

# GENERAL TERMS AND CONDITIONS

Version: 4 Datum: 27-07-2021 Pag. 1 of 9



**General terms and conditions of the private limited-liability company VWS Export–Import of Flowerbulbs B.V., established in Broek op Langedijk, the Netherlands**

## 1. Definitions

In these general terms and conditions of sale and delivery, the following terms shall have the following meanings:

“General terms and conditions”: these general terms and conditions of sale and delivery of VWS

“Customer”: the opposite party of VWS

“Agreement”: the agreement between VWS and the customer

“VWS”: the private limited-liability company VWS Export–Import of Flowerbulbs B.V., established in Broek op Langedijk, the Netherlands

## 2. Applicability

- 2.1. These general terms and conditions shall apply to all offers, quotations, orders and agreements in respect of which VWS acts as party. These terms and conditions shall apply in full between VWS and its opposite party (hereafter: “customer”), unless VWS has agreed in writing to a deviation therefrom.
- 2.2. Any general terms and conditions used by the customer shall not apply as far as the relationship between VWS and this customer is concerned, unless VWS has accepted the applicability of such terms and conditions expressly in writing.
- 2.3. These general terms and conditions shall be deemed to form an integral part of all offers made by VWS.
- 2.4. If any condition of these general terms and conditions is invalid or annulled, the other conditions of the general terms and conditions will remain fully valid.
- 2.5. In all cases in which the agreement ends, the general terms and conditions continue to govern the relationship of the parties in as far as this is required for its completion.
- 2.6. In case of a conflict between the agreement and the general terms and conditions, the conditions of the agreement prevail.

### **3. Offers**

- 3.1. Unless the text of the offer stipulates otherwise, all offers of VWS shall be without any obligation. VWS expressly reserves the right to implement price changes which occur between the time of making the offer and concluding the agreement.
- 3.2. All orders made by VWS either directly or via its agents shall be quoted by VWS as being without any obligation.

### **4. Agreement**

- 4.1. An agreement shall only be deemed to have been affected once VWS has sent out a written acceptance and confirmation of the agreement.
- 4.2. In the event of the sale of varieties which are subject to plant breeders' rights or similar rights, the customer shall be bound by the obligations connected with such rights imposed by the entitled party. Contracts of sale in respect of these varieties shall only be concluded subject to the resolute condition that a licensing agreement be concluded which will make fulfilment of the contract of sale in question possible.
- 4.3. The customer shall be obliged to comply with the conditions relating to the non-propagation and non-sale of varieties protected by plant breeders' rights, which varieties are indicated by VWS with an "R". The customer indemnifies VWS against all claims of third parties relating to the violation by the customer of said protective conditions.

### **5. Prices**

- 5.1. All prices shall be ex warehouse of VWS and exclusive of VAT and any due and payable fees and duties.
- 5.2. All prices shall be quoted in euros, unless expressly indicated otherwise.
- 5.3. Packaging shall be charged to the customer at cost and shall not be taken back by VWS under any circumstances.

### **6. Delivery and transport**

- 6.1. All deliveries shall take place ex warehouse of VWS, as described in the Incoterms 2010 of the International Chamber of Commerce (ICC).

- 6.2. Should the customer not give any instructions for shipping or other actions related to transportation, the customer shall be deemed to have agreed to the procedures used by VWS in this regard. Deviating terms of delivery must be included in writing in the agreement.
- 6.3. Agreed delivery dates shall not, in view of the nature of the products delivered by VWS, be firm dates as defined in article 6:83 a of BW (Dutch Civil Code). An agreed delivery date shall be deemed to be a guide date. Should delivery not have taken place by the agreed guide date, the customer must send a written notice of default to VWS and give it a reasonable period in which to make the delivery. Should delivery not be possible within the meaning of clause 8 of these general terms and conditions, VWS shall be entitled to cancel the delivery in full, without prejudice to the provisions of clause 12 of these general terms and conditions.
- 6.4. Should it be necessary to obtain any statutory permit or consent before delivery can be made, the customer shall render any assistance required in this regard. Not obtaining the permits or consent (in full) or only obtaining such permits or consent at a later date shall be entirely for the account and risk of the customer.
- 6.5. If the goods have not been purchased by the customer after the expiration of the delivery period, or if the customer is negligent in giving the information necessary for the delivery, the goods will be stored at the customer's expense and risk. In that case, the customer will be under the obligation to settle all supplemental costs, including at least the storage costs. Consequently, VWS is not liable for any damages to and/or deterioration of the goods, irrespective of the question whether the customer is responsible for failing in his purchase obligation.

