Art. 2. Applicability**

1. These general terms and conditions are applicable to all offers, quotations and / or all agreements made by the seller or entered into with other parties. Deviations from these general terms and conditions are only binding if and insofar as such deviations have been explicitly agreed upon in writing by the seller and other parties.

2. These conditions also apply to agreements for which other parties need to involve third parties to execute such agreements.

3. General and / or special conditions of the buyer and / or supplier do not bind the seller unless the seller has explicitly agreed to the applicability of such terms and conditions in writing.

4. If one or more articles of these terms and conditions should be completely or partially declared null and void or be annulled at any given time, then the remaining part of these terms and conditions continues to apply in full.

5. If the seller does not continuously demand strict compliance with these terms and conditions, this does not mean that the articles thereof are not applicable, nor that the seller loses the right to demand strict compliance with the articles of these terms and conditions to any degree whatsoever in other cases.

**Art. 3. Quotations and offers**

1. All quotations and / or offers made by the seller are free of engagement, unless stated otherwise in the quotations and / or offers. All quotations and offers are made subject to interim sales and growth. Quotations and / or offers are confirmed in writing.

**Art. 4. Agreement**

1. The agreement of purchase and sales and additions and / or modifications referring to the agreement, only become binding after confirmation in writing by the seller. The content of the confirmation determines the content of the agreement.

2. When a payment security is needed, the agreement becomes valid only after the buyer has given the seller a certified payment security, such as an irrevocable (confirmed) letter of credit, and after it has been accepted as such. Each agreement is entered into by the seller under the resolute condition that the buyer, at the sole discretion of the seller's credit insurer, proves to be sufficiently creditworthy for the financial performance of the agreement.

3. If the acceptance (whether or not regarding subservient points) deviates from the supply stated in the quotation and / or offer, the seller is not bound by it. Subsequently, the agreement is not established according to this deviating acceptance, unless the seller states otherwise.

4. A composite price offer does not bind the seller to carry out a part of the order at a corresponding part of the offered price. Offers and / or quotations do not automatically apply to future orders.

5. Any additional agreements and / or modifications, as well as verbal pledges made by personnel of the seller or made on his behalf by his agents or other representatives working for him, only bind the seller after these have been confirmed by him in writing.

#### **Art. 5. Prices**

1. All prices are stated in the agreed currency and do not include VAT or other governmental levies and are Free Carrier Udenhout Nederland (FCA, incoterms 2020), unless otherwise agreed upon in writing.

2. Unless explicitly otherwise agreed, the costs for packaging and shipping, as well as all other costs including travel and subsistence expenses and administration costs, monitoring by the NVWA Netherlands Food and Product Safety authority and / or Nak horticultural quality assurance authority, charged or levied by third parties for the products of the seller and for transport, are for the account of the buyer.

3. In the event the seller and buyer agree upon the sales price being in a currency other than EURO, then the exchange rate of the EURO applies as of the order confirmation date, unless otherwise agreed upon in writing.

#### **Art. 6. Payment**

1. Unless explicitly agreed otherwise, the invoice amount must be paid within 30 days of the invoice date, without any deductions of discounts or other settlements.

2. All payments must be made without any further costs, to a bank account indicated by the seller.

3. Discountable bills will only be accepted by the seller, if explicitly agreed upon in writing. Costs and fees concerning the discounting are for the account of the buyer.

4. Payment will only be considered received when the seller can access the amount unhindered. The acceptance of bills and cheques is therefore only regarded to be a method of payment rather than being the actual physical payment.

5. Active payment may not be made to any persons employed by seller who do not have an explicit mandate to accept such payment.

6. If at any given time the seller may have reason to doubt the creditworthiness of the buyer, the seller has the right to demand an advance on the purchase amount from the buyer, or that the buyer provides a valid payment security for the full amount that the seller still has to claim from the buyer, before complying (further).

7. Regardless of any allocation of payment by the buyer, the seller retains the right, to first deduct the buyer's older debts. If costs and interests have already accumulated, then the seller is entitled to first deduct such, followed by any interest, and only then settle the main claim.

#### **Art. 7. Late or outstanding payments**

1. Payment cannot be suspended on the grounds of claims of inferior supply or on the grounds that the supply is not yet complete or based on any other professed claim by the buyer. Neither is the buyer entitled to a deduction or return of goods for reimbursement of the purchase price nor to a discount on the purchase price unless the seller has given explicit written permission.

