

I GENERAL

1. These General Terms and Conditions apply to all offers made by a wholesaler (hereinafter: “Seller”) and all agreements between seller and a customer (hereinafter: “buyer”) and their performance. Unless the application of buyer’s conditions has been agreed in writing, they are explicitly excluded.
2. Parties must agree conditions that deviate from these General Terms and Conditions in writing. They take precedence over these General Terms and Conditions.

II OFFERS/AGREEMENT

1. Offers are always free of obligation, unless they contain a term. If a quotation contains an offer free of obligation which is accepted by the buyer, seller nevertheless has the right to withdraw the offer within two days after receipt of the acceptance.
2. Information published by the seller about the offered product, including but not limited to images, product specifications and similar expressions, on the website or in any way whatsoever, is only indicative. They don’t bind the seller and the buyer cannot derive rights from them, unless the seller has explicitly indicated in writing that the products concerned are identical to the published information. The images exclusively shown in the webshop and seller’s offers, are leading, taking into account deviation colour differences on different screens and in comparable media.
3. An agreement is concluded at the time of the explicit acceptance of the order by seller in a manner customary for the industry.
4. Offers are one-off and don’t apply to re-orders.

III PRICES

1. Prices are ex-works.
2. Unless otherwise agreed the prices are exclusive of VAT, import duties, other taxes and levies, costs of quality control and/or phytosanitary research, costs of loading and unloading, packing, transport, insurance etc. All cost-increasing factors that are initially paid by the seller and/or that seller must charge buyer on the basis of a statutory regulation, will be charged by the seller to the buyer. A transport insurance is only taken out on special request and at buyer’s expense.
3. Prices are quoted in Euro, unless a different currency is mentioned on the invoice.

IV DELIVERY AND DELIVERY TIME

1. Delivery times indicated by the seller are only indicative and don't entitle buyer to dissolution or compensation in case of expiration, unless parties have agreed otherwise in writing.
2. If the seller can't (partially) meet his obligations, he will inform buyer as soon as possible. If he can't deliver the entire ordered quantity, he is entitled to carry out a partial delivery or to suspend the performance of the agreement or deliver other similar or equivalent products, in consultation with the buyer.
3. Unless otherwise agreed in writing, the delivery location is the storage location or processing location, or another location to be designated by the seller. The risk passes on to the buyer at the time of delivery, or if transport is to take place, when the products are handed over to the carrier or leave the delivery location for transport, regardless of whether the transport takes place from the delivery location and whether buyer or seller pays the transportation costs.
4. Free delivery only takes place if and insofar seller has mentioned it on the invoice or on the order conformation.
5. Seller is entitled not to execute orders if buyer hasn't paid a previous delivery within the agreed payment term, the buyer has otherwise failed to meet his obligations towards the seller or if, in the opinion of the seller, non-fulfillment is about to take place.
6. If buyer hasn't accepted the ordered products at the agreed time and place he is in default and the buyer is responsible for the risk of quality loss. The ordered products are at his disposal and are stored at his expense and risk.
7. Once a limited storage term has expired, which can be considered reasonable in view of the product type, and buyer hasn't accepted the goods and the risk of quality loss and/or deterioration of the products requires intervention, according to the seller, seller is entitled to sell the products to third parties.
8. Non-fulfillment by the buyer doesn't release him from the obligation to pay the full purchase price.
9. Seller is not liable for damage resulting from non-delivery..

V FORCE MAJEURE

1. In case of force majeure, seller can (partially) dissolve the agreement, or suspend the delivery for the duration of the force majeure.
2. Force majeure includes, but not exclusively, circumstances such as domestic riots, war, strike, natural disasters, epidemics, terrorism, weather conditions, traffic conditions such as for example roadblocks, traffic jams, fire, government measures or similar events, even if this only concerns third parties engaged in the performance of the agreement, such as a supplier or a carrier.

