

## General Terms and Conditions for the Delivery of Goods

### ***Applicability***

#### *Article 1*

1. The present general terms and conditions shall apply to all offers submitted and all agreements concluded by John van Oosterwijck B.V., hereinafter to be referred to as the user.
2. The present general terms and conditions shall apply to all future offers submitted to and agreements concluded with the same opposite party, irrespective of the fact whether or not said agreements are connected with or follow offers already submitted or agreements already concluded.
3. If and in as far the opposite party uses general terms and conditions which are incompatible with the present general terms and conditions, the general terms and conditions of the opposite party shall not apply.

### ***Offers***

#### *Article 2*

1. All offers submitted by the user shall be free of obligation, unless explicitly mentioned otherwise in the offer; in the latter case the offer shall be valid for one month.
2. If no agreement is concluded, the user shall be entitled to a compensation for all the costs incurred by the user in preparation of the offer, to be paid by the party asking user to submit an offer.
3. An Agreement shall only be concluded if the user has confirmed in writing that he accepts the offer or the order of the opposite party. However, parties can also use other means to furnish proof that the agreement has been concluded.
4. The drawings, models, designs, calculations, samples, prospectuses and the like provided by or on behalf of the user together with the offer, shall remain the property of the user and must be returned forthwith by the opposite party if no agreement is concluded. The user shall reserve all rights to the intellectual property of said items.
5. Said documents, provided by or on behalf of the user, must not in any way be duplicated, made public or put at the disposal of third parties or used in any other way, wholly or partially, without the explicit written consent of the user.
6. The drawings, models, designs, samples, calculations, prospectuses and the like made available by the opposite party shall not be returned or archived by the user.
7. All prices in the offers shall be exclusive of value added tax, unless explicitly mentioned otherwise.
8. The opposite party shall be responsible for the data, specifications, calculations and the like made available by it.
9. The opposite party shall indemnify the user against any claims lodged by third parties against the user pertaining to the violation of intellectual property rights resulting from the data, models, images, etc. made available by the opposite party.

### ***Price and Price Adjustment***

### *Article 3*

1. All prices agreed upon shall be exclusive of the corresponding value added tax due on them.
2. The user shall reserve the right to increase the prices agreed upon if changes to one or more cost price factors occurring after the conclusion of the agreement but prior to the execution thereof, so dictate.
3. The user shall inform the opposite party in due time in writing if and in as far as he exerts the right meant hereinabove to introduce the price changes. Upon the written request of the opposite party to that effect, the user shall dissolve the agreement when the difference in price compared to the price agreed upon, amounts to more than fifteen per cent (15%).
4. Unless explicitly agreed upon otherwise, all prices shall be in Euro.
5. All prices agreed upon shall be exclusive of potential transport or packaging costs.

### ***Delivery and Risk***

#### *Article 4*

1. The goods shall be delivered to the location and at the time as mentioned in the offer or in the confirmation of the order.
2. The term within which the goods have to be delivered shall commence as from the moment the user has all the data, licences, instructions, documents, exemptions, allocations and deliveries necessary to deliver, manufacture and transport the good to be delivered, at his disposal.
3. The goods shall be delivered ex nursery in Gilze (Molenschot), but in any case, immediately prior to the moment on which work is started to load the goods on to a vehicle made available by or on behalf of the opposite party or the user.
4. Unless explicitly agreed upon otherwise, the user shall have the right to deliver the goods to be delivered by him, in phases, whereby each delivery shall be invoiced separately.
5. The user shall reserve the right to deliver all or part of the goods to be delivered by the user, before the moment in time agreed upon.
6. If the opposite party does not take delivery of the goods, does not take delivery of them in due time or at the location agreed upon, because the opposite party refuses to lend its necessary co-operation to that effect or if another hindrance arises on its part, the opposite party shall be in default by operation of law and the user shall have the right to transport the goods from the location where and as from the point in time on which delivery has to be made, for the account and risk of the opposite party to a location to be established by the user and to store them there.
7. The user shall then be entitled to a compensation for the damage sustained by him. Said compensation shall at least amount to ten per cent (10%) of the net invoice amount, all this without prejudice to the right to claim damages for the amount in excess of said ten percent (10%).
8. The risk of loss of, damage to or the total or partial destruction of the goods to be delivered shall in any case be for the account of the opposite party as from the moment of delivery.

