

## **GENERAL TERMS AND CONDITIONS OF SALES OF ZABO PLANT B.V.**

### **Applicability**

All quotes and sales by Zabo Plant B.V. (hereafter: Zabo Plant) are made exclusively on the basis of these general terms and conditions of sales, which can also be found at [www.zaboplant.nl](http://www.zaboplant.nl). Any general terms applied by the buyer are hereby explicitly considered as non-applicable.

By placing an order, the buyer fully accepts these general terms and conditions of sales. These general terms and conditions of sales can only be amended in writing and with the express permission of Zabo Plant and, as such, relate only to the transaction in question, unless the parties have agreed otherwise.

### **Terms**

#### **1. Offers and conclusion of agreement**

- 1.1 All offers and prices stated by Zabo Plant are free of obligations.
- 1.2 An agreement shall only come into effect once Zabo Plant has confirmed the order in writing
- 1.3 Any supplementary arrangements or amendments agreed on at a later stage, as well as any verbal promises made by Zabo Plant's personnel or on behalf of Zabo Plant by agents or other parties working for Zabo Plant, will only be binding for Zabo Plant from the moment that the latter confirms them in writing.

#### **2. Prices**

- 2.1 All product prices are stated in Euro, exclusive of VAT and are based on free carrier, 't Zand, The Netherlands (Incoterms 2010).
- 2.2 If one or more of the cost price factors is subject to change after order confirmation but before delivery of the products, Zabo Plant shall be entitled to adjust the agreed prices accordingly.
- 2.3 The costs of transport, packaging and insurance are payable by the buyer. All levies and/or taxes that are owed or become due, either directly or indirectly, on account of the agreement entered into between Zabo Plant and the buyer are payable exclusively and entirely by the buyer and may not be deducted from sums owed to Zabo Plant.

#### **3. Payment**

- 3.1. Unless otherwise agreed in writing, payment for goods sold by Zabo Plant that are sent by air must be made within 30 days of the invoice date and, in the case of goods sent as sea freight, within 60 days of the invoice date in the agreed currency.
- 3.2 The value date on which Zabo Plant receives payment shall be deemed to constitute the date of payment. Where payment is made by means of a bank transfer, the date on which Zabo Plant's bank account is credited, shall be deemed to constitute the date of payment.
- 3.3 The buyer is not entitled to make any deduction, suspension or reduced payment and all calls for settlement are explicitly excluded. In the event of late payment, Zabo Plant will be entitled to charge the statutory interest for business transactions as of the due date, and also to charge any legal and extrajudicial costs incurred in collecting the amounts owed; the extrajudicial costs owed will never be less than 15% of the sum to be collected.
- 3.4 In case a delivery is effected in parts, Zabo Plant shall be entitled to demand payment for each partial delivery before proceeding with any other.
- 3.5 Upon or after entering into the agreement and before its implementation, Zabo Plant will be entitled to demand a guarantee from the buyer that both the payment obligations and any other obligations arising from this agreement will be fulfilled. Refusal by the buyer to provide the required security gives Zabo Plant the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to dissolve the contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

#### **4. Delivery**

- 4.1 All deliveries shall be free carrier ('t Zand), The Netherlands, unless otherwise agreed in writing.
- 4.2 Although the stated time of delivery will always be taken into account as far as possible, this delivery time is approximately indicated and can never be considered a fatal date. Zabo Plant shall not be in default in respect of such delivery time until the buyer notifies it in writing that it is in default, in doing so stipulating a reasonable period of time within which Zabo Plant has the opportunity to effect delivery, and the latter still fails to do so.
- 4.3 The agreed delivery time shall commence as soon as Zabo Plant has confirmed the order in writing.
- 4.4 Zabo Plant shall not be liable for any harm due to late delivery if and insofar as this is attributable to circumstances beyond Zabo Plant's control and sphere of risk, which is deemed to include late or noncompliance on the part of its suppliers.
- 4.5 The buyer's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending Zabo Plant's duty to effect a delivery.

#### **5. Force majeure**

- 5.1. In a case of force majeure - for example in the event of a crop failure, insufficient quality available, viruses, natural disaster, labour strike, fire, or import and export restrictions - or in the case of other circumstances that make it impossible to demand Zabo Plant's fulfillment or timely fulfillment of the obligations arising from the agreement between Zabo Plant and the buyer, Zabo Plant will be entitled to opt, without the need for legal intervention and without being obliged to pay any form of compensation, between completely or partially cancelling the agreement by means of a single written notice to that effect or the suspension of this agreement until the case of force majeure has come to an end.
- 5.2 Where Zabo Plant has already executed part of an agreement, the buyer shall pay the purchase price for any products that have been delivered.

#### **6. Complaints**

- 6.1 The buyer is obliged to check the products upon delivery for any visible and/or immediately observable defects. This means all defects that can be ascertained by means of ordinary sensory perception or a simple spot check. The buyer is moreover obliged to check whether the delivered products are also in accordance with other particulars of the order. Failure to fulfill the obligation to check the delivery shall mean the forfeiture of any claims the buyer may have vis-à-vis Zabo Plant.
- 6.2 If a delivery deviates less than 10% in terms of number, quantity and weight from that which was agreed, the buyer shall be obliged to accept the delivery in spite of such deviation.
- 6.3 Complaints regarding the quality and quantity of the products delivered must be submitted by registered mail or telefax at the latest within seven calendar days after delivery. Defects which can only be observed at a later stage (non visible defects) shall be forthwith reported to Zabo Plant after this has been observed. Once these periods have passed, the buyer will be considered to have approved the products supplied and complaints will no longer be considered.
- 6.4 The complaint must contain a description of the flaw and Zabo Plant must upon first request be given the opportunity to investigate the complaint. The buyer shall allow Zabo Plant to have the concerned products examined by an expert or an independent inspection service. If the complaint turns out to be well-founded, all the costs of any investigation will be for Zabo Plant's account. If a complaint is groundless, all the costs will be for the buyer's account.
- 6.5 If the buyer has reported a complaint to Zabo Plant in a timely manner and the Zabo Plant has acknowledged this complaint, Zabo Plant shall only be obliged to deliver that which is missing, replace the delivered products or repay a proportional part of the purchase price, such at Zabo Plant's own discretion.
- 6.6 A complaint shall not suspend the buyer's payment obligation, unless Zabo Plant agrees expressly with such suspension.
- 6.7 The products can only be returned for the account and risk of the buyer and only after prior written permission has been obtained from Zabo Plant.

