

STANDARD TERMS AND CONDITIONS OF SALE and DELIVERY GULILAT HOLDING BV (Ltd)

Clause 1 – Definitions

The following definitions apply to these standard terms and conditions of sale and delivery (further referred to as Conditions):

- "Seller": GULILAT HOLDING B.V., located and with registered offices at Graadt van Roggeweg 77-2, 3531 AE, Utrecht, the Netherlands, registered in the Chamber of Commerce trade register under number 30208554;
- "Buyer": the Person with whom Seller has agreed a contract or with whom Seller is negotiating a contract;
- "Parties": Seller and Buyer;
- "Agreement": every Agreement between Parties covering the supply of products or products held in consignment by Seller for Buyer and/or providing any other service by Seller on behalf of Buyer, any modification or addition to this Agreement, as well as all actual transactions and legal acts undertaken in preparation of and as part of the execution of this Agreement, including quotations to Buyer;
- "Products": all matters and/or transactions that are the subject of an Agreement;
- "Person": natural person or legal entity or company without legal personality.

Clause 2 – General

2.1 These conditions apply to all Agreements.

2.2 Terms which deviate from these conditions are only binding if agreed in writing and only apply to the case concerned.

2.3 Buyer's standard terms and conditions do not apply, irrespective of when they are referred to.

2.4 The stipulations in these conditions have not only been made for the benefit of Seller, but also for: its directors and shareholders; all Persons who work for Seller; all Persons engaged by Seller and who are involved in the execution of an Agreement; and any Persons for whose acts or omissions Seller may be liable.

2.5 If these conditions are also drawn up in a language other than Dutch, in the event of a dispute, the Dutch text shall prevail.

2.6 The invalidity of a part of the Agreement and/or part of these Conditions does not affect the validity of the remainder of the Agreement and/or these Conditions.

2.7 Customer's Responsibility

2.7.1 The Products supplied by seller are produced either for Dutch market or other markets respectively. The Customer shall be responsible for ensuring that the Products are in compliance with the laws and regulations applicable in its own country and/or the country where it sells the Products. Seller disclaims any liability in this respect.

2.7.2 If the Customer purchases Products from seller with a short shelf life, the Customer shall be responsible for the consequences. Seller disclaims any liability in this respect.

Clause 3 – Proposals, formation of an Agreement

3.1. All information and specifications provided by Seller will always be approximate. Deviations of up to 10% are permitted without consultation.

3.2. If a sample or model is provided or shown to Buyer, this is done only by way of indication, without the actual Products having to match this sample.

3.3. All quotations issued by Seller are without obligation. Seller is entitled to withdraw its quotation with 5 working days of receiving the order acceptance.

3.4. An order acceptance by Buyer which deviates from Seller's quotation in anyway whatsoever, is always considered a rejection of the quotation and as a new quotation from Buyer. An Agreement is only reached conform this new quotation following written confirmation of order acceptance from Seller.

3.5. An Agreement is established when (a) 5 working days have passed since Seller received the order acceptance from Buyer and Seller has not withdrawn the quotation during this period, or (b) Seller has confirmed the Agreement in writing, or (c) Seller has commenced work on fulfilling the Agreement.

Clause 4 – Prices

4.1 Unless otherwise expressly stated, the prices quoted by Seller are exclusive of turnover tax, other government levies, transport costs, storage costs and other expenses.

4.2 Prices are based on pricing factors at the time the Agreement was concluded. If after the conclusion of the Agreement, changes occur in these pricing factors beyond Seller's reasonable control, Seller shall be entitled to pass on the additional costs arising to Buyer, irrespective of whether or not the price changes could have been anticipated at the time the Agreement was concluded.

4.3 Seller shall inform Buyer in writing about the extent and effective date of the price increase. If the price increase exceeds 15% and is not based on statutory requirements, Buyer has the right to terminate the Agreement from the effective date of the price increase within 7 working days of receiving notice of the price increase by means of a written notification to Seller. The termination has no legal consequences and Buyer is still bound to fulfil the Agreement if Seller informs Buyer within 5 working days of receiving the termination statement of its intention to deliver according to the old prices.

4.4 If, as stated in the Agreement, the price is calculated based on the weight of the products delivered, the vehicle transporting the products is weighed with and without its cargo on the same weighbridge with a calibrated weighing system and with date and time registration. Seller must be given the opportunity to be present when the products supplied are weighed. Seller shall receive written notification of the weight of the products supplied within one week of delivery. The cost of weighing will be borne by Seller.

