



BOOMKWEKERIJEN J.D. VAN DE BIJL LIENDEN B.V. GENERAL CONDITIONS OF SALE AND DELIVERY

1. Scope of application

1. These terms and conditions only apply to agreements involving Boomkwekerijen J.D. van de Bijl Lienden B.V. and its affiliated companies (for instance, sister, subsidiary or parent companies).
2. These terms and conditions govern all offers made by the seller, and all purchase agreements concluded with it and the implementation thereof.
3. The applicability of other terms conditions, including general terms and conditions applied by the buyer, is explicitly excluded.
4. A derogation from these terms and conditions can only be invoked if the seller has expressly agreed to this in writing, and the derogation only relates to the relevant agreement.
5. In these terms and conditions, 'in writing' means by letter, by fax or through electronic means.

2. Offers and conclusion of an agreement

1. All offers and quotations made by the seller are subject to confirmation without obligation.
2. An agreement is only established if the seller has confirmed the order in writing and the seller has accepted an agreed payment security, including an irrevocable (confirmed) letter of credit, in writing if applicable. The seller enters into each agreement under the resolutive condition that it is evident that the buyer is sufficiently creditworthy for the financial fulfilment of the agreement, this to be determined exclusively at the discretion of the seller's credit insurer.
3. Any additional agreements or changes made later, including verbal undertakings made by the seller's employees or made on its behalf by its agents or other representatives working for it, will only be binding on the seller from the time that it confirms them in writing.

3. Prices

1. All prices for the goods are determined in the agreed currency, excluding VAT and based on ex works, (place of business), in the Netherlands (EXW Incoterms 2010) unless otherwise agreed in writing.
2. If after the order confirmation but before delivery of the products one or more of the factors that determine the cost price changes, the seller reserves the right to adjust the agreed prices accordingly.
3. The costs relating to transport, packaging, insurance and inspection by the Netherlands Food and Consumer Product Safety Authority and/or Netherlands Inspection Service for Horticulture in Roelofarendsveen are for the buyer's account. All levies and/or taxes that are or will be owed, both directly and indirectly, due to the agreement entered into by the seller with the buyer are exclusively and fully for the buyer's account, and may not be deducted from the amounts owed to the seller.
4. If the seller and the buyer agree that the price is in a currency other than the euro, then the exchange rate of the euro on the date of the order confirmation applies.

4. Payment

1. Unless the parties have agreed otherwise in writing, payment of the goods sold by the seller must take place in the agreed currency within 30 days of the invoice date.
2. The date of payment is the value date on which the seller receives the payment. If the payment is made to the bank, the date of payment is the date that the seller's bank account is credited.
3. The buyer is not entitled to any deduction, suspension or payment discount, and offsetting is also explicitly excluded unless otherwise agreed. If the payment term is exceeded, the buyer is in default by operation of law once the payment term has expired. The seller is entitled to charge statutory interest for commercial transactions from the due date onwards, while all collection costs, both the judicial and the extrajudicial, are for the buyer's account; extrajudicial costs will be at least 15% of the amount to be collected, and will be a minimum of 250 euros.
4. If an order is delivered in parts, the seller is entitled to demand payment for the partial deliveries before delivering the remaining partial deliveries.
5. On or after entering into the agreement, before (further) performance, the seller is entitled to demand assurance from the buyer that payment and other obligations arising from this agreement will be met. Any refusal by the buyer to provide the security required gives the seller the right to suspend its obligations and ultimately gives it the right to terminate the agreement, entirely or in part, without notice of default or judicial intervention, without prejudice to its right to compensation for any damages sustained by it.
6. The seller is entitled to use payments to settle older debts first, regardless of the purpose that the buyer's payment may have. If costs and interest have already been incurred, then the payment goes towards settling the costs first, then the interest and only after that the principal sum.