9. The user shall strive in accordance with the requirements of reasonableness and fairness to comply with the stipulated term within which the goods have to be delivered, but said term shall not be binding.
10. Exceeding the stipulated term of delivery shall not entitle the opposite party to suspend its obligations pursuant to the agreement.
11. Exceeding the term within which the goods have to be delivered shall never entail any liability on the part of the user for direct or indirect consequences of the late delivery.
12. The costs relating to the delivery of goods, also including in any case the costs of transport, insurance, obtaining the necessary documents and licences, packaging, hoisting, loading and unloading activities, shall be for the account of the opposite party.

### ***Return Shipments***

#### ***Article 5***

Return shipments of goods already delivered by the user shall only be accepted by the user following his written consent to that effect.

Said return shipments shall be entirely for the risk and account of the opposite party.

### ***Packaging***

#### ***Article 6***

1. The packaging shall be charged at a fixed standard price. Said price shall each year be mentioned in the user's catalogue.
2. Deposit packaging must not be deducted from the invoice, unless the opposite party has received a credit note in this respect from the user.

### ***Retention of Title***

#### ***Article 7***

1. By way of guarantee that the opposite party fulfils its obligations fully and properly, the user shall reserve the right to retain the title to the goods delivered until the moment the opposite party has complied with its obligations in full.
1. In this respect, obligations are understood to be obligations concerning the consideration owed to the user concerning:
  2. the goods delivered or still to be delivered by virtue of the present agreement;
  3. work to be done for the opposite party by virtue of the present agreement;
  4. the claims resulting from a failure to perform the present agreement.
2. If the user has any claims invoking a retention of title on the opposite party as well as claims not invoking a retention of title on the opposite party, a payment made by the opposite party shall first serve as settlement of the claims not invoking a retention of title.
3. If the claims in respect of which the right to invoke the retention of title to the delivered goods has been reserved, has been settled in full by the opposite party, the user shall reserve, if he feels such is desirable, a non-possessory pledge the moment he transfers

the title to the delivered goods, serving as a security for the current and future claims of the user on the opposite party.

5. The opposite party shall then be under the obligation to lend its co-operation to the establishment of said non-possessory pledge, and this under pain of an immediately payable penalty not open to moderation to the amount of fifty per cent (50%) of the net invoice amount for the delivered goods in respect of which a retention of title has been established.
4. As long as the title to the delivered goods has not transferred to the opposite party, the latter shall not be allowed to transfer the ownership of the delivered goods, to encumber them with a right in rem or a right pertaining to the law of obligations or to dispose of them, under any title whatsoever.
5. As long as the title to the delivered goods has not transferred to the opposite party, the latter shall be under the obligation to keep the delivered goods under it on behalf of the user with due diligence and as property clearly belonging to the user. Marks or signs potentially made in or on the delivered goods or attached to them, must remain visible to every one.
6. As long as the title to the delivered goods has not transferred to the opposite party, the opposite party shall be under the obligation to store the delivered goods separately and in a clearly recognisable manner, if the delivered goods are classified by variety and weight exclusively.
7. As long as the title to the delivered goods has not transferred to the opposite party, the opposite party shall be allowed to treat or process them within the scope of its usual business operations or to sell and transfer them to third parties, provided the opposite party respectively reserves vis à vis its customer the title to the delivered goods in the event he sells on the delivered goods or forthwith pays the user the purchase price it owes the latter, respectively grants the user a right of pledge at the latter's first request on the claim on the opposite party's customer.
8. The user shall have the right to take back the goods delivered under retention of title if and in as far the opposite party fails to fulfil any of its obligations vis à vis the user, or experiences financial difficulties in the user's opinion.
6.
  9. The opposite party shall grant the user now for then the irrevocable right to enter the opposite party's industrial premises or have them accessed by third party to be appointed by the user if the user wishes to take back the delivered goods or if the user wishes to verify the physical presence of the goods on the premises.
9. If the user delivers to an opposite party established in Germany the following provisions of German law concerning the "extended retention of title" shall apply:
  - a. if the opposite party (temporarily) plants the delivered goods on its own parcel of cultivated land or on a parcel of a third party in anticipation of the resale mentioned above in paragraph 7, the retention of title shall remain in force;
  - b. in the latter case, the opposite party shall be under the obligation to plant the goods delivered under the retention of title in such a manner that they are and remain clearly separate and distinguishable from the other plants;
  - c. the opposite party shall in that case be held to take care of the delivered goods in due time and in proper manner.
10. If the user delivers to an opposite party established in Belgium, the following provisions of
11. Belgian law concerning the "explicit avoidance clause" shall apply:

7. in the event the opposite party fails to pay on the expiry date, the user can consider the sale null and void by operation of law and without any warning being required;
8. the delivered goods shall in any case remain the property of the user until the opposite party has paid the purchase price in full. All risks shall be for the amount of the opposite party.
9. The user shall reserve the advance payments made, to compensate for the possible losses in the event of resale by the opposite party.

## **Guarantee**

### *Article 8*

1. The user shall guarantee the agreed quality of the delivered goods (authenticity of the variety).
2. Shortcomings have to be reported in writing to the user within six working days following delivery and if they are not visible, within six working days following the day the opposite party could have detected the shortcoming in reasonableness; in the absence of such a notification, the guarantee shall lapse.
3. Shortcomings being wholly or partially the result of a processing method imposed by the opposite party or of a supplier, consultant or a helping hand imposed by the opposite party, shall not be covered by the guarantee.
4. Shortcomings being wholly or partially the result of:
  - a. injudicious treatment by the opposite party;
  - b. injudicious storage by the opposite party;
  - c. the use, treatment or processing of the delivered goods other than in accordance with the instructions, guidelines and specifications given together with the delivered goods or for a purpose other than the one the goods have been delivered for;
  - d. the compliance with any government regulation,
1. shall not be covered by the guarantee.
5. If the opposite party uses, treats or processes the delivered goods in any way contrary to the instructions and specifications given together with the delivered goods or for a purpose other than the one the goods have been delivered for, the guarantee shall lapse.
6. Re-growing an/or re-blooming of the plants delivered, shall equally not fall under the guarantee.
7. If and in as far as a supplier is held to give any kind of guarantee to the user in respect of the delivered goods, the guarantee given by the user shall never cover more than the guarantee given by the supplier concerned.
8. The user shall be entitled to remedy the shortcoming to the delivered goods either by completely replacing the delivered goods or by reimbursing the price paid, all this at the user's discretion.
9. Throughout the period during which the opposite party defaults to fulfil any of its obligations resulting from the present agreement or from any other agreement in connection with the present the user shall not be under the obligation to give any guarantee.
10. Any liability vis à vis the opposite party pertaining to a faulty delivery shall at all times be limited to the guarantee obligations set out hereinabove.

## ***Liability***

### ***Article 9***

1. The user's liability for all direct costs and damage relating in any way to or caused by a mistake or a shortcoming in the performance of the agreement shall at all times be limited to the net invoice amount of the order concerned.
2. The user shall never be liable for all indirect costs and indirect damage relating in any way to or caused by a mistake or a shortcoming in the performance of the agreement.
3. The opposite party shall indemnify the user against all claims to damages or other claims of third parties, which are, directly or indirectly, connected with the performance of the agreement between the user and the opposite party.