VI PACKAGING

1. Packaging takes place in the usual manner in flower- and plant wholesale and is determined by seller as a good merchant, unless parties have agreed otherwise in writing.
2. Once-only packaging can be charged and will not be taken back.
3. If the products are delivered in reusable packaging (cardboard boxes) and/or on sustainable transport material (auction trolleys, containers, pallets etc.) buyer must return identical packaging material with the same registration (chip or label) to seller within a week after delivery, even if an usage fee has been charged, unless otherwise agreed in writing.
4. If return doesn't take place in time or, with regard of sustainable packaging- and/or transport material that has been loaned to buyer for a longer period of time, doesn't take place within a reasonable period set by the seller, seller is entitled to a) charge the costs to the buyer and b) recover any further costs suffered by the seller in connection with this, such as additional rental costs.
5. Insofar the seller has initially pays the costs for the return transport, they will be separately charged to the buyer, unless otherwise agreed in writing. If deposit is charged, this will be settled after the material has been returned in good condition.
6. In case of damage or loss of reusable and/or sustainable packaging material, buyer is obligated to compensate the repair- or replacement costs, as well as any further damage suffered by the seller in connection with this, such as additional rental costs.

In case of a dispute between seller and buyer about outstanding amounts of transport material, the seller's administration is leading.

VII COMPLAINTS

1. Reports of complaints concerning visible defects, including number, size of weight, must have been received by the seller immediately after discovery, or in any case within 24 hours upon receipt of the products. A telephonic call must have been confirmed by the buyer in writing within two days upon receipt of the products. Visible defects must also be noted on the transport documents, immediately upon delivery.
2. Complaints about non-visible defects to delivered products must be reported to the seller immediately after discovery and, if the notification is not made in writing, be confirmed in writing within 24 hours after the notification.
3. The complaints must at least contain:
 - a. A detailed and accurate description of the defect, supported by evidence such as photos or an expert report;
 - b. A statement of possible further facts, from which it can be deduced that the supplied and the products rejected by the buyer are identical.
4. Seller must always be enabled to investigate the accuracy of the complaints on location and/or to retrieve the supplied products, unless seller has indicated in writing that he will refrain from an on-site investigation. The products must be kept available in the original packaging.
5. Complaints that only concern a part of the delivered products can't be a reason to reject the entire delivery.
6. After expiry of the terms mentioned in paragraphs 1 and 2 of this article, buyer is deemed to have approved the delivery or the invoice. Complaints will then no longer be processed by the seller.
7. If a complaint submitted by the buyer is unfounded, buyer must reimburse the seller for the costs related to the investigation.

VIII LIAIBILITY

1. The seller is not liable for damage suffered by the buyer, except and inssofar buyer proves that there is intent or gross negligence on the part of the seller.
2. Defects regarding any phytosanitary- and/or other requirements that are in force in the importing country don't entitle the buyer to compensation or dissolution of the agreement, unless buyer has informed seller in writing, prior to entering into the agreement.

3. Seller is never liable for consequential loss, delay damage, loss of profit, stagnation damage or other consequential loss of the buyer. Should the seller nevertheless be obliged to compensate his damage, the seller's liability is explicitly limited to the invoice amount, exclusive of VAT, regarding the part of the delivery to which the damage relates.
4. Unless explicitly stated otherwise, the delivered products are only intended for decoration purposes and not suitable for internal use. Seller points out that the products can lead to harmful effects on humans and/or animals if used incorrectly, consumed, contacted and/or in case of hypersensitivity. In addition, some products may cause damage to materials that come into contact with dripping fluid. Buyer has an obligation to pass on this warning to his customers and indemnifies seller against all claims from third parties, including end users, with regard to these consequences.

IX PAYMENT

Payment must only be made to the seller, through payment methods accepted by the seller, according to the agreed term.

Any banking costs are passed on to the buyer.

2. Buyer is not authorized to suspend the payment of the purchase price or to deduct any amount from the purchase price without explicit prior written approval of the seller.
3. Buyer is in default only by expiring the payment term. Seller is then entitled to dissolve the agreement with immediate effect by a single notification to buyer (expressly resolutive clause). Seller doesn't owe buyer any compensation with regard to the consequences the dissolution could have for the buyer.
4. In case buyer is in default, seller is entitled to charge 1,5% interest on a monthly basis, or, if this is higher, the statutory interest, from the due date of the invoice until the day of full payment. In the event of default by the buyer, seller is also entitled to charge suffered loss of exchange rate.
5. The buyer established in an EU-Member State other than the Netherlands will inform seller in writing about his correct VAT-number. The buyer will also provide the seller, at seller's first request, with all information and documents the seller needs to prove that the products have been delivered in an EU-Member State other than the Netherlands. Buyer indemnifies seller for all claims resulting from and all adverse consequences of not or not fully complying with the provisions herein.