5. Delivery

1. Unless otherwise agreed in writing, all deliveries take place ex works (place of business), in the Netherlands (EXW Incoterms 2010).
2. Although the specified delivery time will be taken into account as much as possible, this delivery time is only approximate and can never be regarded as a final deadline. The seller will not be in default regarding the delivery time until after the buyer has given it written notice of default, has given the seller the opportunity to deliver within a reasonable period and the seller has failed to do so.
3. The agreed delivery period commences as soon as an agreement has been concluded in accordance with Article 2.2.
4. The seller cannot be held liable for damages due to late delivery if and to the extent that this late delivery is due to circumstances that are not for the seller's account and risk, including failure on the part of suppliers to deliver at all or on time.
5. Failure by the buyer to comply with any payment obligation at all or on time will suspend the seller's delivery obligation.
6. If a request is made to postpone the autumn delivery until after 15 December, the price will be increased by 3%.

7. If a request is made to postpone the spring delivery until the autumn, the buyer will bear all costs incurred to make this possible. In addition, the buyer will be charged at least 50% of the invoice amount at that time.
8. The seller reserves the right to deliver the goods in parts, in which case the payment and other conditions described in Article 4 also apply to each partial delivery.

6. Force majeure

1. In the event of force majeure – which includes crop failure, viruses, natural disasters, strikes, fire, and import and export restrictions – or in case of other circumstances as a result of which the seller cannot be expected to fulfil the agreement at all or in time, the seller is entitled to choose, without judicial intervention and without being obliged to pay any damages, and by written notice alone, either to terminate the agreement entirely or in part or to suspend the implementation of this agreement until the time that the force majeure ends.
2. If the seller has already partially implemented the agreement, the buyer will pay the selling price for the delivered goods.

7. Claims for compensation

1. The buyer is obliged to examine the goods on delivery for visible and/or immediately observable defects. All deficiencies that can be detected by means of normal sensory perception or a simple sample are considered to be such visible and/or immediately observable defects. In addition, the buyer is obliged to check whether the delivered goods also match the other order specifications. The buyer forfeits the right to any claims against the seller if he or she fails to fulfil the inspection obligation.
2. If the delivered number, volume and weight deviate by less than 10% from what was agreed, the buyer will nevertheless be obliged to accept the delivered goods.
3. Claims regarding the quality and quantity of the delivered goods must be submitted in writing and within eight calendar days after delivery at the latest. The seller must be informed of defects that can only be discovered at a later stage (hidden defects) immediately after discovery, but in any case before the end of the first growing season after delivery. As soon as these deadlines have been exceeded, the buyer is deemed to have approved the delivered goods and claims will no longer be considered.
4. The claim must include a description of the defect and the seller must be given the opportunity to examine the complaint immediately on request.
5. The buyer must allow the seller to have an inspection of the goods in question carried out by an expert or an independent inspection body. If the expert declares that the claim is well founded, the costs of the inspection are for the seller. If the claim is declared unfounded, the costs are for the buyer's account.
6. If the buyer reported a complaint to the seller in time and the complaint is acknowledged, then the seller – at its sole discretion – is obliged to deliver or replace the missing parts, replace the delivered goods or refund a proportional part of the purchase price.
7. Submitting a complaint does not suspend the buyer's payment obligation, unless the seller explicitly agrees to such suspension.
8. The return of the goods is at the buyer's expense and risk, and can only take place with the seller's prior written permission.

8. Liability

1. The seller will never be liable for the regrowth or flowering of the delivered goods. It is always the buyer's responsibility to assess whether the conditions, including climatic conditions, are suitable for the goods.
2. The seller guarantees the species authenticity of the goods it delivers.

3. The names are described according to list of names of woody crops and the list of names of perennials issued by the Netherlands Inspection Service for Horticulture or, for international dealings, by the European Nurserystock Association.
4. With the exception of the statutory liability pursuant to mandatory legal provisions and except in the event of intent or gross negligence, the seller is never liable for any damage suffered by the buyer. Liability for indirect damages, consequential loss, immaterial damage, trading loss, environmental damage, damages due to loss of profit or damages due to third-party liability is also expressly excluded.
5. If and insofar as the seller has any liability on any grounds whatsoever despite the provisions of Article 8.4, then this liability is limited to the amount equal to the net invoice value of the goods concerned.
6. The buyer indemnifies the seller against third-party claims for damage compensation for which the seller is not liable under these terms and conditions.
7. The buyer indemnifies the seller against any third-party claims due to damages occurring in connection with products delivered by the buyer to these third parties, unless it is established in law that these claims are a direct consequence of gross negligence or intent on the part of the seller, and the buyer also demonstrates that it is in no way to blame for the damages.

