

General terms of sale

GENERAL TERMS OF SALE AND DELIVERY OF THE COMPANY RIJK ZWAAN

Article 1: Application

1. These terms shall be applicable to all offers and agreements between the company Rijk Zwaan (hereinafter referred to as the “seller”) and the buyer, unless the parties expressly agreed in writing to rescind one or more provisions of these terms.
2. Any general terms of the buyer are hereby expressly excluded.

Article 2: Offers, agreement, prices

1. Offers made by the seller are not binding. The seller may withdraw a non-binding offer within three working days as of the receipt of the confirmation of the buyer's acceptance of the offer.
2. The prices specified in the offer do not include sale taxes.
3. The seller reserves the right to periodically change the prices. For orders made after the introduction of new prices, any new price offers shall replace the previous offers.
4. If the order pertains to an amount that is different from the seller's standard packaging unit or its multiple, the seller may deliver the product in an accordingly larger quantity.
5. All weights and numbers are given as net values.
6. Under any circumstances, an offer made to the buyer or a sale agreement concluded between the seller and the buyer shall not be interpreted as granting the buyer an implied licence for any intellectual property related to the offered or sold goods.

Article 3: Order documentation

While placing an order, or at the first request of the seller, the buyer shall specify in writing the information, specifications and documents required by the provisions of law applicable in the country to which the products shall be delivered, including those related to:

- issuance of invoices,
- phytosanitary requirements,
- international certificates,
- other documents or import declarations.

Article 4: Reservation related to successful cultivation and processing

All deliveries are subject to the customary reservation of successful cultivation and processing. In the event that the seller reasonably refers to the reservation of successful cultivation and processing, the seller shall not be obliged to fulfil the agreement; however, the seller shall endeavour to deliver the goods in parts or deliver similar replacement goods. In the event that the seller refers to the reservation mentioned hereinabove, the buyer shall not be entitled to any damages.

Article 5: Delivery

1. The goods shall be deemed delivered when they have been handed over to the first carrier by the seller. The seller reserves the right to charge the buyer with the costs of transportation and transportation insurance.
2. In the event that the seller is responsible for the transportation of goods, the goods shall be transported in such a way as the seller thinks fit. The buyer shall be charged with all additional costs incurred by the seller due to the buyer's special requirements concerning transportation. The seller shall not be liable for any delay in delivery performed by the carrier.
3. The buyer may not return the goods to the seller without the seller's consent. The costs of sending the returned goods to the seller, if any, shall be incurred by the buyer.

Article 6: Delivery date

Delivery date shall be agreed by the seller and the buyer. In the event that the time limit for delivery is exceeded, the buyer shall inform the seller in writing of the failure to perform the contractual provisions, and shall specify a proper time limit for the seller to fulfil the agreement.

Article 7: Partial deliveries

The seller may make partial deliveries of goods. However, this solution is not possible if the goods delivered in partial deliveries do not have any value if they are separated from each other. The seller may issue separate invoices for each partial delivery.

Article 8: Reservation of ownership right

1. Goods delivered by the seller and/or products derived from the delivered goods shall remain the property of the seller until the buyer settles the amounts due related thereto.

In the event that the seller does not receive payment, the seller may recover the goods and/or products from the buyer and the buyer shall enable such a recovery. The buyer may not pursue any claims for damages. The reservation of ownership right also covers the seller's claims against the buyer arising from the buyer's failure to perform one or more obligations towards the seller.

2. The goods delivered by the seller and/or the products derived from the delivered goods which are subject to the reservation of ownership right in accordance with section 1 of this Article:

a) shall, at all times, be stored and/or used in a way that makes it possible to recognise them as goods and/or products owned by the seller,

b) shall be used or sold only for the customary operational purposes.

In the event of resale, the buyer shall reserve the ownership right of the seller.

Furthermore, the buyer shall bind the sub-buyer with the obligations specified in Article 8.

3. The buyer is not entitled to pledge the goods or allow for submitting any other claims related to the goods.

Article 9: Payment terms

1. Unless the parties agree otherwise, payment shall be made within 30 days as of the issuance of a relevant invoice. If the buyer fails to make the payment within the period specified on the invoice, it shall be automatically interpreted as a violation of contractual provisions by the buyer; the buyer shall pay the statutory interest on the overdue amount, calculated as of the expiration of the due date. The seller reserves the right to withhold further deliveries to the buyer for the period in which the buyer fails to discharge contractual obligations.

