

## General Terms and Conditions Sher Holland BV

### I GENERAL

1. These General Terms and Conditions apply to all offers and agreements concluded between Sher Holland B.V., its affiliates, subsidiaries and or its associated parties (hereafter called the Seller) and a customer (hereafter called the Buyer), and to the performance of those agreements. These General Terms and Conditions shall also, after they have become part of any agreement, form part of agreements concluded afterwards, even if at the conclusion of the agreements concluded afterwards there has been no reference to the applicability of these General Terms and Conditions, unless the parties have expressly agreed otherwise in writing.
2. Any varying provisions must be expressly agreed in writing and signed by authorized representatives of the parties and will be deemed to supplement and not to replace these General Terms and Conditions. These varying provisions shall only apply to the offer or the agreement for which the variations were drafted.

### II OFFERS/AGREEMENT

1. All offers made shall not bind the Seller unless they specify a time limit. If an 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 one-off and do not apply to subsequent orders.
4. Representations, drawings, weights, samples, proportions, and colours forming part of an offer made by the Seller shall not bind the Seller unless the accuracy has been guaranteed in writing by an authorized representative of the Seller.
5. Verbal commitments or agreements by or with its staff only bind the Seller after and insofar as they have been confirmed in writing by an authorized representative of the Seller.
6. The Buyer guarantees the accuracy, completeness, and reliability with regard to data and information provided to the Seller. The Seller is only obliged to (continue) to execute the order if the Buyer has provided all data and information required. If the necessary data and information has not been provided in time or not in accordance with the agreements made, the Seller also has the right to the costs incurred.

### III PRICES

1. The prices are generally determined upon acceptance of the order.
  - a. All prices are ex works Seller in accordance with the Incoterms 2010.
  - b. All prices are exclusive of value added tax (VAT).
  - c. The prices do not include import duties, other taxes and charges, costs of quality inspection and/or phytosanitary testing, costs of loading and unloading, packaging, transport and insurance.
  - d. The prices are in Euros, unless another currency is stated in the invoice.
2. Deviations from all above points may occur in consultation and provided they are agreed in writing and signed by authorized representatives of the parties. These deviations will be deemed to supplement and not to replace these General Terms and Conditions. These varying provisions shall only apply to the offer or the agreement for which the variations were drafted.
3. Changes in cost factors including, but expressly not limited to, labour costs, cost price of (raw) materials and transport costs relating to the agreed performance that will occur after the agreement has been concluded, give the Seller the right to charge these costs to the Buyer. If the abovementioned price increase amounts to a total of more than 20% of the price agreed, excluding VAT, the Buyer shall have the right to terminate the agreement (early) by giving notice, provided that the Buyer informs the Seller in writing immediately after learning about these costs. In case of termination the Buyer shall have no right to damages.

### IV DELIVERY AND DELIVERY TIME

1. The Seller will deliver the agreed quantity, unless an event of force majeure necessitates a reduction in the quantity.
2. The Seller will immediately notify the Buyer of any event of force majeure and may in that case deliver a smaller quantity or suspend execution of the agreement and/or deliver other equivalent or similar products in consultation with the Buyer.
3. The Seller has the right to deliver an order in one instalment or several successive instalments. In the latter case, the Seller shall have the right to invoice the Buyer separately for each partial delivery and to demand payment for each partial delivery. If and for so long as a partial delivery is not paid by the Buyer, the Seller shall not be under any obligation to make the next partial delivery. The Seller has the right to choose to suspend or terminate the agreement, to the extent that the agreement has not been executed, without notice of default to the Buyer being required, without prejudice to its other rights, including its right to damages.
4. The Buyer must ensure that the products ordered and the associated packaging, labelling and other information comply with all of the country of destination-imposed government regulations. The use of the products and their conformity with the government regulations is at the risk of the Buyer.
5. Delivery will be made ex works, in accordance with the Incoterms 2010, unless otherwise agreed in writing. The risk will be transferred to the Buyer, the moment the Seller in fact makes the product available to the Buyer.
6. Delivery will be free only if and to the extent as so agreed and stated by the Seller in the invoice.
7. Any delivery times quoted are indicative and may in no event be regarded as being of the essence, unless otherwise expressly agreed in writing. The Seller shall not be liable for the consequences if the term is exceeded. Exceeding the delivery period does not provide the Buyer with the right to claim damages or a penalty by whatever name or the right to refuse delivery of the products or to terminate, in whole or in part, the agreement. However, after the term of delivery has expired, the Buyer has the right to still demand (in writing) delivery from the Seller within 2 working days. If this term is exceeded, the Buyer has the right to terminate the agreement. In case of an extension of the term of delivery, the term of delivery will only be considered to be expired after the extended term of delivery has expired.
8. If the Buyer has not taken delivery of the products at the agreed time and place, the Buyer will be 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. 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 the risk of loss of quality and/or decay of the products so demands, the order will be deemed to have been cancelled by the Buyer. The Seller will then be entitled to sell the products in question to a third party. The Buyer will be liable to the Seller for any reduction in price that has arisen on such sale and for any other costs and loss incurred by the Seller.
9. The Seller reserves the right not to perform orders if the Buyer has not paid for previous deliveries within the agreed term of payment. The Seller will not be liable for any loss incurred by the Buyer as a result of non-delivery.
10. Notwithstanding the provisions of the preceding paragraphs, the Buyer and the Seller may agree that the Seller will handle the transport. In this case, the risk of storage, loading, transport and unloading will also be for the Buyer. The Buyer shall take out insurance against these risks. In the event parties agree that the Seller will handle the transport and the Buyer does not stipulate any means of transport, the Seller will choose the most customary manner of transport. The costs of transport will be charged to the Buyer.

