

## **GENERAL TERMS AND CONDITIONS OF SERVICE**

### **General terms and conditions for the cultivation of plant propagation material for horticultural products on an assignment basis**

#### **1. Definitions**

- 1.1. "Client" is understood to mean the natural or legal person who gives the contracted party the assignment referred to in article 4.1.
- 1.2. "Contracted party" is understood to mean the natural or legal person who accepts the assignment referred to in article 4.1.
- 1.3. "Propagation material" is understood to mean seeds, cuttings or tissue culture.

#### **2. Scope**

- 2.1. These general terms and conditions of the contracted party apply to every agreement by virtue of which the client provides propagation material to the contracted party with the assignment to cultivate this propagation material into plant material.
- 2.2. Any terms and conditions of the client, of any nature whatsoever and known by any title whatsoever, shall not be applicable.
- 2.3. Any deviating provisions must be agreed explicitly and in writing.
- 2.4. In so far as any provision of these general terms and conditions may prove to conflict with any provision of peremptory law, the parties will consult one another in order to agree on a valid provision that corresponds to the greatest possible extent with the original provision.

#### **3. Offers and formation of agreements**

- 3.1. All offers by the contracted party are made free of obligation. Unless specified otherwise, they will lapse 30 days after the date stated on the offer.
- 3.2. The agreement is formed upon written confirmation of the offer by the client, unless the contracted party withdraws its offer within five days after receipt of confirmation.
- 3.3. If the client gives confirmation of the offer via an intermediary of the contracted party, the agreement will not be formed until the contracted party has accepted the assignment in writing.

#### **4. Performance of assignment**

- 4.1. The assignment to be performed by the contracted party under the agreement is the cultivation of propagation material into plant material that is suitable for further cultivation. The propagation material and the resulting plant material shall remain the property of the client.

- 4.2. The contracted party will not commence the performance of the assignment until the client has made the propagation material available to the contracted party, stating the variety name and the accompanying specifications. Irrespective of whether the propagation material is available, the contracted party is entitled to charge costs to the client from the originally agreed commencement date for the assignment.
- 4.3. Until the contracted party commences the performance of the assignment, the client is entitled to dissolve (cancel) the agreement, in which case the client will immediately owe 25% of the invoice amount for the agreed cultivation work and must reimburse the contracted party for all costs already incurred. Once the contracted party has commenced the performance of the assignment, the client will always owe 100% of the invoice amount for the assignment.
- 4.4. If the client wishes propagation material or the resulting plant material to be returned after cancellation within the meaning of article 4.3, the client must inform the contracted party accordingly upon cancellation. The contracted party may charge costs for this. The client is obliged to collect the material within seven days after cancellation, failing which the contracted party will be entitled to sell or destroy the material.
- 4.5. The client guarantees that the holder of any intellectual property rights related to the propagation material and the resulting plant material has given permission for all actions that the contracted party must undertake in the context of the cultivation assignment.

## **5. Delivery and transport**

- 5.1. Delivery of the cultivated plant material shall be made at the business premises of the contracted party.
- 5.2. The contracted party will determine the delivery date after consulting the client. This date will not be a final deadline for the contracted party. If the contracted party is unable to deliver on the date that is originally set, the contracted party will inform the client accordingly in the most timely manner possible, following which the parties will consult on a new delivery date.
- 5.3. If the client takes delivery of the ordered products before the delivery date referred to in article 5.2, any resulting risk will be entirely for the client.
- 5.4. If the client takes delivery of the ordered products after the delivery date referred to in article 5.2, any resulting risk will be entirely for the client. The additional costs incurred by the contracted party will also be charged to the client.

## **6. Packaging**

- 6.1. Single-use packaging will be charged to the client at cost and cannot be returned.
- 6.2. The contracted party is entitled to charge the client a usage fee and/or deposit for multi-use packaging, trolleys, wheeled containers and pallets (hereinafter: "multi-use packaging").

- 6.3. All multi-use packaging will remain the property of the contracted party. The client may only use this multi-use packaging to package and transport the plant material cultivated by the contracted party.
- 6.4. The client is obliged to return the multi-use packaging to the contracted party within 30 days after delivery, at the client's own expense, in a fit and proper state and in the correct, hygienic conditions. If it has been agreed that the contracted party will collect the multi-use packaging from the client, the client must enable the contracted party to collect it in the normal way. Trolleys, wheeled containers and pallets must be returned immediately.
- 6.5. In the event of damage to or loss of multi-use packaging, the client is obliged to reimburse the contracted party for the repair or replacement costs as well as any extra usage costs resulting from late return.

## **7. Prices and payment**

- 7.1. All prices charged by the contracted party and agreed with the client are in euros and are exclusive of VAT and additional costs, such as transport costs, multi-use packaging costs, quality control, phytosanitary examinations, import levies, government levies and other public law levies, as well as any payments related to plant breeders' rights or any other payments.
- 7.2. The client is always obliged to pay in euros within seven days after the invoice date, without applying any reduction or set-off. Irrespective of whether the payment term has expired, full payment for the assignment must be made prior to delivery of the plant material.
- 7.3. The client is not entitled to suspend performance of its payment obligation for any reason whatsoever.
- 7.4. All payments shall be made at the office of the contracted party or by means of payment into or transfer into a bank account designated by the contracted party.
- 7.5. If the client fails to comply with its payment obligation in a timely manner, the client will automatically be in default. In that case the client will owe interest of 1% per month, or the statutory interest if this is higher, on the amount that is outstanding, calculated from the date on which the payment term expires, with any incomplete month being treated as a whole month.
- 7.6. If the client is in default or fails in any other way to comply with any of its obligations to the contracted party, all reasonable costs to obtain just satisfaction, both judicially and extrajudicially, will be for the client's account.
- 7.7. The contracted party is entitled to suspend performance of its obligations to the client if the client fails in any way to comply with its obligations to the contracted party or if there is a risk of non-compliance. The contracted party is not liable for any resulting damage incurred on the part of the client.

