

# Terms and conditions



## Article 1: Definitions

The following conditions will apply to:

1. User: Westland Seeds B.V., located at Honselersdijk (Chamber of Commerce no.: 27324510);
2. Other party: the one with whom the user enters into an agreement – in any form – or to whom the user makes an offer;
3. Agreement: the agreement to sell/supply of, including but not limited to, horticultural products.

## Article 2: Applicability

1. These conditions shall apply to all offers made by user regarding the entering into an agreement and all agreements (and other legal relations) between user and other party, and its implementation, to which the user has declared these general conditions applicable. From the moment these terms and conditions apply, all provisions of the conditions are in effect, to the extent that both parties have not deviated from them explicitly and in writing.
2. These terms and conditions also apply to all agreements with user, for the implementation of which third parties need to be involved.
3. The applicability of any purchase or other conditions of other party is explicitly rejected, unless user has accepted these explicitly and in writing.
4. If one or more provisions of these terms and conditions are invalid or void, the remaining provisions of these conditions will remain applicable. User and other party will then enter into negotiations in order to agree on new provisions to replace the invalid and/or void provisions which will take into account as much as possible the purpose and intent of the original provision.

## Article 3: Offers, quotations, realisation of the agreement and prices

1. All offers, quotations and price lists of user are free of engagement and can be revoked by the user at any time. All prices mentioned in the price overviews are recommended prices and only mentioned as an indication of price. No rights can be derived from this.
2. An agreement is only concluded at the time of explicit written acceptance by the user of an order placed by the other party. Agreements with employees of user are not binding until and to the extent that they have been confirmed in writing by the user.
3. General terms, descriptions and illustrations of the kind, type, quality and such of the goods to be delivered by the user are exclusively intended as general information and not as quality and/or guarantee indicators and remain the (intellectual) property of user. They cannot be used, copied or handed over to third parties or publicised in any way without permission. If the other party does not accept an offer or quotation, he shall be immediately obliged to return all information referred to in the previous sentence to the user.
4. Advice from user prior to, during or after the conclusion of the agreement will only be provided as non-binding information that the other party will have to interpret and apply. Other party cannot derive any claims from advice provided by user.
5. User can continuously rely on the accuracy and completeness of the provided information to the user by the other party in the context of the establishment and implementation of the agreement.
6. The prices in the offers and quotations mentioned are exclusive of VAT, the prices are in euro's EXW Enkhuizen
7. A composite offer or quotation will not oblige user to execute a part of the agreement for a corresponding part of the mentioned price.
8. All offers are based on the information provided by the other party. For inaccuracies in the information provided by the other party or the consequences thereof, the user shall never be liable.
9. If, after the date of the realisation of the agreement, one or more of the cost factors are increased, the user is authorised to proportionally charge higher costs. User shall inform the

other party of the intended increase of the sum. User shall also communicate the amount of the increase.

10. If the user charges the higher sum within three months after the agreement has been reached – and the new price differs more than 5% from the agreed-upon price – the other party is entitled to dissolve the agreement on that ground.

11. User reserves, apart from the provision in paragraph 9 and 10, the right to change its prices. Each new price list renders the previous one inoperative with regard to orders placed after the new price list.

#### **Article 4: Delivery**

1. If the agreement includes a delivery time, then this is – unless otherwise explicitly agreed – never a deadline. By exceeding the delivery time the other party can declare the user in default, to which the user should provide a reasonable period yet to be observed.

2. Notwithstanding the other provisions in these terms and conditions, the delivery will in any case be extended with the duration of the delay on the part of the user arising from non-compliance by other party of any obligation arising from the agreement or if he fails to cooperate regarding the implementation of the agreement.

3. If an order quantity differs from the standard quantity of the user or a multiple thereof, the user is free to deliver the next higher standard quantity.

4. For orders with a value less than €250,= the user reserves the right to charge €25,= handling charges.

5. Proper performance of delivery obligation by the user will also mean delivery with a minor difference in size, packaging, amount or weight.

6. The user is permitted to deliver sold products in partial deliveries. If the products are delivered in parts, the user is authorised to invoice every part separately.

7. Delivery occurs Ex Works (EXW) Enkhuizen of the user according to Incoterms 2000, except where the parties have explicitly agreed otherwise. If at the request of the other party the user were to take care of the transport of the goods destined for the other party, this shall occur at the account and risk of the other party.

8. When placing an order, the other party must provide written information regarding applicable regulation of the country of destination.

