

# General service conditions

## GENERAL SERVICE CONDITIONS

General conditions for the contractual performance of plant raising work on plant reproduction material for horticultural products by order

Filed in the Dutch language with the Chamber of Commerce of Rotterdam on 13 January 2011.

In case of any contradiction between the English and Dutch version of these general conditions, the Dutch version shall prevail.

### **Article 1 Applicability**

1. These general conditions shall apply to any agreement in which the client supplies plant reproduction material, namely seed, cutting or tissue culture, to the contractor with the order to raise this reproduction material into planting material. The basis of this agreement is that the ownership of the reproduction material and the planting material resulting therefrom shall always remain vested in the client.
2. Any conditions of the client, of any nature whatsoever and by any name whatsoever, shall not apply unless they have been agreed explicitly in writing.
3. Deviating provisions must be agreed explicitly and in writing. In so far as they do not take the place of the provisions of these general conditions, they shall be deemed to supplement these conditions.

### **Article 2 Definitions**

1. The “client” shall be the natural person or legal person who gives the “contractor” the order to raise plant reproduction material that is the property of the client into planting material that is suitable for cultivation at the business of the client or for further cultivation elsewhere.
2. The “contractor” shall be the natural person or legal person who undertakes to perform the work that is necessary to raise planting material.

### **Article 3 Offers and prices**

1. All offers shall be without engagement unless something else has been agreed in writing. An offer shall have a period of validity of at most 30 days.
2. With the client’s written acknowledgement of the offer, in which connection it is explicitly indicated that this concerns an order for services, the agreement shall be deemed to have been concluded, unless within five days after dispatch of the client’s acknowledgement a written objection is made thereto by the contractor.
3. Agreements shall be concluded on condition that the plant reproduction material, with mention of the name of the variety and corresponding specifications, at the start of the raising work is available to the contractor.
4. If the agreement is created through the intermediary of agents, commercial representatives and/or other middlemen and/or retailers, it shall only bind the contractor after it has been accepted by the contractor in writing.

5. The prices shall be exclusive of VAT and additional costs, including transport charges, costs of packaging, costs of quality control and/or phytosanitary examination, import duties, government and other levies under public law, and also payments under breeders' rights and possible other payments, unless something else has been agreed in writing.
6. In so far as nothing else has been indicated, the prices shall be in euros (€).
7. In the event of cancellation of the agreement by the client before sowing or planting the client shall immediately owe 25% of the invoice value of the agreed raising work. The client shall furthermore be liable for all expenses already incurred by the contractor. In the event of cancellation of the agreement by the client after sowing or planting the client shall immediately owe 100% of the invoice value of the agreed raising work as compensation for the cancellation.
8. In the event that the client wants the seed or planting material back after the above-mentioned cancellation, he must inform the contractor about this simultaneously with the cancellation. If the client does not collect the seed or planting material from the contractor within seven days after cancellation, the contractor shall be entitled to destroy the seed or planting material.
9. Both parties shall be obliged to limit any damage as much as possible.

#### **Article 4 Delivery and transport**

1. Delivery shall be made ex works, unless something else has been agreed.
2. After consultation with the client the contractor shall determine the date of delivery. Stated times of delivery shall not be considered deadlines. If a date of delivery has been agreed, the contractor shall aim at adhering to this date for delivery as much as possible. If the contractor cannot deliver on the agreed date or within the agreed period, he shall inform the client on the subject in the timeliest manner possible. Parties will determine a new date of delivery in consultation. This new date of delivery will be the agreed date of delivery as mentioned in article 10 paragraph 5.
3. If the client takes the ordered products before the agreed date or period as provided in paragraph 2 the risk following from this shall be entirely for the client.
4. If the client takes or wants to take the ordered products after the agreed date of delivery, the risk of a possible loss of quality occurring owing to longer storage shall be entirely for the client. At the same time the costs made by the contractor for the longer raising period shall be charged to the client.