2. If the buyer remains in default of the required advance payment in accordance with paragraph 6 of the previous article and also fails to supply the required security, then the seller is entitled to dissolve the agreement, either in its entirety or partially.

3. From the moment in time that there is non-compliance with the obligation to pay by the buyer, the buyer becomes liable to pay interest on the amount owed, including VAT, at a rate of 1% per calendar month.

4. All costs, both judicial and extrajudicial, with a minimum of € 250.00, related to late or outstanding payment of whatever the buyer owes, are for the account of the buyer. Extrajudicial costs cover all costs for summonses and serving notice as well as the advances and fees of whichever party has

been assigned by the seller to collect the monies owed. If a bankruptcy petition must be filed for the buyer, then the buyer is not only liable for the principal sum and the extrajudicial costs and contractual interest, but also the costs of the bankruptcy petition.

#### **Art. 8. Delivery**

1. Unless otherwise agreed in writing, all deliveries are made Free Carrier from Udenhout, The Netherlands (FCA, Incoterms 2020).
2. If the seller and the buyer agree on delivery on the basis of Delivered at Place (DAP, Incoterms 2020), the following applies: DAP: deliveries are transported by means of full loads by the seller to the agreed place. Unloading etc. must be done by the buyer. The buyer is responsible for unloading in a professional manner, unless agreed otherwise. Additional conditions: DAP in combination: If the buyer only partially calls his orders, resulting in a partial load, the seller is entitled to pass on the resulting additional costs to the buyer. DAP orders that are not full loads are delivered when the combination option arises. In all cases, the driver is responsible for reaching the unloading location without damage. The driver is therefore the person who assesses whether the unloading location is accessible.
3. For such deliveries, the maximum time for unloading a full load at one unloading address is two hours, unless explicitly agreed otherwise. The unloading time for partial loads is maximum one hour per loading address. If the unloading time is exceeded or extra unloading addresses are added, then the seller is entitled to charge the extra unloading/waiting hours based on cost price.
4. When packing material is charged separately in the form of a deposit to the buyer in accordance with the prices as published by the Foundation for Auxiliary Materials (*Nederlandse Stichting Hulpmaterialen*), the buyer may return the packing material, clean and in good condition, during the same season, upon which the seller will reimburse the aforementioned standard deposit.
5. Boomkwekerij Udenhout is entitled to return such packaging material received from its suppliers in the same season, clean and in good condition, to its suppliers, for the amount as published by the Foundation for Auxiliary Materials of the Dutch association of tree nurseries.
6. Co-supplied auxiliary materials such as straps, chains, holsters, etc. are charged by the seller and only credited if the buyer returns them within one month, at his own expense and in good condition.
7. If the delivery period is brought forward or delayed by the buyer, then the buyer is responsible for any damage to the plants caused by premature or postponed delivery.
8. The seller reserves the right to deliver the goods in parts, in which case the (payment) conditions described in Article 6 also apply to each partial delivery.
9. For non-available species, the seller has the right to supply comparable and/or equivalent species in larger or smaller girth and/or sizes, at a correspondingly higher or lower price. Such a delivery shall not be regarded as defective. Unless explicitly agreed otherwise, the seller may proceed to deliver a B-quality in the event of non-available plants.
10. The seller's warranty is limited to delivery of products in accordance with the description in the order confirmation.

#### **Art. 9. Delivery time**

Although the specified delivery time will be respected as much as possible, the delivery time is only an approximation and can never be regarded as a deadline. This is because delivery times are subject to various circumstances beyond the influence of the seller. The seller is not in default with regard to the delivery time until he has been issued written notice of default by the buyer, who has given him the opportunity to deliver within a reasonable period and the seller has failed to comply with this.

#### **Art. 10. Cancelling an order**

1. In principle, cancellation of an order by the buyer is not possible. If the buyer nevertheless cancels an order in whole or in part or transfers it to another financial year (01-07 to 30-06), for whatever

reason, the seller need only accept this if the buyer pays cancellation costs, which are at least equal to 50% of the invoice value of the cancelled goods, plus VAT. In that case, the seller is also entitled to charge all costs incurred and to be incurred up to that time (including costs of preparation, care, storage, etc.), without prejudice to the seller's right to compensation for loss of profit and other damages.

2. When delivery is refused, then the buyer is liable for all resulting costs and damages, unless refusal of delivery is the result of an erroneous delivery or transport damage, hindering or making impossible the use of the entire delivery or a great part thereof. Damages are calculated on the basis of the contents of article 10.1. The seller has the right, also without prior notice, to sell the products freely at a price it deems acceptable, at the expense of the defaulting buyer. The buyer is then liable for the price difference as well as for all other costs that arise from this for the seller, including storage costs.