## **8. Security**

- 8.1. Upon provision of the propagation material in accordance with article 4.2, the contracted party acquires a pledge on that propagation material and the resulting plant material, as security for payment of invoices connected with the assignment as well as payment of invoices from the client's earlier or later assignments. If invoices have not yet been paid by the time of delivery, the contracted party will also have the right to retain the plant material as well as to request the client, at the latter's expense and in accordance with the appended model, to grant an undisclosed pledge for the benefit of the contracted party on the plant material that is to be delivered.
- 8.2. Upon provision of the propagation material in accordance with article 4.2, the contracted party acquires a right of usufruct in relation to that propagation material and the resulting plant material, as long as the invoices connected with the assignment have not yet been paid.

## **9. Warranties and complaints**

- 9.1. The contracted party guarantees only that the products that must be delivered on the basis of the assignment satisfy the requirements set in the applicable regulations of the Dutch inspection authorities as they apply at the time when the agreement was concluded.
- 9.2. The contracted party cannot guarantee the absence of defects, including diseases, which result from the propagation material that has been made available. Neither does the contracted party provide any guarantee concerning deficiencies in the quantity, growth and bloom, quality and characteristics of the plant material insofar as this is connected with the propagation material that has been made available.
- 9.3. Complaints relating to visible defects must be reported to the contracted party within no more than two days after delivery and communicated in writing to the contracted party within eight days.
- 9.4. Complaints relating to hidden defects must be reported to the contracted party without delay (and in any case within two days) after discovery and communicated in writing to the contracted party within eight days.
- 9.5. Furthermore, complaints must always be communicated to the contracted party at such a time that the contracted party can check the plant material. The client hereby gives the contracted party permission to enter its business premises where applicable for the purpose of carrying out the checks.
- 9.6. A complaint must include at least the following:
  - a) a detailed and precise description of the defect;
  - b) the storage place of the plant material to which the complaint relates;
  - c) facts establishing that the complaint concerns the same plant material as that which was delivered by the contracted party.

- 9.7. The client is obliged to check the quantity of plant material upon delivery and to report any deviations to the contracted party in accordance with article 9.3.
- 9.8. Issuing a complaint does not suspend the client's payment obligation, irrespective of the potential merits of the complaint.

## **10. Liability**

- 10.1. The contracted party is liable only insofar as explicitly provided for by this article. In such a case the contracted party's liability will be limited to a maximum of the invoice amount for the agreed cultivation work. The contracted party is never liable in the event of force majeure.
- 10.2. The client guarantees the absence of and indemnifies the contracted party for all damage that may arise on the part of the contracted party or third parties as a consequence of diseases or other defects in the propagation material that the client has made available to the contracted party.
- 10.3. If the contracted party has informed the client in accordance with article 5.2, the contracted party is not liable for any damage and consequences of late delivery. In all other cases, if the agreed delivery date is missed by more than seven days, the contracted party may be given written notice of default, in which the client must provide the contracted party with a reasonable period to comply with its obligations.
- 10.4. In the event of defects in the delivered plant material, the contracted party will only be liable insofar as the delivered plant material does not comply with the guarantee contained in article 9.1 and provided that the defect was reported in accordance with article 9. If damage is reported, the percentage of defective plants will be determined jointly by the contracted party and the client or, if the parties are unable to agree, by an independent third party. The contracted party's liability will be limited to the number of defective plants as a percentage of the invoice amount for the agreed cultivation work.
- 10.5. In the event of deliberate intent or gross negligence on the part of the contracted party, the limitations on liability contained in this article will not apply. The contracted party is however never liable for any form of consequential loss, loss of turnover or loss of profit.

## **11. Force majeure**

- 11.1. Force majeure is understood to mean every circumstance outside the direct sphere of influence of the contracted party that makes it no longer reasonable to expect performance of the agreement from the contracted party. Such circumstances are in any case deemed to include strikes, fire, extreme weather conditions, government measures, sickness and plagues.
- 11.2. The contracted party will endeavour to inform the client as quickly as possible if it is unable to make delivery or to do so on time as a consequence of force majeure. The parties will then consult on amending or partially or fully dissolving the agreement.

11.3. If the parties are unable to agree on amendment or dissolution within ten days after the force majeure situation is reported, either of them may submit the matter to the court.

## **12. Dispute settlement**

12.1. All agreements fully or partially covered by these general terms and conditions shall be governed by Dutch law.

12.2. All disputes between the parties will be submitted to the court with territorial jurisdiction in the region in which the contracted party is based. The contracted party is also entitled to instigate court proceedings against the client before the court with statutory jurisdiction.

August 2018