2. In the event of liquidation, bankruptcy or suspension of payments by the buyer, the outstanding amounts shall immediately become due and payable, and the seller shall have the right to withhold or annul any and all agreements with the buyer, which shall not affect the seller's right to claim damages.

3. If the parties have agreed to payment in instalments and the buyer fails to meet one of the payment dates, all outstanding amounts shall become immediately due and payable without the need to issue an additional notice to this effect. In such an event, proper interest shall be calculated in accordance with section 1.

4. Bank charges shall be incurred by the buyer.

Article 10: Costs of debt collection

If the buyer fails to meet any obligation, the buyer shall be charged with all costs of debt collection, both as part of court and out-of-court proceedings.

Article 11: Liability

1. If the seller deems that the complaint submitted by the buyer is justified, the seller shall, to the possible extent, at the seller's own discretion and cost, remove the defect or replace the defective goods with goods without any defects. In such an event, the buyer shall fully cooperate with the seller. The buyer shall secure the defective goods subject to the complaint to the greatest possible extent.

2. The seller shall not be liable for any damage incurred by the buyer as a result of or in connection with defects in the goods, including defects related to packaging, unless the damage stems from wilful misconduct or gross negligence of the seller and/or the seller's employees.

3. The seller's liability for any damage incurred by the buyer shall, at all times, be limited to the value of the invoice issued to the buyer (excluding VAT) and pertaining to a given delivery. Under no circumstances shall the seller be liable for any indirect damage suffered by the buyer, including, but not limited to, consequential damage, commercial loss or loss of profit.

4. Furthermore, the seller shall not be liable for losses resulting from an alleged delay in delivery.

5. Any and all claims for damages under these general terms shall expire a year after delivery of goods constituting the object of the claim unless the seller receives any claim in writing within that period.

Article 12: Use and guarantee

1. The seller guarantees that the goods delivered by the seller correspond, to the greatest possible extent, to the descriptions thereof. The guarantee does not include product specifications, if any. The seller shall inform the buyer if the delivered goods do not comply with product specifications included in the catalogue made available by the seller for a given season.

2. The seller does not guarantee that the goods delivered to the buyer by the seller are fit for the purposes for which the buyer intends to use them. The buyer expressly acknowledges that even when the best-quality product is used, the successful cultivation of plants is largely dependent on cultivation methods, weather conditions and soil quality.

3. Any and all quality-related information provided by the seller in writing is based only on reproducible tests. The data reflects only the result obtained by the seller while performing tests and under conditions in which the tests are carried out. It should not be assumed that there exists a direct connection between the provided data and the results obtained by the buyer. The result obtained by the buyer is contingent upon such factors as: location, cultivation measures, e.g. the substrate used for sowing, and/or climatic conditions.

4. Any and all guarantees given by the seller shall expire if the buyer processes or contributes to processing goods, repacks or contributes to repacking goods or uses and/or stores goods improperly or contributes to the improper use and/or storage of goods.

5. The seller does not guarantee that the use of the delivered goods does not violate any (intellectual property) rights of third parties.

Article 13: Processing seeds at the buyer's request

1. If goods are processed by or on behalf of the seller at the buyer's special request, the seller does not guarantee that such processing will be effective and/or is not liable for the results of such processing. The seller is not liable for any damage arising from the processing performed at the special request of the buyer.

2. However, if the seller is held liable for damage arising from the processing performed at the special request of the buyer despite the provision hereinabove, the seller's liability shall be limited to replacing the goods or crediting the amount to the invoice related to the given goods, to such an extent as it is possible and as the seller thinks fit.

3. Any and all data related to the goods is based on tests performed prior to the processing made on demand.

Article 14: Defects and terms of guarantee

1. The buyer shall analyse the goods upon delivery or without undue delay after the delivery, and shall notify the seller, within eight days as of the delivery, if the goods or value thereof are different than agreed.