3. The seller has the right to cancel an order if, at the time of delivery, the buyer has not yet timely fulfilled his previous payment obligations towards the seller or towards other creditors. The seller can also make use of this right if he considers the information regarding the creditworthiness of the buyer to be insufficient. The buyer cannot derive any rights from such cancellations and the seller can never be held liable by the buyer.

#### **Art. 11. Force majeure**

1. Despite any binding delivery agreements, the seller cannot be held liable for exceeding the delivery time because of force majeure and other unforeseen circumstances which make it exceedingly difficult or impossible for the seller to deliver – this includes growth damage or decay caused by unforeseen and/or weather damage, official prohibition on delivery and/or other orders, interruption of operations, strikes etc.- also if the circumstances occur at the suppliers of the seller. Such events entitle the seller to suspend the delivery for the duration of the hindrance plus an appropriate start-up time, or to dissolve, either partially or fully, the as yet unfulfilled part of the agreement.

2. If the hindrance lasts longer than four weeks and the seller cannot be held responsible for this hindrance, the buyer may only dissolve the agreement, after he has proposed a reasonable subsequent delivery period in writing to the seller, with which the seller has failed to comply.

#### **Art. 12. Liability**

1. Any liability on the part of the seller and his personnel for all damage, whatever sort of damage, directly or indirectly, including loss of profits, damage to movable property or real estate or to persons and prosecutable damage is explicitly ruled out, except in the case of intent or negligence bordering on intent, on the part of the seller.

2. The seller accepts no responsibility for any damage resulting from the use of products from his suppliers; the same applies to transport.

3. The seller shall never be liable for the regrowth, blooming of the delivered goods or the unsuccessful establishment or growth of the delivered goods unless otherwise agreed in writing. The seller will also never be liable for damage resulting from diseases or pests that affect the goods after delivery. This applies to both diseases and pests that are quarantine organisms in certain countries or areas of Europe, as well as all other diseases and pests. It is the buyer's responsibility at all times to assess whether the conditions, including climatic conditions, are suitable for the goods.

4. If, despite the provisions of Article 12, paragraphs 1, 2 and 3, the seller is found to be liable for whatever reason, the liability of the seller will be limited to a maximum of the invoiced amount for the goods, on the condition that the seller shall be solely and exclusively liable for an amount of maximum € 20,000.00 per case.

5. The buyer indemnifies the seller against third-party claims for compensation for damage for which the seller is not liable under these terms and conditions.

**Art. 13. Buyer's information obligation**

1. The buyer is obliged to inform his customers, where necessary, about the correct treatment of the products supplied and in the applicable cases to advise them in particular of the dangers related to the products, such as the degree of toxicity of the plants, intolerance upon ingestion of plants and/or parts of plants.
2. The buyer indemnifies the seller against any form of responsibility to third parties, in the case of damage being caused as a result of the buyer not fulfilling the abovementioned obligations.

**Art. 14. Right of complaint**

1. Upon receipt, supplied products must immediately be checked for transport damage, incorrect delivery and/or incorrect quantities. Any such complaints must be noted on the delivery note; subsequent complaints for these types of damages will not be accepted.
2. Other complaints must be submitted promptly and in writing, with a detailed description of the reason of complaint, to the seller, and in the event of visible flaws, must be submitted within eight days following receipt or acquisition of the product.
3. Complaints that are too late and/or not correctly submitted will not be accepted. The date of the postmark or email is qualifying.
4. If the right of complaint is exercised timely and the complaint is justified, then the seller may choose to either supply replacement products without charge or send a credit note for the amount of the invoice. If the complaint refers to the authenticity of the species of plants delivered, then the seller warranty is limited to no more than the amount of the invoice.
5. The seller is not liable for the unsuccessful establishment or growth of plants delivered by him. Unless explicitly agreed otherwise and in that case under the conditions of the growth warranty provided by the seller. The seller must be allowed a suitable period to be able to supply a replacement delivery.
6. The right of complaint expires at the very latest one month after a written statement by the seller declaring the complaint inadmissible unless the buyer has submitted an objection in writing to this rejection. The seller is obliged in such a case to inform the buyer explicitly of the consequences of not responding.
7. Having submitted a complaint does not free the buyer of his obligation to pay. Only if the seller agrees in writing, may the buyer deduct the amount of the contested products from the invoice.
8. The right of complaint may only be exercised by the directly contracting party. The right of complaint is not transferable.
9. All rights of complaint lapse if the buyer does not treat the plants that he has rejected with the necessary care during the period that they are in his possession.