## **7. Payment**

- 7.1. Payments must be made to the bank account of VWS stipulated in the invoice within 30 days of the invoice date without any discount or set-off unless it has been provided otherwise in writing. Should the payment date be exceeded, the customer shall be in default by operation of the law. The customer shall owe VWS trade interest equal to the statutory interest for the period during which it is in default. Should the customer be in default, VWS shall, without prejudice to any other rights to which it is entitled, be entitled to charge any costs which it incurs in respect of collection and the safeguarding of its rights, including the costs of legal assistance, to the customer. Extrajudicial costs shall be calculated in accordance with the collection rates of NOA (Netherlands Bar Association).

- 7.2. Should, where payment in instalments has been agreed, the customer fail to pay an instalment, the full invoice amount shall as a result become immediately due and payable, without it being necessary for VWS to send a further notice of default.
- 7.3. VWS shall be entitled to demand that (a part of) the payment be made immediately on delivery.
- 7.4. VWS reserves the right to present the customer with a bill for acceptance.
- 7.5. As far as payments are concerned, the customer shall not be entitled to put up a defence of set-off vis-à-vis VWS.

## **8. Force Majeure**

- 8.1. *Force majeure* shall be deemed to be any circumstance as a result of which the (further) fulfilment of this agreement either in full or in part cannot in all reasonableness be expected from VWS, regardless of whether such circumstance occurs in respect of VWS, its suppliers or any other third party on which VWS depends.
- 8.2. *Force majeure* shall, *inter alia*, include strikes, lockouts, fire, weather influences, growing failures, floods, terrorism, lack of transportation means, government regulations, the issue of import or export permits being refused by the government, riots, mobilization, a state of siege, blockades, interruption of operations, excessive illness among staff, epidemics and pandemics, the delayed or faulty delivery of packaging material or raw and ancillary materials.
- 8.3. In the event of *force majeure* as defined above, VWS shall be entitled to suspend the fulfilment of its obligations or to cancel these definitively. In such case, clause 12 of these general terms and conditions shall then apply in full. VWS shall inform the customer in writing of the suspension and/or cancellation as soon as possible following the occurrence of the situation of *force majeure*.

## **9. Dissolution, cancellation and suspension**

- 9.1. VWS shall, without any further notice of default being required, be entitled, by means of a written declaration, to dissolve the agreement with the customer in question either wholly or partially, to suspend its obligations, to claim the goods delivered by it subject to the retention of title and/or to demand immediate payment of all that which the customer owes it, should:
  - a. the customer fails to fulfil its obligations vis-à-vis VWS either wholly or partially, even where such failure cannot be attributed to the customer

- b. VWS have valid reasons to assume that the customer in question will not or will not be able to fulfil its obligations vis-à-vis VWS and should the customer fail to comply with a request from VWS to state in writing within a reasonable period of time that the customer will indeed fulfil its obligations vis-à-vis VWS
  - c. the customer applies for a suspension of payments or should a petition for an order for compulsory winding up be submitted against the customer
  - d. a third party make an attachment against the customer on goods belonging to VWS
- 9.2. In the event of the dissolution of the agreement by VWS on the basis of the provisions under 1 above, the customer shall be obliged to compensate VWS for all damage suffered by it as a result, including the costs of undoing, the costs of (partial) implementation and lost profit.
- 9.3. In the event of the cancellation of the agreement by the customer after having concluded this agreement, the customer shall be obliged to compensate VWS for all damage suffered by it as a result, including the costs of undoing, the costs of (partial) implementation and lost profit.
- 9.4. In the event of dissolution of the agreement in the way as mentioned under 2 and 3, at all events the customer shall owe VWS as a compensation an amount of 25% of the gross amount for which VWS would have invoiced the customer, had the agreement been implemented in the regular way, without prejudice to the right of VWS to full compensation. The compensation amount must be paid by the customer to VWS within 14 days after the request for that on the part of VWS.

## **10. Retention of title**

- 10.1. All goods delivered by VWS shall remain its property until the customer has fulfilled in full all claims relating to the counter-performance in respect of the goods delivered or to be delivered to the customer by VWS in accordance with the agreement and in respect of any services provided or to be provided to the customer pursuant to such an agreement, as well as all claims arising from the non-fulfilment of such agreements.
- 10.2. The customer shall be entitled to sell the goods delivered to it subject to the retention of title to third parties within the framework of its regular business operations and, on delivery of the goods sold in this manner, to transfer the ownership thereof. The customer shall forfeit the right referred to in the first sentence should it be granted a suspension of payments or should it be declared bankrupt.

