

## Royal Trade Association for Nurserystock and Flowerbulbs (ANTHOS)

### CONDITIONS OF SALE

#### 1. Applicability

- 1.1. These terms and conditions only apply to agreements with regard to which one of the parties is a member of Anthos at the time of conclusion of the agreement, which – within the framework of these general terms and conditions – is also deemed to include other partnerships who are (in)directly affiliated to an Anthos member company (e.g. sister company, subsidiary or parent company of the member).
- 1.2. If an agreement refers to these terms and conditions and this agreement only involves non-members, the terms and conditions below do not apply.
- 1.3. Furthermore, if an agreement refers to these terms and conditions while neither party is member of Anthos, the law and copyright law are violated.
- 1.4. All offers made by the seller and all contracts of sale entered into with the seller and the execution of such contracts of sale are governed by these conditions.
- 1.5. The applicability of general conditions of the buyer is expressly rejected by the seller.
- 1.6. Departures from the present conditions will only be valid if expressly agreed to in writing by the seller.
- 1.7. Insofar as these general terms and conditions are also drawn up in a language other than Dutch, in the event of any conflict the Dutch text shall always prevail.

#### 2. Offers and conclusion of agreement

- 2.1. All offers and prices stated by the seller are free of obligations.
- 2.2. An agreement shall only come into effect once the seller has confirmed the order in writing
- 2.3. Any supplementary arrangements or amendments agreed on at a later stage, as well as any verbal promises made by the seller's personnel or on behalf of the seller by agents or other parties working for the seller, will only be binding for the seller from the moment that the latter confirms them in writing.

#### 3. Prices

- 3.1. All product prices are stated in Euro, exclusive of VAT and are based on ex works (place), The Netherlands (EXW, Incoterms 2000).
- 3.2. If one or more of the cost price factors is subject to change after order confirmation but before delivery of the products, the seller shall be entitled to adjust the agreed prices accordingly.
- 3.3. The costs of transport, packaging, insurance and the inspections carried out by the Department of Phytopathology are payable by the buyer. All levies and/or taxes that are owed or become due, either directly or indirectly, on account of the agreement entered into between the seller and the buyer are payable exclusively and entirely by the buyer and may not be deducted from sums owed to the seller.

#### 4. Payment

- 4.1. Unless otherwise agreed in writing, payment for goods sold by the seller that are sent by air must be made within 30 days of the invoice date and, in the case of goods sent as sea freight, within 60 days of the invoice date in the agreed currency.
- 4.2. The value date on which the seller receives payment shall be deemed to constitute the date of payment. Where payment is made by means of a giro or bank transfer, the date on which the seller's giro or bank account is credited, shall be deemed to constitute the date of payment.
- 4.3. The buyer is not entitled to make any deduction, suspension or reduced payment and all calls for settlement are explicitly excluded. In the event of late payment, the seller will be entitled to charge the statutory interest for business transactions as of the due date, and also to charge any legal and extrajudicial costs incurred in collecting the amounts owed: the extrajudicial costs owed will never be less than 15% of the sum to be collected.

- 4.4. In case a delivery is effected in parts, the seller shall be entitled to demand payment for each partial delivery before proceeding with any other.
- 4.5. Upon or after entering into the agreement and before its implementation, the seller will be entitled to demand a guarantee from the buyer that both the payment obligations and any other obligations arising from this agreement will be fulfilled. Refusal by the buyer to provide the required security gives the seller the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to dissolve the contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

#### 5. Delivery

- 5.1. All deliveries shall be ex works (place), The Netherlands (EXW, Incoterms 2000), unless otherwise agreed in writing.
- 5.2. Although the stated time of delivery will always be taken into account as far as possible, this delivery time is approximately indicated and can never be considered a fatal date. The seller shall not be in default in respect of such delivery time until the buyer notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which the seller has the opportunity to effect delivery, and the latter still fails to do so.

- 5.3. The agreed delivery time shall commence as soon as the seller has confirmed the order in writing.
- 5.4. The seller shall not be liable for any harm due to late delivery if and insofar as this is attributable to circumstances beyond seller's control and sphere of risk, which is deemed to include late or non-compliance on the part of its suppliers.

- 5.5. The buyer's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending seller's duty to effect a delivery.

#### 6. Force majeure

- 6.1. In a case of *force majeure* - for example in the event of a crop failure, viruses, natural disaster, labour strike, fire, or import and export problems - or in the case of other circumstances that make it impossible to demand the seller's fulfilment or timely fulfilment of the obligations arising from this agreement, the seller will be entitled to make a choice, without the need for legal intervention and without being obliged to pay any form of compensation, between completely or partially cancelling the agreement by means of a single written notice to that effect or the suspension of this agreement until the case of *force majeure* has come to an end.

- 6.2. Where the seller has already executed part of an agreement, the buyer shall pay the purchase price for any products that have been delivered.

#### 7. Complaints

- 7.1. The buyer is obliged to check the products upon delivery for any visible and/or immediately observable defects. This means all defects that can be ascertained by means of ordinary sensory perception or a simple spot check. The buyer is moreover obliged to check whether the delivered products are also in accordance with other particulars of the order. Failure to fulfill the obligation to check the delivery shall mean the forfeiture of any claims the buyer may have vis-à-vis the seller.
- 7.2. If a delivery deviates less than 10% in terms of number, quantity and weight from that which was agreed, the buyer shall be obliged to accept the delivery in spite of such deviation.
- 7.3. Complaints regarding the quality and quantity of the products delivered must be submitted by registered mail or telefax at the latest within seven calendar days after delivery. Defects which can only be observed at a later stage (non visible defects) shall be forthwith reported to the seller after this has been observed. Once these periods have passed, the buyer will be considered to have approved the products supplied and complaints will no longer be considered.
- 7.4. The complaint must contain a description of the flaw and the seller must upon first request be given the opportunity to investigate the complaint. The buyer shall allow the seller to have the concerned products examined by an expert or an independent inspection service. If the complaint turns out to be well-founded, all the costs of any investigation will be for the seller's account. If a complaint is groundless, all the costs will be for the buyer's account.