9. Cancellations

1. The seller is entitled to cancel an order if, at the time of delivery, the buyer has not met its previous payment obligations towards the seller or towards other creditors within the specified time. The seller can also exercise this right if the seller considers the buyer's creditworthiness information to be unsatisfactory. The buyer cannot derive any rights from such cancellations and can never hold the seller liable.
2. It is in principle not possible for the buyer to cancel an order. If the buyer nevertheless fully or partially cancels an order regardless of the cause, the seller will only have to accept the cancellation if the goods have not yet been delivered to the carrier for dispatch, and on condition that the customer pays cancellation fees, which are at least equal to 30% of the invoice amount of the cancelled goods plus VAT. At the same time, the seller is also entitled to charge all costs incurred up to that time and yet to be incurred, including costs of preparation, provision, storage and the like, without prejudice to the seller's right to compensation for loss of profits and other damages.
3. The buyer is obliged to take delivery of the purchased goods at the time they are made available to it. If the buyer refuses to accept them, the seller is entitled to sell these goods elsewhere and the buyer will for the price difference as well as for all other costs arising from this for the seller, including storage costs.

10. Retention of title

1. The ownership of the goods delivered by the seller does not pass to the buyer until after full settlement of all amounts invoiced by the seller, plus any interest, penalties and costs, and until after full settlement of all claims due to shortcomings in the fulfilment of buyer's obligations arising from this agreement or other agreements. Issuing a cheque or other commercial paper does not count as payment in this respect.
2. The seller is entitled to immediately take back the sold goods if the buyer remains in any way in breach of its payment or other obligations. In that case, the buyer is obliged to grant the seller access to its premises and its grounds for this purpose.
3. The buyer must store the goods on which a retention of title rests separately from the other goods, so that it is possible to distinguish the seller's goods.
4. As long as there is a retention of title on the delivered goods, the buyer may not dispose of,
5. encumber, pledge or otherwise give control of the goods to third parties other than in the course of its normal business operations.

6. However, the buyer is not permitted to dispose of the goods within the context of its normal business operations if the buyer has filed for suspension of payment or the buyer is declared bankrupt.

11. Termination and suspension

1. The seller is entitled to suspend or terminate the agreement, within a reasonable term, without notice of default, without judicial intervention, and without any obligation to pay compensation, if the buyer fails to fulfil its obligations under the concluded agreement at all, on time or properly, or if there is well-founded fear of this, as well as if suspension of payment, bankruptcy or liquidation of the buyer's business has been filed for, as well as in event of his or her death or dissolution or termination of the buyer, if it is a company, or if there is a change in its corporate form or in the management of the company, or in the contribution from the company's activities.
2. The seller's claim related to the already executed part of the agreement, as well as the damages resulting from the suspension or termination, including loss of profits, will be immediately due and payable.

12. Intellectual property rights

1. The seller reserves all intellectual property rights that the seller has in connection with goods delivered by the seller.
2. In those cases in which the catalogue used by the seller or the agreement concluded by the parties shows that a variety is subject to plant breeders' rights, which is indicated by the abbreviation '(R)/PBR' after the name of the variety in question, the buyer is bound to all obligations related to that right. Violation of this provision renders the buyer liable for all ensuing damages for the seller and third parties.

13. Conflict with legal provisions

1. Should any provision of these General Terms and Conditions of Sale and Delivery not apply or be in conflict with public order or the law, then only the relevant provision will be considered as not written, while the other conditions will remain fully in force.
2. The seller reserves the right to change the disputed passage or passages into a valid one or ones.

14. Competent court and applicable law

1. All disputes, including those considered as such by only one of the parties, will be subject to the judgment of the competent court for the seller's place of business, without prejudice to the seller's right to submit the dispute to another competent court.
2. The provisions of Article 14.1 do not affect the rights of the seller to obtain a judgment from one arbitrator through arbitration by the International Chamber of Commerce in accordance with the arbitration rules of the International Chamber of Commerce. The place of arbitration is Amsterdam, the Netherlands. The arbitration proceedings will be conducted in English.
3. All offers and quotations made by the seller, and all agreements concluded between the buyer and the seller, are governed exclusively by Dutch law.