Clause 5 – Delivery/Risk and Delivery Times and Transport

1. Unless agreed otherwise in writing, delivery shall be Ex Works (Incoterms 2010) Utrecht (the Netherlands) or the place where Seller's supplier has its registered office.

2. The Products to be supplied by seller shall be deemed to have been delivered if seller notifies the Customer that the Products are ready and have been separated for the Customer or are made available to the carrier for delivery to the Customer or for storage for the Customer. The risk of loss of and damage to the Products shall pass to the Customer as soon as the Products are at the disposal of the Customer or the carrier. Any loading damage shall be at the Customer's expense.

3. Seller shall be entitled to deliver in consignments (partial deliveries), each of which shall be payable in advance or may be invoiced separately.
4. Seller shall deliver the Products on disposable pallets. The height of the pallets to be loaded shall be at seller's sole discretion, without any liability arising on its part to compensate the Customer.
5. Delivery times stated shall be estimates only. In no event shall the delivery times stated be deemed to be strict deadlines, unless expressly agreed in writing that a delivery date is fatal. Seller shall at all times be entitled to deliver the Products to the Customer prior to the delivery date stated.
6. In the event that any delivery time is exceeded, seller shall not be liable to pay any compensation. After a delivery time is exceeded by at least six (6) weeks, the Customer may give seller written notice of default by registered letter, granting a final (reasonable) term for delivery. If delivery does not take place as yet within the term set, the Customer shall be entitled to dissolve the Agreement, unless seller is subject to force majeure (see article 14 hereof).
7. The Customer shall take delivery of the Products upon delivery by seller.
8. Any instructions by the Customer to have seller arrange transport, despatch, customs formalities, and/or insurance of the Products shall be carried out by seller at the expense and risk of the Customer, all without prejudice to the provisions of Article 5 hereof. The Customer shall be under an obligation to allow seller to take out insurance for the foregoing risk at the Customer's expense and risk.
9. The Products shall be transported at the Customer's expense and risk, even if the carrier claims inclusion of a clause in consignment notes, road waybills, etc., to the effect that all transport damage shall be at the expense and risk of the consignor.

Clause 6 – Retention of title

6.1 Seller retains title to all Products delivered until the price is fully paid. The retention of title also applies to other claims as referred to in Article 3:92 paragraph 2 of the Dutch Civil Code that Seller has or will have on Buyer.

6.2 Buyer is obliged to handle the Products delivered under the retention of title, with due care and to store them as identifiable property of Seller. Buyer is obliged to insure the Products for the duration of the retention of title against damage caused by fire, explosion, water and theft and to show this insurance policy to Seller on first request. All claims that Buyer may receive under this insurance policy against the insurers, will be pledged to Seller as additional security for the performance of its obligations by Buyer in the manner stated in Article 3:239 of the Dutch Civil Code, as soon as Seller indicates that this is desirable, for whatever reason.

6.3 As long as ownership of the Products has not been transferred to Buyer, Buyer may not pledge the Products or grant a third party any rights to the Products whatsoever. Buyer is permitted to transfer or sell the Products supplied under the retention of title in the context of the normal operation of its business to a third party. In the event of resale Buyer is obliged to demand a retention of title based on the provisions of this clause. Buyer undertakes not to assign the receivables it is due from its customers or to pledge without prior written authorisation from Seller. In addition, Buyer undertakes, on first request of Seller in the manner stated in Article 3:239 of the Dutch Civil Code, to pledge to Seller the receivables due from its customers as additional security for the performance of its obligations towards Seller, for whatever reason.

6.4 If Buyer fails to meet its obligation or if Seller has good reason to fear that Buyer will fail to meet its obligation, without prejudice to its other rights, Seller is authorised to take back the Products delivered under the retention of title. To this end, Buyer will provide access to the area where the Products are stored and shall cooperate fully. After taking back the Products Buyer will be credited for their market value, which under no circumstances may be higher than the original price, less the costs involved in returning the Products and other damage suffered by Seller.

6.5 Buyer shall relinquish any rights of retention relating to the Products in advance and shall not lay any claim to the Products.

6.6 If the law in the country where the Products purchased are delivered provides additional opportunities for retention of title than stated above, it is automatically agreed between the Parties that these additional rights are claimed by Seller, with the understanding that if it cannot be decided objectively which additional provisions apply, the provisions stated above will continue to apply.

Clause 7 – Reusable packaging

7.1 Reusable packaging supplied via Seller, including pallets, crates and boxes, for which a deposit has been charged, will be taken back at the invoice price applicable at the time of return, plus a surcharge, if applicable, equal to a fixed reusable packaging charge according to the prevailing regulations. Returnable containers must be clean and fit for use for horticultural products.

