

## **Attachment 1: GENERAL TERMS AND CONDITIONS**

### **General terms and conditions of:**

- **Sion B.V., located at De Lier, The Netherlands, registered in the Trade Register managed by the Chamber of Commerce in The Hague with the number: 27178991;**
- **Sion Young Plants B.V., located at De Lier, The Netherlands, registered in the Trade Register managed by the Chamber of Commerce in The Hague with the number: 27313673.**

**The following terms and conditions are based on the general terms for ornamental plant and nutritional horticulture production of Plantum NL.**

Filed at the Chamber of Commerce, Gouda office, on 19 September 2002.

In case of any contradiction between the English and Dutch version of these general conditions, the Dutch version shall prevail.

### *GENERAL PROVISIONS*

#### **Article 1 Applicability**

1. These General Terms and Conditions apply to all offers, sales and deliveries made by the seller and agreements concluded by the seller regarding the (activities concerning) plants and cultivation material of ornamental plants and horticultural plants as well as horticulture materials, including the sales and delivery of for example fertilizers and crop protection products (both deliverable merchandise and activities will be referred to in these General Terms and Conditions as 'products' or 'product'). Any terms of the buyer, of any type and by any name are not applicable, unless expressly agreed in writing.
2. Deviating provisions must be agreed explicitly and in writing. In so far as they do not take the place of the provisions of these general terms and conditions, they shall be deemed to supplement these terms and conditions.
3. A copy of these General Terms and Conditions will be provided for free to the buyer by the seller.

#### **Article 2 Definition**

1. 'Seller' refers to: Sion B.V. and/or Sion Young Plants B. V. , as to the reproduction of flowers or plants and/or the processing, treatment and cultivation of products as well as any other type of services.
2. 'Buyer' refers to: the natural or legal person or collaboration with whom the seller enters into any agreement regarding the products indicated in article 1, part 1.

#### **Article 3 Offers and prices**

1. All offers are non-binding unless otherwise agreed in writing. A binding offer or proposal will remain valid for a maximum of 30 days.
2. The agreement is deemed to have been concluded by written confirmation of the offer by the buyer, unless the seller objects in writing within five days after the buyer has sent confirmation.
3. If an agreement is concluded by the intervention of agents, travelling sales representatives and/or other intermediaries and/or retailers, it will only bind the seller once the agreement has been accepted by the seller in writing.
4. Prices are exclusive of VAT and additional expenses, including the following: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties, government and other official levies, as well as fees under breeders' rights and any other fees, unless otherwise agreed in writing. If no price is agreed on, the seller's price in effect at the time of delivery will apply.
5. The seller is entitled to adjust the price, in accordance with the requirements of reasonableness and fairness, to a level to be determined by the seller, if his expenses have increased significantly since the price was set.
6. Unless otherwise indicated, prices are in euros (€).
7. If the buyer cancels the agreement, he will immediately owe 25% of the gross sale value of the to be delivered products as a cancellation charge.
8. In the event that the products in question prove to be unsaleable or saleable only at a lower price as a result of said cancellation, the buyer will be liable for any price differences and other damages incurred by the seller.
9. Both parties are obliged to limit the possible damage due to the cancellation as much as possible.

#### **Article 4 Conditions of sale**

1. Orders for plants and/or cultivation materials for which materials have to be purchased from the buyer that are not yet fully grown at the time of purchase will be accepted by the seller subject to the normal cultivation average of good plant material with a good appearance.
2. Complete or partial failure of the cultivation or harvest of products or partial spoilage during storage for whatever reason will release the seller from the obligation to deliver and his other obligations, unless attributable to an intentional act or gross negligence on the part of the seller.
3. Next to that, the seller is entitled to deliver a replacement. This replacement delivery shall take place under the same conditions as originally agreed. If the delivery of a variety that has been ordered is not possible for any reason, the seller is entitled to deliver another variety, or to cancel the order, when the ordered variety is not deliverable, or the buyer does not accept the other variety. The seller shall, in consultation with the buyer, make an effort to deliver a variety that is equivalent as much as possible. If delivery of another variety has been agreed, the buyer does not have the right to receive compensation for damages or to terminate the agreement.

### **Article 5 Delivery and transport**

1. Delivery is ex works, unless otherwise agreed. On delivery, the risk connected to the products in question, with all that is connected, is transferred to the buyer.
2. After consultation with the buyer, the seller will determine the delivery date. Delivery dates indicated are not considered deadlines. If a delivery date is agreed on, the seller will endeavour to maintain that date for delivery in as far as possible. If the seller cannot deliver on the agreed date or within the agreed period, the seller will inform the buyer about this in the timeliest manner possible. After consultation with the buyer, the seller will determine a new delivery date, which immediately replaces the previous delivery date.
3. If the buyer receives the ordered products before the agreed delivery date or period as indicated in part 2, the resulting risk is entirely for the buyer.
4. If the buyer receives or wishes to receive the ordered products after the agreed delivery date, the risk of any loss of quality resulting from longer storage will be entirely for the buyer.
5. If after a certain storage period that may be considered reasonable in view of the type of product, the buyer has not received the product and the risk of loss of quality and/or spoilage of the products leaves no other option, the order will be deemed to have been cancelled by the buyer. In that case, the buyer is obliged to pay the damage incurred by the seller as a result.