2. Complaints related to obvious defects of the goods, including the packaging, shall be submitted to the seller in writing within eight days as of the delivery of the goods to the buyer. Complaints related to unobvious or hidden defects of the goods, including the packaging, shall be submitted to the seller in writing within eight days as of the day when the alleged defect was or could reasonably be discovered by the buyer. Complaints should be prepared in such a way as to enable the seller or a third party to verify the object thereof. Complaints shall include the batch number and details related to delivery and invoices. The buyer shall specify the conditions in which the goods were used, and in the event of resale of the goods, the buyer shall specify the sub-buyer of the goods. The failure to submit a complaint to the seller in writing within the time limit specified hereinabove shall deprive the buyer of the right to compensation and damages.

3. In the event of an unresolved dispute between the parties, related to germination, purity of the variety, uniformity of the type, technical purity or health, at the request of the buyer and/or the seller, an assessment may be carried out by Naktuinbouw inspection (ISTA station) with its registered office in Roelofarendsveen, the Kingdom of the Netherlands, or by another impartial and independent organisation agreed by the buyer and the seller, at the cost of the losing party. In the event of a dispute related to health, it shall be preferable to use the accepted research methods of ISHI: International Seed Health Initiative. The result of the assessment shall be binding to both parties, notwithstanding their right to report any and all disputes related to such a decision to authorities specified in Article 21.

4. Complaints related to an invoice issued by the seller shall be submitted to the seller in writing within fourteen days as of the issuance of the invoice. The submission of the complaint does not entitle the buyer to withhold the payment for the invoice being subject to the complaint.

Article 15: Indemnification

1. The buyer shall indemnify the seller against liability for any claims and rights of third parties related to damages for the (alleged) damage caused by the goods delivered by the seller or related thereto, including claims and rights reported against the seller as the producer of goods, pursuant to any provisions on third-party liability for effects caused by defective goods in any country, unless the damage stems from wilful misconduct or gross negligence of the seller.

2. The buyer shall have a relevant insurance for any claims and third-party liability arising from the indemnification granted in Article 15.1; at the first request of the seller, such insurance shall be submitted to the seller for acceptance.

Article 16: Guidelines on the manner of cultivation, descriptions of varieties and recommendations

1. The guidelines on cultivation given by the seller are not binding. The guidelines concerning cultivation as

well as descriptions, recommendations and illustrations in any form are, to the greatest possible extent, based on experience gained during studies and in practice. However, the seller shall not be liable for different results obtained as a result of cultivating the goods on the basis of such information. The buyer is responsible for determining whether the goods are fit for specific cultivation and local conditions.

2. The words: “immunity”, “resistance” and “susceptibility” used in the information provided by the seller shall mean:

- immunity: immunity to the attacks of certain pests and pathogens;

- resistance: the ability of a plant variety to limit the growth and development of certain pests or pathogens and/or damage caused thereby in comparison with susceptible varieties of plants in similar environmental conditions and under similar pressure of pests and pathogens. Resistant varieties may exhibit some symptoms of diseases or may be harmed if they are under strong pressure of pests or pathogens. Two levels of resistance are distinguished: high/standard resistance (HR): plant varieties which highly limit the growth and development of certain pests or pathogens in the conditions of normal pressure in comparison with susceptible varieties. However, such varieties may exhibit some symptoms or suffer greater damage if they are under strong pressure of pests or pathogens.

Intermediate/medium resistance (IR): plant varieties which limit the growth and development of certain pests or pathogens but may exhibit a greater scope of symptoms or suffer greater damage in comparison with the varieties with strong/standard resistance.

Varieties with intermediate/medium resistance exhibit less serious symptoms or are less damaged compared with susceptible varieties of plants when cultivated in similar environmental conditions and/or under a similar pressure of pests of pathogens.

- Susceptibility: the inability of a plant to limit the growth and development of certain pests or pathogens.

Article 17: Force majeure

1. It is assumed that force majeure means circumstances beyond the control of the seller, which hinder or prevent the performance of the agreement. This means, among others, the following situations, provided that they considerably hinder or preclude the fulfilment of obligations: strikes in companies other than the seller's company, illegal or political strikes in the seller's company, general shortages of the required raw materials and other materials or services which are indispensable in order to perform the agreement, unforeseeable stoppages concerning suppliers and/or other third parties on which the seller's activity depends, as well as general problems with transportation.