If a shipping agent has been engaged the Seller will be liable only for damage that occurs until the moment of transfer of the products to the shipping agent.

### V FORCE MAJEURE

1. Without prejudice to its other rights, in the event of force majeure, after consultation with the Buyer, the Seller may terminate (in whole or in part) the agreement, or postpone delivery until such time as the event of force majeure has ceased to exist without the Seller having to pay any damages or otherwise.

2. If delivery is delayed by more than two days in the event of postponement, the Buyer may give written notice that it considers the contract of sale terminated.
3. For the purpose of these General Terms and Conditions, 'force majeure' means, but is not limited to, any circumstance beyond the Seller's direct control, as a result of which it can no longer reasonably be required to perform the agreement, such as, but explicitly not limited to: war, war risk, strikes, lockout, mobilization, traffic obstructions, blockades, import/export barriers, lack of shipping place, lack of labour, fire, water damage, extreme weather conditions or government measures.

#### **VI QUALITY AND HEALTH**

1. The products to be delivered will meet the customary quality standards for the flower products in question.
2. The products to be exported will furthermore meet the phytosanitary government requirements that apply to the flower and bulb nursery products in question in the country of import. Any defects in this respect will not entitle the Buyer to damages or give it the right to terminate the agreement, unless parties agreed upon any special phytosanitary requirements the Buyer has informed the Seller of prior to or at the date of the conclusion of the agreement.

#### **VII 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.
2. Non-reusable packaging will be charged at cost.
3. Reusable packaging and other durable material (cardboard boxes, buckets, and extensions etc.), which will remain the Seller's property, will also be charged at cost and must be returned to the Seller.
4. 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.
5. If the Buyer fails to return durable packaging material (trolleys and shelves 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.
6. If a deposit is charged, that deposit will be refunded after the material in question has been returned in good condition.
7. The Buyer is not allowed to market packaging of the Seller other than with the original package contents.

#### **VIII COMPLAINTS**

1. Complaints concerning visible defects in products delivered must be notified to the Seller by fax, e-mail or telephone immediately after discovery but at the latest within 24 hours of receipt of the products, indicating precisely the nature and the grounds of the complaints. Any reports issued by telephone must be confirmed in writing and the confirmation must be received within 2 days of receipt of the products. Complaints must be accompanied by photographs of the visible defect in the relevant shipment. The Buyer or recipient of the products must also note the complaint on the transport documents in question, as confirmation that the complaint existed at the time of delivery of the products.
2. Complaints concerning non-visible defects in products delivered must be notified to the Seller immediately after discovery but must in any event be submitted to the Seller in writing in such good time as 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.
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. Complaints in respect of a part of the products delivered will not entitle the Buyer to reject the entire delivery.
5. 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 reserves the right to discontinue the handling of complaints after the above periods have elapsed and/or if the above procedure has not been followed correctly

#### **IX LIABILITY**

1. In the event that the Seller has failed imputably to fulfil any of its obligations or has committed an unlawful act against the Buyer, the Seller shall, after liability has been established in an arbitral award, only be liable vis-a-vis the Buyer for the resulting damage incurred by the Buyer to the extent of the invoice value (excluding VAT) of the products delivered to which the claim applies.
2. The Seller will not be liable in any event for indirect damage and consequential loss, as, but explicitly not limited to: commercial damage, missed opportunity, compromising a good name, lost turnover, damage caused by delays, lost of profits, stagnation damage and immaterial damage. If the Seller is, after this has been established in an arbitral award, nonetheless required to compensate the Buyer's indirect damage or consequential loss, the Seller's liability will then be explicitly limited to the invoice value, excluding VAT, regarding the portion of the delivery with which the damage is associated.
3. 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.
4. The limitations of liability referred to in this clause shall not apply in case the Buyer can prove that the damage is caused by the intentional act or omission or gross negligence of the Seller or its managerial staff.
5. The Buyer shall indemnify the Seller against all claims for damages from third parties for which Seller's liability in relation to the Buyer has been excluded.