#### **7. Liability**

- 7.1 Zabo Plant will never be liable for the results regarding the flowering of the products supplied. It always remains the buyer's responsibility to assess if the circumstances, among which climatologically, are fit for the products.
- 7.2 In case of a nonperformance attributable to Zabo Plant, Zabo Plant's liability is always limited to a maximum of the net invoice value of the products or to that part of the net invoice value to which a claim for compensation is directly or indirectly related.
- 7.3 Except in the case of legal liability pursuant to provisions of mandatory law and a deliberate act or omission, or gross negligence, any liability of Zabo Plant for any further damage, among which any direct or indirect damage, consequential damages or lost profits, is excluded.
- 7.4 The buyer shall indemnify Zabo Plant against all claims for compensation brought by third parties in respect of which Zabo Plant is not liable under these general terms and conditions of sales.

## **8. Cancellation**

- 8.1 Zabo Plant will be entitled to cancel an order if the buyer has failed to comply with earlier payment obligations with respect to Zabo Plant or with respect to other creditors. This right may also be exercised if Zabo Plant considers the information concerning the buyer's credit rating to be insufficient. The buyer will never be able to derive any rights from such cancellations or hold Zabo Plant liable.
- 8.2 Zabo Plant will only be required to accept the buyer's complete or partial cancellation of the agreement between Zabo Plant and the buyer, as a result of any cause whatsoever, if the goods have not yet been delivered to the transporter for dispatch and on condition that the customer pays compensation equivalent to at least 25% of the invoice value of the cancelled goods. Zabo Plant shall in that case also be entitled to charge all costs incurred up to that time.
- 8.3 The buyer is obliged to accept the products at the time that they are made available to him. If the buyer refuses to accept the goods, Zabo Plant will be entitled to sell them elsewhere and the buyer will be liable for the difference in price as well as all the other costs incurred by Zabo Plant in connection with this, among which costs of storage

## **9. Retention of title**

- 9.1 The ownership of the goods supplied by Zabo Plant does not pass to the buyer until the sums invoiced, plus any interest, penalty and costs, as well as all claims as a result of the buyer's failure to perform its obligations towards Zabo Plant under this agreement or any other, have been paid in full. The provision of a cheque or any other bill of exchange will not count as payment in this regard.
- 9.2 Zabo Plant will be entitled to immediately take back the goods supplied if the buyer remains in default in any way whatsoever with regard to the fulfillment of payment obligations. In that case, the buyer will be obliged to allow Zabo Plant access to the buyer's land and buildings for this purpose.
- 9.3 The buyer must store the goods subject to a retention of title separately from the other goods, in order to be able to continue distinguishing the goods of Zabo Plant.
- 9.4 As long as the delivered goods are subject to a retention of title, the buyer may not sell, encumber or pledge these goods, or otherwise place them under the control of third parties, other than as part of its normal business operations. The buyer shall, however, not be permitted to sell the goods within the context of its normal business operations if it has applied for a suspension of payments or if it has been declared bankrupt.

## **10. Suspension and dissolution**

- 10.1 If the buyer fails to perform, fails to perform in a timely manner, or fails to perform to a sufficient degree any of the obligations arising for it from the concluded agreement, or if a well-founded fear exists of such failure occurring, as well as in the case of an application for a suspension of payments order, bankruptcy or the liquidation of any of the buyer's businesses, as well as in the event of the buyer's death, or dissolution if the buyer is a company, or if there is any change in the type of company or in its management or in the contribution made by the company's activities, Zabo Plant will be entitled, without notice of default or legal intervention being required, to suspend its own obligations for a reasonable period or to annul the agreement without being held liable for any compensation.
- 10.2 The claim of Zabo Plant with respect to the part of the agreement already performed, as well as damage arising from the suspension or termination, which damage includes lost profit, shall be immediately due and payable.

## **11. Prohibition of Propagation**

- 11.1 Propagation of the varieties supplied by Zabo Plant which are protected by plant breeder's rights, is strictly forbidden, unless otherwise agreed between Zabo Plant and the buyer in a separate written license agreement. The buyer here confirms to undertake that it shall impose such a prohibition to his customers who purchase these varieties from him. In the event of any noncompliance by the buyer or any of its customers, the buyer shall be fully liable towards Zabo Plant and any related third party (such as the breeder) for the losses incurred by them.

## **12. Severance**

- 12.1 Should any provision of these general terms and conditions of sales and delivery be non-applicable or in conflict with public order or the law, only the provision in question shall be deemed non-applicable and the rest of the conditions shall remain fully in force. Zabo Plant reserves the right to amend the inadmissible provision in order to make it legally valid.

## **13. Jurisdiction, forum**

- 13.1 Any disputes, even if only considered as such by one of the parties, will be referred to the competent court Amsterdam, the Netherlands, without affecting the right of Zabo Plant to have the dispute heard by another competent court. 13.2 All offers and agreements concluded between the buyer and Zabo Plant shall be exclusively governed by the laws of the Netherlands.