- 7.5. If the buyer has reported a complaint to the seller in a timely manner and the seller has acknowledged this complaint, the seller shall only be obliged to deliver that which is missing, replace the delivered products or repay a proportional part of the purchase price, such as the seller's own discretion.

- 7.6. A complaint shall not suspend the buyer's payment obligation, unless the seller agrees expressly with such suspension.

- 7.7. The products can only be returned for the account and risk of the buyer and only after prior written permission has been obtained from the seller.

#### 8. Liability

- 8.1. The seller will never be liable for the results regarding the flowering of the products supplied. It always remains buyer's responsibility to assess if the circumstances, among which the climatological, are fit for the products.
- 8.2. In case of a shortcoming attributable to seller, seller's liability is always limited to a maximum of the net invoice value of the products or to that part of the net invoice value to which a claim for compensation is directly or indirectly related.
- 8.3. Except in the case of legal liability pursuant to provisions of mandatory law and a deliberate act or omission, or gross negligence, any liability of seller for any further damage, among which any direct or indirect damage, consequential damages or lost profits, is excluded.
- 8.4. The buyer shall indemnify the seller against all claims for compensation brought by third parties in respect of which the seller is not liable under these terms and conditions.

#### 9. Cancellation

- 9.1. The seller will be entitled to cancel an order if the buyer has failed to comply with earlier payment obligations with respect to the seller or with respect to other creditors. This right may also be exercised if the seller considers the information concerning the buyer's credit rating to be insufficient. The buyer will never be able to derive any rights from such cancellations or hold the seller liable.
- 9.2. The seller will only be required to accept the buyer's complete or partial cancellation of the agreement, as a result of any cause whatsoever, if the goods have not yet been delivered to the transporter for despatch and on condition that the customer pays compensation equivalent to at least 25% of the invoice value of the cancelled goods. The seller shall in that case also be entitled to charge all costs incurred up to that time.
- 9.3. The buyer is obliged to accept the products at the time that they are made available to him. If the buyer refuses to accept the goods, the seller will be entitled to sell them elsewhere and the buyer will be liable for the difference in price as well as all the other costs incurred by the seller in connection with this, among which costs of storage.

#### 10. Retention of title

- 10.1. The ownership of the goods supplied by the seller does not pass to the buyer until the sums invoiced, plus any interest, penalty and costs, as well as all claims as a result of the buyer's failure to perform its obligations towards the seller under this agreement or any other, have been paid in full. The provision of a cheque or any other bill of exchange will not count as payment in this regard.
- 10.2. The seller will be entitled to immediately take back the goods supplied if the buyer remains in default in any way whatsoever with regard to the fulfillment of payment obligations. In that case, the buyer will be obliged to allow the seller access to the buyer's land and buildings for this purpose.
- 10.3. The buyer must store the goods subject to a retention of title separately from the other goods, in order to be able to continue distinguishing the goods of the seller.
- 10.4. As long as the delivered goods are subject to a retention of title, the buyer may not sell, encumber or pledge these goods, or otherwise place them under the control of third parties, other than as part of its normal business operations. The buyer shall, however, not be permitted to sell the goods within the context of its normal business operations if it has applied for a suspension of payments or if it has been declared bankrupt.

#### 11. Suspension and dissolution

- 11.1. If the buyer fails to perform, fails to perform in a timely manner, or fails to perform to a sufficient degree any of the obligations arising for it from the concluded agreement, or if a well-founded fear exists of such failure occurring, as well as in the case of an application for a suspension of payments order, bankruptcy or the liquidation of any of the buyer's businesses, as well as in the event of the buyer's death, or dissolution if the buyer is a company, or if there is any change in the type of company or in its management or in the contribution made by the company's activities, the seller will be entitled, without notice of default or legal intervention being required, to suspend its own obligations for a reasonable period or to annul the agreement without being held liable for any compensation.
- 11.2. The claim of the seller with respect to the part of the agreement already performed, as well as damage arising from the suspension or termination, which damage includes lost profit, shall be immediately due and payable.

#### 12. Intellectual property rights

- 12.1. The seller reserves all rights which it has in relation to intellectual property rights in respect of products it has supplied.
- 12.2. With regard to cases in which it is apparent from the seller's catalogue or from the agreement entered into by the parties that a variety is protected by plant breeder's rights - which is indicated by a letter R or P after the name of the variety concerned - the buyer will be bound to fulfil all the obligations the said rights entail. Any failure to comply with this stipulation will result in the buyer being liable for the losses incurred by the seller or any third party.

#### 13. Severance

- Should any provision of these general terms and conditions of sale and delivery be non-applicable or in conflict with public order or the law, only the provision in question shall be deemed as not having been written and the rest of the conditions shall remain fully in force.
- The seller reserves the right to amend the inadmissible provision in order to make it legally valid.

#### 14. Jurisdiction, forum

- 14.1. Any disputes, even if only considered as such by one of the parties, will be put before the competent court in the district in which the seller is registered, without affecting the right of the seller to have the dispute heard by another competent court.

- 14.2. All offers and agreements concluded between the buyer and the seller shall be exclusively governed by the laws of the Netherlands.

1 July 2006