#### **Article 5. Packaging/packing/carts/pallets**

1. One-way packaging shall be charged at cost price and shall not be taken back.
2. All packing and packaging, with the exception of one-way packing, shall remain the contractor's property.
3. The contractor shall be entitled to charge the client an agreed user fee for reusable packaging and other durable material, which fee shall be stated separately on the invoice.
4. Within 30 days after delivery or immediately after planting the client shall be obliged to return to the vendor packaging and packing at his own expense and in good condition and under the proper hygienic conditions. If it has been agreed that the contractor will collect the packaging and packing himself, the client must see to it, in connection with the date announced by the contractor, that packaging and packing

remain in a good state and under the proper hygienic conditions and store them in such a way that the contractor can collect them in a normal manner.

5. The client may not continue to use or allow third parties to use the packaging and packing.
6. Carts, rolling containers and reusable pallets must be returned immediately unless something else has been agreed. It shall be forbidden to keep them for one's own use or to allow them to be used by third parties.
7. In the event of damage or loss of reusable packages, carts, rolling containers, pallets, etc. the client shall be obliged to pay the contractor the repair or replacement costs and also any extra rent as a result of late return.

## **Article 6 Payment**

1. Payment must be made in different instalments, which shall be charged as the service proceeds. Per instalment the contractor shall charge the necessary material and auxiliary materials, which shall become the client's property after payment. Packaging and packing shall not be included in this.
2. All payments are to be made within seven days after the invoice date. Payment of the last instalment must be made prior to the delivery of the planting material.
3. The client shall not be empowered to deduct any amount of a counterclaim asserted by him from the price to be paid by him.
4. The client shall not be empowered to suspend the fulfilment of his obligation of payment in the event of a complaint submitted by him to the contractor about the products delivered.
5. All the payments shall be made at the office of the contractor or by deposit or transfer into a bank account to be designated by the contractor.
6. Payment must be made in euros (€) unless something else is stated on the invoice. In the last-mentioned case the contractor shall be entitled to charge exchange differences to the client.
7. If the client does not fulfil his obligations of payment in time, he shall be deemed to be in default by operation of the law. The contractor reserves the right to claim the ownership of the planting material at that time. The contractor shall not be liable for any damage on the part of the client as a result of failure to deliver the planting material.
8. Moreover the contractor shall be entitled to charge an interest of 1% a month from the day that the client has failed to fulfil the obligation of payment mentioned in paragraph 2, in which connection part of a month shall be counted as a whole month. In the event of the client's default the contractor shall also be entitled to charge the exchange loss suffered as a result of that.
9. If the client is in default or if he fails in any other way in fulfilling any of his obligations, all reasonable costs to obtain satisfaction both judicially and extrajudicially shall be for his account.
10. The contractor reserves the right not or no longer to perform orders or agreements if in any way the client has not fulfilled his obligations to the contractor or there is a threat of non-fulfilment. The contractor shall inform the client of this immediately. The contractor shall not be liable for any damage on the part of the client as a result of non-performance of orders.

## **Article 7 Force majeure**

1. Force majeure shall be: any circumstance beyond the contractor's immediate control, as a result of which performance of the agreement cannot reasonably be expected. In this connection consideration may be given to strikes, fire, extreme weather conditions or government measures and diseases and pests on the one hand and defects in the materials supplied to the contractor on the other hand.
2. If the delivery cannot be made by the contractor as a result of force majeure, the contractor must inform the client in writing as soon as possible about the circumstances.
3. In the event of force majeure the parties shall consult about a change of the agreement or about the whole or partial dissolution of the agreement.
4. If the parties cannot agree on amendment or dissolution within 10 days after the written statement of the said circumstances, each of the parties may apply to the court.

### **Article 8 Unforeseen circumstances**

1. In the event of unforeseen circumstances on the part of one of the parties that are so serious that, having regard to the demands of reason and fairness, the other party may not expect that the concluded agreement will remain intact without change, the parties shall consult about a change of the agreement or about the whole or partial dissolution of the agreement.
2. If within 10 days after written communication of the relevant circumstances the parties cannot agree on an amendment or dissolution, each of the parties may apply to the court.