#### **X PAYMENT**

1. Payment must be made, at the Seller's option:
  - a. net cash on delivery;
  - b. by means of deposit or transfer to a bank account indicated by the Seller within the period indicated as stated in the above business terms;
  - c. direct debit;
  - d. Debit by means of a credit card payment authorized by 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 all or part of 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 terminate the agreement immediately by means of a single notice to the Buyer (explicit termination provision). All claims will then be immediately due in full, even if the payment period for one or more invoices has not yet passed.
4. If the Buyer is in default, the Seller will be entitled to charge interest (at an interest percentage of 2% per month) 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 be liable 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 be liable 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.
7. Payments will consistently be applied first to the settlement and payment of all contractual interest and expenses, and then to invoices that have been due longest, regardless of whether a debtor has indicated a different sequence.
8. Regardless of the above, the Seller at any time has the right to demand payment in cash or, before proceeding to delivery, to demand adequate security for timely payment from the Buyer. Sufficient security shall be provided by means of issuing an irrevocable bank guarantee at a Dutch banking institution with a good reputation or by providing another, reasonably comparable, security.

#### **XI 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, for whatever reason, 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 in writing 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 there from.
4. If so permitted under the laws of the country in which the Buyer has its registered office and/or in which the products have been delivered to the Buyer, the following will furthermore apply:
  - 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 under retention of title 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. The Buyer will then immediately transfer the relevant invoices and accompanying correspondence on the first request. The Seller will then disclose the Buyer's debtor's pledge in writing and state that payment to the seller can only occur by way of discharge.
  - 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.
5. If the law of the country for which the products are intended or in which the Buyer is established, do not recognize retention of title or otherwise make specific demands, the Buyer shall fully cooperate with the fulfilment of the legal requirements for the establishment of a reservation of ownership or a similar security on the products. At the conclusion of the agreement the Buyer authorizes the Seller an irrevocable power of attorney to take all necessary measures to that end.

#### **XII SUSPENSION AND TERMINATION**

1. In the event that the Buyer does not fulfil any obligation vis-a-vis the Seller, or does not fulfil any obligation vis-a-vis the Seller properly or in time, enters into a debt settlement with its creditors, applies for a moratorium, is put into liquidation, closes down its company or transfers its company or its company is dissolved, and if attachment is made of the company's assets, the company will be considered to be in default by operation of law and the Seller shall have the right, without notice of default or without judicial intervention, to suspend the performance of the agreement or to terminate the agreement, in whole or in part, at Seller's option, without the Seller having to provide guarantee or pay damages, but without prejudice to Seller's other rights. Termination of the agreement does not lead to the creation of reversal obligations.
2. If the Seller suspends the performance of the agreement and at a later date does perform the agreement, the Buyer shall be under an obligation to compensate the damage incurred by the Seller.
3. Any claim the Seller has, or will have, against the Buyer will become immediately due and payable in case of attributable failure on the part of the Buyer.

#### **XIII APPLICABLE LAW/DISPUTES**

1. All agreements between the Seller and the Buyer and any non-contractual obligations arising out of or in connection with it are governed by Dutch law. The provisions of the Vienna Sales Convention 1980 are expressly excluded.
2. All disputes arising out of or in connection with an agreement between the Seller and the Buyer shall be referred to and finally settled in accordance with the Arbitration Rules of the National Arbitration Institute (NAI). The place of arbitration shall be Rotterdam, the Netherlands. The proceedings shall be conducted in the English language. The arbitral tribunal shall decide by Dutch law.
3. Applicability of the Buyer's general terms and conditions is explicitly rejected, unless accepted by the Seller in writing. In the event Buyer's general terms and conditions are applicable the Seller's General Terms and Conditions will at all times prevail over any terms set out by the Buyer.
4. Each party waives the right it may have to a jury trial of any claim or cause of action in accordance with an agreement.

#### **XIV FINAL PROVISION**

1. 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.
2. Only the English text of the General Terms and Conditions will be binding.
3. Translations of the General Terms and Conditions have been created with the greatest of care. The Seller accepts no responsibility for potential translation errors.
4. The Seller has the right to make amendments to these General Terms and Conditions. These amendments will take effect on the announced effective date. The Seller will send the amended conditions to the Buyer in time. If the Buyer has not been informed of an effective date, the amendments will take effect for the Buyer as soon as the amendments have been announced.