7.2 If Seller is to collect the reusable packaging to be returned it must be sorted and stacked ready for loading.

7.3 Reusable packaging not supplied by Seller will only be taken back if Seller has the reusable packaging concerned in its normal range of packaging.

Clause 8 – Inspection and complaints

8.1 On delivery of the products, Buyer is obliged to accurately inspect or have a third party inspect the Products immediately, and therefore not to delay inspection until the Products have arrived at their final destination, to determine that the products meet the conditions of the Agreement in all respects, in particular:

- that the correct Products have been supplied;
- that the Products delivered meet the quality requirements as may be expected for normal use and/or for commercial purposes;
- that total quantity of the Products delivered (number, quantity, weight) agrees with that which the Parties have agreed. In the event that the delivery is up to 10% less than the total quantity ordered, Buyer is obliged to accept the delivery in full with a proportionate reduction in the total price.

Buyer will give Seller the opportunity to be present when the Products are inspected.

8.2 The confirmation of receipt or transport document signed without protest or reservation by or on behalf of Buyer counts as conclusive proof of the dispatch of the quantity and good appearance of the Products as stated in this signed document.

8.3 Seller must be notified of any complaints within 6 hours of delivery, stating the exact nature of the defect. Complaints notified orally must be confirmed in writing immediately.

8.4 In the event that a complaint is lodged later than the period stated Buyer may not claim that the Products do not satisfy that stated in the Agreement.

8.5 Complaints relating to minor deviations common in the trade and usual technical unavoidable deviations in quality, size, weight, colour, quantity etc. are inadmissible.

8.6 Buyer will cooperate fully with all investigation of the complaint. If Buyer does not cooperate or if investigation is not or no longer possible for whatever reason, the complaint will be inadmissible.

8.7 Complaints regarding Products that have been prepared or processed are inadmissible. In the event of a complaint the Products may only be prepared or processed after receiving prior written consent from the Seller.

8.8 The identification of a defect in part of the Products supplied does not give Buyer the right to refuse all the Products delivered.

8.9 If the complaint from Buyer, also taking the provisions of this clause into consideration, is legitimate, Seller, after consultation with Buyer will either supply the missing Products, or will rectify or replace the faulty Products delivered or will adjust the price accordingly. Complete or partial termination of the Agreement, including reduction in the price, it is only permissible with the prior written consent of Seller.

8.10 Buyer is obliged to take proper care of the Products at all times. Buyer is not free to return the Products without the prior written consent from Seller. If Seller puts the products into storage or takes the returned Products back in any other manner, the cost and risk is for the account of Buyer. This measure may never be interpreted as an approval or acceptance for return of the Products supplied.

8.11 Any legal action must be taken within one year after timely notification of a complaint at the risk of forfeiting any right to compensation.

Clause 9 – Payment

9.1 Unless agreed otherwise in writing and in advance, payment shall be made prior to delivery of the Products as referred to in Article 5, in euros (in the Netherlands), without any deduction of discounts, bank costs or setoff. Seller shall not commence performance of an Agreement until full payment in advance has been received by the seller. Payment can be made at Seller's office or to an account appointed by Seller, without suspension, discount or deduction, for whatever reason.

9.2 Buyer will be in default by operation of the law through the mere passing of the payment deadline.

9.3 If Buyer is in default with respect to a payment, then all other amounts due by Buyer to Seller are due in full on demand.

9.4 During the period Buyer is in default with respect to any amount due, default interest of 1½% per month or part of a month is due.

9.5 In the event of extrajudicial recovery, in addition to the principal sum and the default interest, Buyer must also pay the actual collection costs incurred by Seller. The extrajudicial collection costs will amount to at least 15% of the principal sum with a minimum of € 250.

9.6 Judicial costs will not be limited to the assessed process costs, but will include liability for all costs if Buyer is found to be fully or mainly in error.

9.7 Following such a request from Seller, that may be made either prior to or during the performance of the Agreement, Buyer will make full or partial prepayment or provide adequate security for the performance of its obligation.