## ***Force Majeure***

### ***Article 10***

1. If and in as far the user cannot fulfil his obligations resulting from the agreement, cannot fulfil them in due time or at the location agreed upon due to a cause which cannot be imputed to the user, the user shall be entitled to dissolve the agreement concerned without judicial intervention and without being liable for damages on this account, or to suspend his obligations under the agreement concerned for a period the user deems reasonable.
2. Causes which cannot be imputed tot the user shall include, among others: each and every unforeseeable stagnation of the regular procedures in the user's enterprise or in the enterprise of a third party from which the user purchases goods or services, as well as apparent changes in the actual circumstances since the moment the agreement was concluded, which affect, directly or indirectly, the cost price factors and the possibilities to deliver.
3. Causes which cannot be imputed to the user shall include: fire damage by water, exceptional weather conditions, catastrophes, war and the threat of war, contagious diseases, government measures, riots, war risk, strikes, lock-outs, word-to-rule, defects to machines or installations, interruptions of an delay in the supply or rationing of raw materials, auxiliary substances and fuel and the non-fulfilment of any of its obligations by a third party from which the user purchases goods or services.
4. If one of the circumstances listed above arises, the user shall inform the opposite party thereof as soon as possible, producing the documentary evidence available.

## ***Payment***

### ***Article 11***

1. All payments must be made within thirty days (30 days) from the date of invoice, without any right to discount or set-off, including in the event of bankruptcy, to the user's office or via transfer into a bank account indicated by the user.
2. If the opposite party pay in full everything due within ten days (10 days) from the date of invoice, it shall be entitled to deduct a two per cent (2%) discount from the net perennial amount.

3. If the opposite party has not paid within the above-mentioned period, it shall be in default without any further of notice of default being required and the user shall then be entitled to charge the opposite party without any further warning or notice of default an interest equalling the statutory interest then applying, but with a minimum of eight per cent (8%) per year as from the expiry date, and this until the date the amount due has been paid in full, all this without prejudice to the order rights vested in the user.
1.
  4. All costs resulting for the user from the non-fulfilment, late or improper fulfilment by the opposite party of one of its obligations under the present agreement, shall be for the account of the opposite party.
  2. Said costs shall be understood to include the costs incurred in connection with warnings, cancellation costs, collection costs and bailiff's expenses, as well as the costs relating to the fees of legal counsel/lawyer and attorney of record, and all other extrajudicial and judicial costs.
  3. Said costs shall be fixed by the user and the opposite party at a minimum of fifteen per cent (15%) of the principal debt.
  4. If and in as far as the opposite party fails to fulfil its obligation to pay, as well as in the event of bankruptcy of, petition for suspension of payments by or a petition to wind up the opposite party's enterprise, all of the user's claims on the opposite party shall become immediately payable.
  5. The user shall reserve the right tot demand full or partial prepayments of the price agreed upon.
  6. Upon the user's first demand to that effect, the opposite party shall be held to furnish real security or to issue a bank guarantee for everything the opposite party should owe the user by virtue of the present agreement or in any other way.
  7. The user shall be entitled to compensate all debts due and payable owed by the user tot the opposite party with all the claims assessable in cash the user has on the opposite party.
  8. The user shall be entitled to suspend the obligation to deliver up a good, until the opposite party has fulfilled all of its obligations, whatever their origin, vis à vis the user.

### ***Applicable Law and Choice of Forum Clause***

#### ***Article 12***

1. Dutch law shall in principle apply to all agreements between the user and the opposite party, with the following supplement thereto:
  - a. if the user delivers to an opposite party established in Germany the provisions mentioned in paragraph 10 of article 7 of German law concerning the "extended retention of title" shall apply;
  - b. if the user delivers to an opposite party established in Belgium, the provisions mentioned in paragraph 11 of article 7 of Belgian law concerning the "explicit avoidance clause" shall apply.
2. All disputes arising from the agreements between the user and the opposite party and which do not fall within the jurisdiction of the Sub district Court, shall in the first instance be submitted to and ruled on by the District Court in Breda.