- 10.3. The customer shall not be entitled to give the products delivered by VWS subject to the retention of title on loan to third parties, to pledge such goods or otherwise to encumber such goods with any right for the benefit of third parties.
- 10.4. Should the goods have been sold and delivered by the customer to third parties, the customer shall, on first demand by VWS, be obliged to pledge its claim in respect of these deliveries to VWS as security for all that it owes to VWS. In this regard, the customer hereby grants VWS an irrevocable power of attorney to affect such pledge, if necessary, itself on behalf of the customer.
- 10.5. The customer shall be obliged to properly insure the goods delivered by VWS subject to the retention of title against the usual dangers at its own expense and to keep such goods insured; the customer shall be obliged to provide proof of the insurance to VWS at the request of VWS.

## **11. Guarantee**

- 11.1. VWS guarantees the authenticity of all varieties delivered by it, however, subject to the provisions of clause 8 and taking into account clause 12 of these general terms and conditions.
- 11.2. VWS does not in any way whatsoever guarantee the result of the cultivation, including the flowering.
- 11.3. VWS expressly reserves the right to replace varieties which have been sold out and/or which are no longer available with other varieties. VWS shall inform the customer of fundamental changes.

## **12. Liability**

- 12.1. The liability of VWS regarding goods delivered by VWS or advice given by VWS, mediation and/or assistance provided by VWS, etc. is limited to that which is defined in these general terms and conditions. Any further liability is explicitly excluded by VWS.
- 12.2. VWS shall accept no liability for any damage to bulbs which it has in its possession for the purpose of safekeeping or processing—regardless of whether this takes place via an auxiliary person—except for in cases of gross negligence or intention. Unless it has been expressly agreed otherwise, the entitled party and/or the customer must ensure that there is sufficient insurance against any form of damage to the goods in safekeeping at VWS and VWS shall not be obliged to insure goods accepted for safekeeping or processing.

- 12.3. VWS shall not be liable for any losses incurred by the customer as a result of a given delivery date being exceeded, unless such exceeding can be attributed to the intention or gross negligence of VWS.
- 12.4. In cases where VWS is liable on the grounds of the aforementioned provisions, its liability shall in all cases be limited to the net invoice amount which has been or would have been invoiced by VWS in such case, or, at the choice of VWS, to the replacement value of the goods which are and/or were the subject of the agreement in question.
- 12.5. VWS shall under no circumstances be liable for any form of consequential loss and/or pure financial loss.
- 12.6. The liability of VWS shall in any case be limited to a maximum of €10,000.
- 12.7. The customer indemnifies VWS, both judicially and extra-judicially, against all compensation claims of third parties which arise either directly or indirectly from an agreement between the customer and VWS, in as far as the damage of the third party is inflicted by the customer or the customer is (partly) guilty of the damage.

### **13. Complaints**

- 13.1. The customer is obliged to look for defects in the delivered goods upon receipt. Any (visible) defects have to be reported within eight days after delivery in writing and registered, precisely stating the nature and cause of the defects, under penalty of dissolution of the customer rights. Any complaints relating to seriously defective goods delivered by VWS have to be reported immediately and in writing within 24 hours.
- 13.2. Should VWS be of the opinion that a complaint is justified, VWS shall be entitled to replace the faulty goods, returned with the permission of VWS, while still maintaining the existing agreement, all the above without prejudice to the provisions of clause 12 of these general terms and conditions.
- 13.3. Return consignments shall not be accepted by VWS, except on the grounds of an obligation pursuant to law.
- 13.4. Should the customer refuse to accept a consignment without having legally valid reasons to do so, VWS shall be entitled to sell the goods to another party. The customer shall then be liable for any price difference occurring to the detriment of VWS, without prejudice to the right of VWS to claim damages and costs in such case.

#### **14. Advertising material**

- 14.1. Any advertising material put into circulation by VWS and held by its customers shall remain the property of VWS and may not be used by the customer in any other way or for any other purpose than that for which it was made available to the customer.

#### **15. Applicable law and competent court**

1. All disputes arising from or connected with the agreement concluded between VWS and its customers, of which these general terms and conditions form an integral part, shall be submitted to the judgement of the competent court in Alkmaar, the Netherlands. However, if the customer is established in a state that is no party to EU Council Regulation No. 44/2001 on jurisdiction of 22 December 2000, the ratification and enforcement of decisions in civil and trade matters (EEX Treaty), or the treaty on the jurisdiction and enforcement of decisions in civil and trade matters of 16 September 1988 (EEC-EFTA Enforcement Treaty), any disputes that may arise as a result of the present agreement or any subsequent agreements will be decided according to the arbitration code of the Netherlands Arbitration Institute. All agreements shall be subject exclusively to Dutch law.
2. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods, concluded in Vienna on 11 April 1980) shall be expressly excluded.