#### **Article 5: Retention of title**

1. User retains the ownership of all delivered goods until full payment of the purchase price, and any additional costs, as well as all outstanding claims regarding previous deliveries, as well as that which the other party might be due regarding any breach of his obligations.

2. Products delivered by user that fall under retention of title pursuant to paragraph 1, may only be sold or used within the framework of a normal course of business. In the event of resale, the other party is obliged to insist on retention of title. The other party is not permitted to pledge the products or establish any right on it.

3. User is irrevocably authorised by the other party to (have) take(n) back the delivered goods under retention of title without judicial intervention, injunction or notice.

4. In case of attachment, (provisional) moratorium, debt restructuring pursuant to the law or bankruptcy, the other party shall immediately inform the bailiff, the conservator or trustee of the rights (of ownership) of user.

#### **Article 6: Transfer of risk**

The risk of loss or damage of the sold goods transfers to the other party when the product is ready for shipment to the company, after other party has been notified of this in writing.

#### **Article 7: Payment**

1. Payment of the claims of the user should occur, without deduction, discounts or settlement, within 14 days after date of the invoice, unless explicitly agreed otherwise and in writing. Payment must also occur in Dutch currency by means of money transfer to a bank account to be designated by the user. Objections against the amount of the invoices or claims within the meaning of article 10 do not suspend the payment obligation of other party.

2. Other party is in default by the end of the agreed payment, without requiring a separate notice. Other party will then owe be due interest of 1% per month, unless the legal interest on trade is higher, in which case said legal interest applies. The interest on the amount due shall be calculated from the date the other party is in default until the date of full payment.
3. If the other party fails to correctly and/or timely fulfil any of its obligations the obligations of the user are automatically and immediately suspended until the other party has fully paid that which he was due (payment of any extrajudicial costs included).
4. User is authorised at all times to request an advance payment for its work, disbursements or costs.
5. If the financial position or the payment of other party in the opinion of the user so requires, the user is entitled to require that the other party immediately provides (additional) security in a form to be defined by the user. If the other party fails to provide the required security, the user is entitled – without prejudice to its other rights – to immediately suspend or terminate the further performance of the agreement and anything the other party is due for whatever reason, is due and payable immediately. In case of liquidation, attachment, moratorium or debt restructuring of the other party, anything the other party is due to the user, is also due and payable immediately.
6. Payments made by the other party after the interest and costs pursuant to these terms and conditions are due, will serve in the first place the extrajudicial costs, then the interest and then the principal.
7. User also reserves the right to wholly or partially suspend execution of orders in accordance with the provisions in article 6:52 et seq of the Civil Code, 6:262 of the Civil Code and 6:264 of the Civil Code.

#### **Article 8: Collection costs**

If the other party is in default or fails to fulfil one or any of its obligations, all costs in obtaining satisfaction – extrajudicial and judicial costs – shall be on behalf of the other party. This entails inter alia that the defaulting other party – without prejudice to any court costs – regarding the costs caused by the default, is due an immediately payable sum equal to 15% of the invoice amount with a minimum of €70, or, if the amount is higher, the actual collection costs.

#### **Article 9: Warranty**

1. User warrants that the delivered product will comply with the accompanying product specifications to the best of its ability. The product specifications do not apply as warranty. Furthermore, user does not guarantee that the delivered product meets the goal that the other party shall attribute to it.
2. Any and all warranty of the side of the user expires if the other party adapts, or has someone adapt, repackages, or has someone repackage, or uses it in an improper, incorrect or otherwise incorrect manner.
3. After completion of any warranty period, all costs for repair or replacement, including administrative and shipping costs and call out charges will be charged to the other party.

#### **Article 10: Claims and complaints**

1. The other party should examine the purchased products or delivered work on delivery – or as soon thereafter as possible. By so doing, the other party should verify whether the delivered complies with the agreement.
2. If any visible defects or shortcomings are ascertained, the other party should notify the user within five days after delivery in writing mentioning the batch number and delivery bond and/or invoice information.
3. Non-visible defects should be reported by the other party to user within five days after discovery, in writing and stating the batch number, delivery receipt and/or invoice information. The complaints shall contain description of the shortcoming as detailed as possible, so the user will be able to respond properly.
4. If the other party fails to file a report within the mentioned terms, his complaint will not be attended to and his rights will expire.