**Art. 15. Condition of ownership**

1. The ownership of the seller's goods only transfers to the buyer once the goods in question have been fully paid. The delivered goods may be reclaimed by the seller at any time until full payment has been received, and the buyer in that case is obliged to return these goods immediately upon receiving an initial request to do so.
2. The sold goods remain the property of the seller for the security of the seller as long as the seller is owed monies for previous or later similar agreements.
3. The seller shall be entitled to take back the sold goods immediately if the buyer fails in any way to fulfil his (payment) obligations. In that case, the buyer shall be obliged to grant the seller access to its premises for that purpose.
4. The buyer must store the goods subject to retention of title separately from any other goods, in order to be able to distinguish the seller's goods from the rest.

5. The buyer is not permitted to transfer ownership of the delivered goods to third parties in law or in fact or to encumber them with limited rights without the seller's permission.

#### **Art. 16. Intellectual Property Rights**

1. The seller reserves all intellectual property rights that the seller has in connection with goods supplied by the seller.
2. In those cases in which it appears from the catalogue used by the seller or from the agreement concluded by the parties that a variety enjoys plant breeder's rights or design rights protection - which is indicated by the statement (R) after the name of the relevant variety - the buyer is bound by all obligations related to that right. Violation of this provision means that the buyer is liable for all resultant damage suffered by the seller and third parties.

#### **Art. 17. Disputes**

All disputes, including those that are only considered a dispute by one of the parties involved, with regard to an agreement to which these trading terms and conditions apply, agreements resulting from such an agreement or these trading terms and conditions themselves, will be settled by arbitration by the Netherlands Arbitration Board for Arboriculture (*Nederlands Scheidsgerecht voor de Boomkwekerij*)

#### **Art. 18. Applicable law**

1. All (legal) relationships between the seller and buyer are subject to Dutch law unless explicitly agreed otherwise.
2. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

#### **Art. 19. Sanctions**

1. The buyer guarantees that it complies and will continue to comply with all obligations and restrictions arising from all applicable sanction regulations of the United Nations, the United States of America, the European Union, the Netherlands and any other country that is or may become relevant to the implementation of the concluded agreement ("Sanctions Act").
2. In particular, the buyer guarantees that he will not directly or indirectly sell, transfer, deliver or otherwise make the purchased goods available to (legal) persons, entities, groups or (government) organizations that are sanctioned on the basis of the Sanctions Act.
3. The buyer shall ensure that all obligations under this article will be imposed equally on any party to whom he resells or supplies goods that he has obtained from the seller.
4. If the buyer does not, does not timely or does not properly comply with the obligations arising for him from this article, the seller has the right to suspend or dissolve the agreement with immediate effect without notice of default and without any obligation to pay compensation on the part of the seller. and with full liability for damages on the part of the buyer towards the seller, all at the discretion of the seller.

#### **Art. 20. Anti-Corruption**

1. The buyer shall at all times comply with all obligations and restrictions arising from all applicable anti-corruption regulations of the United States of America, the United Kingdom, the Netherlands and any other country that is or may become relevant to the performance of the concluded agreement ("Anti-Corruption Law").
2. Any offer to and acceptance by employees or members of the management of the buyer of money, gifts, presents, travel, entertainment or other consideration relating to the contract or the seller and which is intended to, or can be seen as, incitement to act in a certain way is strictly prohibited.

3. The buyer shall not directly or indirectly offer, promise or give anything to any political party, campaign, government agency, official or to (employees of) public institutions, state-owned enterprises, organizations, international institutions for the purpose of obtaining or retaining business or any other improper advantage in connection with the contract or the seller.
4. In connection with the contract or the seller, the buyer shall not offer, promise, give or accept a business relationship unless there are fair grounds for doing so and it is reasonable in the day-to-day business and otherwise complies with local legislation.
5. The buyer shall immediately notify the seller if it becomes aware of any situation in the performance of the agreement that may be in violation of Anti-Corruption legislation.
6. If the buyer does not, does not timely or does not properly fulfil the obligations arising for him from this article, the seller has the right, without notice of default, to suspend or dissolve the agreement with immediate effect, without any obligation to pay compensation on the part of the seller and with full liability for damages on the part of the buyer towards the seller, all at the discretion of the seller.