Clause 10 – Suspension and dissolution

10.1 Without prejudice to its other rights Seller is authorised to suspend the Agreement either partially or in full, or to terminate the Agreement without notice of default or judicial intervention being required, by means of a written notification to Buyer if: (a) Buyer fails to fulfil, properly fulfil or fails to fulfil on time an obligation arising from the Agreement; and/or (b) Seller has good reason to fear that Buyer will fail to properly fulfil its part of the Agreement; and/or (c) Buyer has been declared bankrupt, has applied for bankruptcy, suspension of payments has been granted to Buyer, provisional or otherwise, or an application for suspension of payments has been submitted, Buyer has been granted a statutory debt management scheme or an application for a statutory debt management scheme has been submitted, Buyer's company has been liquidated, or seizure under a warrant of execution or precautionary seizure has been granted that is not withdrawn within a month of the date of seizure, or if Buyer's company is taken over, either partially or in full, by a third party.

10.2 In the event of a partial or full termination of the Agreement by Seller, Seller is not obliged to pay any form of compensation and all its claims on Buyer are immediately payable in full.

Clause 11 – Force majeure

11.1 Force majeure ('non-attributable shortcomings') is understood to be all circumstances that cannot be attributed to Seller subjectively that make it impossible or too impractical to fulfil all or part of its obligations, irrespective of whether this circumstance could have been predicted at the time the Agreement was concluded.

11.2 Circumstances as referred to in the previous sub-clause include: whole or partial crop failure, shortcomings from Seller's suppliers, war and danger of war, terror attacks, whole or partial mobilisation, import or export bans, measures imposed by Dutch and/or foreign government organisations that make the performance of the Agreement more difficult and/or more costly, storm damage and other damage caused by natural disasters, frost, industrial action and/or sit-down strikes, epidemics, traffic congestion, loss or damage during transport, fire, theft, interruptions to deliveries of gas and electricity, faulty machinery, all this either within Seller's company or at third parties from whom Seller procures all or some of the Products.

11.3 In the event of force majeure Seller is authorised to suspend its fulfilment of the Agreement or part thereof and Buyer may not make any claim to fulfilment or compensation.

11.4 If the period of force majeure lasts for more than two months, then either Party is authorised to terminate the Agreement either partially or in full without obligation to compensation, with the proviso that if Seller has fulfilled its obligation in part, either before or after the force majeure occurrence, then Seller maintains its claim to a proportional part of the price.

11.5 Seller also has the right to invoke force majeure if this occurs after the date that Seller should have fulfilled the Agreement.

Clause 12 – Liability and indemnity

12.1 Except in so far as provisions of mandatory law oppose this, in respect of Seller's liability for damage suffered by Buyer and/or third parties the following arrangements apply to the indemnity of Seller by Buyer.

12.2 Except in so far as a greater amount will be paid under its liability insurance policy, the total liability of Seller for whatever reason is limited to the amount of the damage that Buyer estimated at the time of concluding the Agreement as possible consequence of the action or omission which obliges compensation with the maximum amount being set at the net invoice value of the delivery or performance, or the relevant part thereof, which caused the claim from Buyer and/or third party.

12.3 Seller is only obliged to compensate damage to persons and objects as described in the policy conditions of its liability insurance. Seller is therefore not liable for consequential loss, trading loss, damage caused by interruptions, loss of profit, missed savings, damage as a result of claims from Buyer's customers, loss of customers, reduced goodwill, reputational damage and the like; Buyer should take out insure itself for such losses.

12.4 Without prejudice to that specified above, Seller's liability for Products Seller sources from third parties does not extend further than the liability of this third party towards Seller.

12.5 Seller is not liable for shortcomings of third parties it has engaged in the performance of an Agreement.

12.6 The condition for any right to compensation is always that Buyer must inform Seller in writing without delay, but no later than 14 days of Buyer becoming aware of the damage or that Buyer could have reasonably known of any damage.

12.7 Any legal action must be taken within one year after timely notification of the damage at the risk of forfeiting any right to compensation.

12.8 Buyer will indemnify Seller for all forms of liability that third parties may claim from Seller regarding the Products supplied or to be supplied by Seller. Buyer will compensate Seller for the reasonable costs incurred in the defence of claims from third parties.

12.9 Seller will not claim a limitation to its liability, and Buyer will not be obliged to indemnify Seller, in so far as the damage is the direct result of deliberate act or conscious recklessness on the part of Seller or of its management or subordinates.

Article 13 – Governing law and disputes

13.1 The legal relationship between the parties is governed by Dutch law, including the Vienna Sales Convention.

13.2 Except in so far as the provisions of mandatory law oppose this, any disputes that may arise between the parties as a result of or related to an Agreement and/or these conditions will in the first case be settled, with exclusive jurisdiction, by the District Court of Rotterdam (proceedings on the merits) or by the Court in interlocutory proceedings of the District Court of Rotterdam (injunction proceedings and other provisional measures), without prejudice to the authorisation of Seller to present a dispute to any other competent court.