5. In the event of persistent disagreement between the parties about the germination, varietal purity, the purity, the technical purity and the health, an inquiry may be conducted at the request of one of the parties by the NAKTuinbouw, located in Roelofarendsveen, the Netherlands. The costs associated with this research will be born by the predominantly unsuccessful party. This request must be submitted within 3 months after the first report of the problem with the other party or user. The research is conducted on the basis of an approved sample. The results of this research bind both parties, without prejudice of the right of the parties, to submit the implication of these results to the authorities mentioned in article 16.
6. A claim shall not suspend the payment obligation of the other party, unless the user has explicitly indicated that the claim is justified.
7. In case of a rightly – and correctly submitted – complaint, the user will only be held liable within the limits of article 12.

#### **Article 11: Force majeure**

1. In case of force majeure, parties are not required to fulfil any obligation.
2. In these general terms and conditions, force majeure means, in addition to the provisions of the law and jurisprudence: illness of the person engaged by the user for the implementation of the agreement or of the third parties engaged by it, and all external causes, foreseen or unforeseen, which user cannot influence but which prevents the user from meeting its obligations.
3. User also has the right to invoke force majeure if the circumstance that precludes (further) fulfilment occurs after user should have fulfilled its obligations.
4. In so far as the user at the time of the occurrence of force majeure has already partially fulfilled or will be able to fulfil its obligations from the agreement and is due an independent value to the fulfilled or to be fulfilled part respectively, the user is entitled to separately invoice the already fulfilled or to be fulfilled part respectively. Other party is obliged to pay this invoice as if it were a separate agreement.
5. User will inform the other party as soon as possible if he will not be able to deliver or perform on time by force majeure.
6. If the force majeure lasts longer than two months, either party is entitled to terminate the agreement (for the part to which the force majeure relates).

#### **Article 12: Liability**

1. User is not liable for damage as a result of a defect in the delivered product or provided service, unless other party can prove he has suffered damage by an act or omission of user that could have been avoided by careful and expert handling.
2. User is not liable for damage caused by seed or plant material that has not been multiplied and/or reproduced by or by order of user.
3. In case of force majeure as described in article 11, the user is not obliged to any compensation.
4. The other party is obliged to minimise as much as possible the damage regarding delivered products or work on which he has filed a complaint with the user.
5. If the user (on the basis of one or multiple conditions) is liable, this liability shall be limited to the invoice value of the products or work, or – if this restriction in law does not hold – to the relevant entitlement of applicable limits under the liability insurance of the user.
5. Damages as mentioned above shall only mean injury to persons, damage to property and direct financial loss.
6. User is never liable for indirect damage, including consequential loss, loss of income, lost savings and damage due to business stagnation.
7. The liability limitations laid down in this provision are also stipulated for the benefit of third parties engaged by the user, which can hereby directly invoke these liability limitations.

#### **Article 13: Safeguard**

The other party indemnifies the user against third-party claims concerning the right of intellectual property on the provided information/delivered products by other party, which are used in the execution of the agreement.

**Article 14: Confidentiality**

1. Both parties are obliged to secrecy of all confidential information received in the context of their agreement from each other or from another source, unless a party has a legal or professional duty to disclosure or if the one party has released the other party in writing of its confidentiality. User will impose its obligations on the grounds of this provision to third parties engaged by him.

2. Notwithstanding the first paragraph the user is entitled, if they are acting for themselves in a judicial or administrative procedure, to apply the data and information provided by or on behalf of the other party and any other data and information of which he has taken notice during the execution of the agreement, to the extent that in her opinion these could be considered of interest to her defence.

**Article 15: Using of trademarks and signs**

The other party is not allowed to use trademarks and signs used by the user to distinguish its products from those of other legal entities/enterprises, or to make use of unclearly distinguishable trademarks and signs. The exception is the trade of products in the original packaging of the user with the trademarks and signs made by him.

**Article 16: Use of seeds**

The buyer is not allowed to make the seeds available in any form to any third parties or to export to countries other than agreed upon with the seller. In doing so without approval of the seller, the buyer shall have to pay three times the agreed-upon price in article 3 to the user.

**Article 17: Dispute**

1. Unless both parties have mutually agreed to arbitration, any dispute shall be settled by the civil court of first instance in the district where the user's company is located, unless the applicable rules of the law adopted in article 17 mandatorily authorise another court.

2. In the event of a dispute, parties will initially by means of mutual agreement, or otherwise by means of mediation – according to the NMI Mediation Regulations 2001, or else by means of replacing regulations – attempt to reach a solution before parties shall submit this dispute to an arbitrator or the civil court.

**Article 18: Applicable law**

To all agreements the user enters into with the other party and any resulting disputes the Dutch law applies, with the exclusion of the United Nations Convention on the International Sales of Goods (CISG).