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6. If payment must be effected by engaging third parties, the judicial and/or extrajudicial costs that result from it – with a minimum of 15% of the outstanding sum – are immediately due and payable by the buyer.

X RETENTION OF TITLE

1. All delivered products remain property of seller, until buyer has fully complied with all claims seller has or will have against the buyer regarding the products he delivered, including claims regarding the failure of buyer to fulfill his obligations.
2. As long as the ownership has not been transferred, buyer may not pledge the delivered products or provide them as security in any other way. In case third parties seize or wish to seize these products or wish to sell them off in any other way, buyer must immediately inform the seller.
3. In exercising the rights of the seller from the retention of title, buyer will always fully cooperate at the first request and at its own expense. Buyer is liable for all costs the seller has in connection with his retention of title and the related actions, as well as for all direct and indirect damage the seller suffers.
4. With regard to products that are intended for export, the goods-related consequences with regard to retention of title apply from the moment the goods arrive in the country of destination. Then, the following applies, if possible in the relevant law, in addition to the provisions in points 1 to 3:
 - a) In the event of default by buyer, the seller is entitled to immediately take back and dispose of the delivered products, as well as the supplied packaging- and transport materials. If required by law, this implies dissolution of the relevant agreement.
 - b) Buyer is entitled to sell the products in the normal course of his business. He will then transfer all claims he obtains through sales to a third party. Seller accepts this transfer and reserves the right to collect the claim himself as soon as buyer doesn't properly fulfill this payment obligation and, if necessary, is in default.
 - c) Buyer is entitled to sell the products in the normal course of his business, whether or not together with products that do not come from the seller. In the relationship in which the seller's products form part of the goods that have been created, seller acquires (co-)ownership of the new goods, which buyer transfers to the seller and which seller accepts.
 - d) If the law prescribes, that seller must give up part of the stipulated securities on request in cases in which they exceed the value of the outstanding claims with a certain percentage, seller will comply with this at buyer's request and if accounting proves this.

XI PROTECTION OF PERSONAL DATA

1. Seller is entitled to pass on identification- and payment details as well as data with regard to the payment behaviour of the buyer to Floridata, a partnership of wholesalers in the floriculture sector.
2. The in paragraph 1 described data will be processed by Floridata in a database with the aim of gaining insight into the markets in which the wholesalers sell their floricultural products on the one hand and in the payment behaviour of individual buyers on the other hand.
3. The data with regard to the sales of floricultural products is processed in aggregated figures, from which no personal data can be derived. These data are published from time to time by Floridata, whether or not through third parties.
4. The data with regard to the payment behaviour of individual buyers is processed for the assessment of the debtor risk. Personal data can be derived from this. The data with regard to payment behaviour will only be published by Floridata on special request, insofar this request comes from a wholesaler who participates in Floridata and aims to limit his own debtor risk.
5. If above mentioned activities of Floridata are to be carried out by another in due course, the seller is entitled to make the above mentioned data available to the other party, which will be subject to same restrictions with regard to these data as Floridata.

XII APPLICABLE LAW/DISPUTES

1. Dutch law applies to all agreements and offers to which these General Terms and Conditions fully or partially apply. The Vienna Sales Convention is explicitly excluded.
2. Disputes with regard to or resulting from offers and/or agreements to which these conditions apply can only be submitted by the buyer to the Dutch court that is competent in the area where the seller is established. Seller is entitled to submit disputes to the competent court in the area where the buyer is established, or to the Dutch court in the area where the seller is established.
3. Contrary to the provisions in paragraph 1, seller and buyer can agree to submit a dispute to an Arbitration Committee that acts in accordance with the Arbitration Rules of the Dutch Arbitration Institute, whose decision is accepted as binding by both parties.

XIII FINAL PROVISION

1. In cases not covered by these General Terms and Conditions Dutch law also applies.
2. If and insofar as any part of these General Terms and Conditions is invalid under Dutch law in connection with any mandatory provision, the other provisions in these General Terms and Conditions will continue to bind parties. Instead of this invalid provision, it is acted as if the parties, if they had known about the invalidity of the provision, had agreed on a provision corresponding to the intention of the invalid provision, or a provision that comes closest to that intention.