### **Article 9 Guarantees and complaints**

1. The contractor guarantees that the products that must be supplied on the basis of the order comply with the demands imposed in the applicable rules of Dutch inspection agencies that are in force at the time of conclusion of the agreement.
2. The contractor shall not guarantee the quantity, the quality and the properties of the planting material that is cultivated from the plant reproduction material supplied. Furthermore the contractor cannot guarantee the absence of defects, explicitly including diseases that are the result of the plant reproduction material supplied.
3. The contractor shall not guarantee the growing and flowering of the products supplied.
4. Complaints in connection with visible defects must be made known to the contractor at the latest within two days after delivery and be communicated to the contractor in writing within eight days.
5. Complaints in connection with non-visible defects must be made known to the contractor immediately (and at any rate within two days) after they have been discovered and be communicated to the contractor in writing within eight days.
6. Moreover complaints must always be communicated to the contractor at such a time that the contractor can check the planting material. In order to be able to carry out the check the contractor must moreover receive immediate permission from the client to enter the latter's business.
7. A complaint must at any rate contain:
8. An extensive and accurate description of the defect;
9. The storage space of the planting material to which the complaint relates;
10. A statement of facts on the strength of which it may be determined that the products supplied by the contractor and criticized or rejected by the client are the same.

11. Complaints in connection with part of the goods supplied cannot be a reason for the client's rejection of the whole delivery.
12. The client shall have the obligation to (have others) check the delivered quantity of the delivered parcel at the time when it is taken receipt of, and report any noted deviation in quantity in conformity with paragraph 4 to the contractor.
13. The issuing of a complaint shall not suspend the obligation of payment of the client, irrespective of any soundness of a complaint.

#### **Article 10 Liability**

1. The contractor shall not be liable for any damage, except for the circumstances mentioned in this article. In such circumstances the liability of the contractor shall not exceed the invoice value of the agreed plant raising work. In no circumstance shall the contractor be liable for any form of consequential damage, loss of turnover or loss of profit.
2. The contractor shall not be liable for damage caused by force majeure as referred to in article 7 paragraph 1.
3. The contractor shall not be liable for any damage that is the result of the quality and health of the plant reproduction material that has been made available by the client.
4. The client shall indemnify the contractor for any damage that may arise on the part of the contractor or third parties as a result of diseases or other defects in the plant reproduction material that he has made available to the contractor.
5. All liability in connection with untimely delivery by the contractor is hereby excluded, unless the agreed date of delivery is delayed by more than seven days. In the event of a delay in the date of delivery by more than seven days the contractor must be held in default in writing, on which occasion the client will have to give the contractor a reasonable period to fulfill his obligations.
6. In case of a complaint which is submitted in conformity with article 9, the contractor shall only be liable if the complaint submitted turns out to be justified and it is also a question of culpability or willful negligence on the part of the contractor. In case of a damage claim, the percentage of deviating, sick or weak plants shall be determined by the contractor and client jointly or by an independent third party. This percentage shall be decisive for the contractor's maximum liability. The client shall be obliged to see to it that the damage as a result of deviating, sick or weak plants is limited as much as possible.
7. Compensation may not be set off by the client and shall not create any right not to pay the invoice amount or not in time.

#### **Article 11 Protection of original varieties under breeders' rights or contract**

2. Plant reproduction material and/or planting material of varieties that are protected by a breeders' right applied for or granted in the Netherlands and/or any other country or by means of a contractual perpetual clause may not
  1. be used for the production or further multiplication of the variety;
  2. be treated for the multiplication
  3. be brought on to the market
  4. be traded any further,
  5. be exported,
  6. be imported
  7. or be kept in stock for any of these acts.

3. The client guarantees that the permission of the holder of the breeder's right has been obtained for the acts that the contractor has to perform within the framework of the agreement.
4. The client and the contractor shall be obliged to respect any breeder's, trademark and patent rights that attach to the relevant planting material.

#### **Article 12. Settlement of conflicts**

1. All the agreements to which these general conditions relate in full or in part shall be governed by Dutch law.
2. Any conflicts (also those that are only regarded as such by one party) in connection with or following from the agreements concluded between the contractor and a client established abroad, to which these general conditions apply, may only be decided by the Dutch court, which has jurisdiction in the area in which the contractor is established. Furthermore, the contractor shall have the right to summon the client before the court that is competent by law or pursuant to the applicable international convention.

#### **Article 13 Final provision**

If and in so far as any component or any provision in these general conditions should appear to be in breach of any coercive provision of national or international legislation it shall be regarded as not having been agreed and these general conditions shall for the rest continue to bind the parties. The parties shall then enter into consultation to arrive at a new provision that complies as much as possible with the intention of the parties.