2. The seller shall inform the buyer of the event of force majeure without undue delay.

3. If the event of force majeure lasts longer than two months, both parties have the right to terminate the agreement.

4. If an event of force majeure occurs, the seller is not obliged to pay any damages.

Article 18: Further use/cultivation, inspection

1. The buyer is not entitled to use the supplied material for further production and/or reproduction of propagating material.

2. In the event that the supplied goods are sold to a third party, the buyer shall bind such a third party with the obligation referred to hereinabove, the violation of which may result in the payment of damages.

3. The buyer shall ensure that the seller or any person conducting an inspection on behalf of the seller has a direct access to the buyer's company, including in particular the greenhouses owned by the company, in such a way as to enable the seller to carry out an inspection. In this Article, “company” shall also mean any and all business activities taken by a third party on behalf of the buyer. At a request, the buyer shall also enable access to the buyer's administrative bodies related to the relevant propagating materials.

Article 19: Use of trademarks, logotype and other marks

1. The buyer may not use or register (help to register) trademarks, logotype and other marks used by the seller in order to distinguish the seller's goods from the goods made by other enterprises, or use trademarks, logotype or other marks similar thereto. This does not pertain to trading goods in the original packaging, marked by the seller or marked otherwise with trademarks, logotype and other marks.

2. In the event that the supplied goods are sold to a third party, the buyer shall bind such a third party with the obligation referred to hereinabove, the violation of which may result in the payment of damages.

Article 20: Severability

1. In the event that any provision of the general terms becomes invalid, such a provision shall be automatically replaced with another provision, which shall correspond to the purpose of the original provision to the greatest possible extent.

2. In such an event, as far as it is possible, all other provisions of the general terms shall remain in force.

Article 21: Settlement of disputes

Any disputes arising from offers and agreements to which these general terms pertain or refer shall be settled amicably. In the event that such a settlement is impossible, the dispute shall be referred to the common court of first instance having competent jurisdiction over the seller's place of residence, unless the provisions of law referred to in Article 22 provide for the jurisdiction of another court. The seller shall retain the right to oblige the buyer to appear in court specified by the provisions of law or a relevant international treaty. The seller reserves the right to summon the buyer to appear in a court in a country where the buyer has their registered office.

Article 22: Governing law

Any and all agreements between the seller and the buyer shall be governed by the laws of the country in which the seller is domiciled. Furthermore, in the event that the seller and the buyer are not domiciled in the same country, the UN Convention on Contracts for the International Sale of Goods shall apply, to the extent in which the Convention does not differ from these terms and it is not inconsistent with the provisions applicable in the seller's country.

Additional terms of selling seeds to breeders per square meter

Article 23: Quantity

The quantity of seeds that should be bought shall be determined by means of consultations between the seller's and the buyer's production consultant. The determined amount shall be noted in the order. In order to determine the amount of seeds, it is first necessary to specify the number of square meters on which the buyer will cultivate plants. This number will also be noted in the order. The starting point shall be the maximum number of 2.5 (two and a half) plants per square meter, unless the seller and the buyer expressly agree otherwise and note such information in the order. A deviation from the starting point may influence the price per net square meter.

Article 24: Payment

1. The price per net square meter noted in the order pertains to one cultivation period specified in the order. "Net" means that when calculating the number of square meters, only the area suitable for cultivating plants is taken into consideration.
2. At the moment of delivery, there shall be issued a single invoice for the amount due for the seeds.

Article 25: Use of seeds

1. The buyer shall use (contribute to using) the seeds only to grow plants on the area expressed in square meters and within the cultivation period specified in the order. In the event that a plant variety is cultivated on the area that exceeds the area specified in the order, the buyer shall pay to the seller a double price specified in Article 24 for each square meter exceeding the agreed number of square meters. If there are any seeds left after the period of cultivation, they shall be collected by the seller.
2. The buyer may not make the seeds or any other material related to the plant variety, regardless of its form, available to any third parties. However, the buyer may make the seeds available to a breeder of plants if i) the breeder of plants uses them only to grow new plants for the buyer in accordance with the number of square meters and cultivation period specified in the order and ii) the breeder of plants hands over all remaining seeds and all new plants grown from the seeds to the buyer. For this purpose, the buyer shall give any and all relevant information to the seller.

Article 26: Final provisions

While ordering or purchasing a product, the Client warrants and represents that they have read and understood these terms of sale and accepts them without any reservations.