### **Article 6 Packaging/carts/pallets**

1. Single-use packaging can be charged against cost-price and will not be taken back.
2. All packaging, except single-use packaging, remains the property of the seller.
3. The seller is entitled to charge the buyer an agreed user fee for reusable packaging and other durable material, which fee shall be specified separately on the invoice.
4. Within 30 days after delivery or immediately after planting, the buyer is obliged to return the packaging to the seller at his own expense and in good condition and under the proper hygienic conditions. If it has been agreed that the seller will collect the packaging himself, the buyer must see to it that the packaging remains in good state and under the proper hygienic conditions and store it so that the seller can collect it in a normal manner at the announced date.
5. The buyer may not continue to use or allow third parties to use the packaging.
6. If carts, rolling containers or reusable pallets have been delivered with the products, then the buyer must return identical carts, rolling containers or reusable pallets immediately, unless agreed otherwise. The buyer may not keep these for his own use or allow third parties to make use of them.
7. In the event of damage or loss of reusable packaging, carts, rolling containers, pallets, etc., the buyer is obliged to repay the repair or replacement costs to the seller and also repay any extra rent as a result of late return.

### *AGREEMENT OF ORDER*

In respect of an agreement to the treatment, processing and cultivation (of products) and other services - in addition to the general provisions of these terms - the following conditions also apply.

### **Article 7 Property and insurance**

1. Products which are property of the buyer and which under an agreement for treatment, processing and cultivation (of products) and other services are located and held in the premises of the seller, shall be affected for the account and at the risk of the buyer. The in article 15 mentioned retention of ownership does not apply to the aforementioned products in this subsection (without prejudice to possible liens of seller).
2. Buyer is obliged to take out and maintain a good products/ business interruptions insurance concerning the products held by the seller. Buyer is obliged to show the policies of the insurance to seller when requested and to show receipts of the last paid insurance premiums to confirm continuation of the insurance.

### **Article 8 Execution of the agreement of order**

1. Seller will execute the treatment, processing and cultivation (of products) and/or other services to its best abilities and in line with high professional standards.
2. A negative difference between the delivered products of the buyer and the actual cultivated number of products (spoilage) will not be considered a shortcoming as long as this difference is smaller than or equal to 5%, unless the case that this difference is caused by intentional or conscious reckless behaviour of seller. When a difference of more than 5% is prevalent, only the part higher than 5% can be considered a shortcoming.
3. Seller never can be held liable towards buyer/third parties for damage which wholly or partially, directly or indirectly, is the result of the quality (including – but not exclusively - possible contaminations and diseases) of the by the seller provided plant material. Buyer is liable for and indemnifies the seller of all damages and/or claims which result from (contaminations and diseases in) the by the seller provided plant material.
4. Seller determined the manner in which and by whom the method, the treatment, processing and cultivation (of products) and other services are executed, yet considers the expressed wishes of the buyer as much as possible. Seller has the right to let certain activities be executed by third parties, in which case the General Terms and Conditions also apply to aforementioned third parties.
5. Seller is not liable for damage of any kind, which has developed because of assumptions of the seller based on incorrect and incomplete information supplied by the buyer, unless the incorrectness and incompleteness was apparent for the seller.
6. If the seller did not receive necessary information from the buyer timely or correctly, the seller has the right to delay or cancel the execution of the order and to charge the buyer with the extra costs and fees of the delay or cancellation of the order.
7. Seller has the right to refuse the by the buyer provided products when she is of the opinion that the products are of insufficient

quality. If nevertheless, buyer wishes execution of the order, seller – if chooses to execute the order – is not liable in any way. The acceptance of the order will in that case be considered as a change in the agreement of order on which article 9 of the General Terms and Conditions is applicable.

8. Buyer indemnifies seller for possible claims of third parties, which in relation to the execution of the agreement suffer damage of which the buyer can be held accountable.

#### **Article 9 Change of the agreement of order**

1. If during the execution of the agreement of the treatment, processing or cultivation (of products) or other services it appears that for proper execution it is necessary to adjust the performed activities or to supplement them, both parties will timely and in collaboration change the agreement. If parties agree that the agreement will be changed or supplemented, the time of complement can be influenced. Seller will inform the buyer as soon as possible about this. If the change or supplement in the agreement will have financial or qualitative consequences, then seller will inform buyer beforehand.

2. Seller can execute more activities and can charge the buyer for extra costs than stated in the agreement, if buyer gave permission for this beforehand, unless these activities fall under the duty of care of seller.

3. Besides the circumstances mentioned in subsection 1, buyer can request the seller to execute activities that deviate from the order at the time the agreement was made. Such a request must be accompanied by a request for the estimation of the costs of the changes.

4. Seller is entitled to deny such a request if in her opinion:

- in the stage of the execution of the order, the requested change is considered undesirable.
- the requested change exceeds the capacity of the seller.

5. If none of the aforementioned cases mentioned in subsection 4 arise, seller will provide the buyer with a written notification of the price of the requested change, the date of payment and – when necessary – the amount of days that the delivery deadline will be extended within three weeks after the request.

### *GENERAL PROVISIONS CONTINUED*

#### **Article 10 Payment**

1. The seller is entitled to request an advance of 50% on the invoice amount from the buyer.

2. Payment must occur within thirty days after the invoice date.

3. The buyer is not entitled to reduce the purchase price by any counter-claim he may make.

4. The buyer is not entitled to suspend the fulfilment of his payment obligation in the event of a complaint submitted by him to the seller regarding the products delivered, unless the seller expressly agrees with the suspension in exchange for a guarantee.

5. All payments will be made at the offices of the seller or by deposit or transfer into a bank account to be indicated by the seller.

6. Payment must be made in euros (€) unless otherwise indicated on the invoice. In the last-mentioned case, the seller is entitled to charge exchange rate differences to the buyer.

7. If the buyer does not fulfil his payment obligation in time, he will be deemed to be in default by operation of law. The seller will then be entitled to charge interest at 1% monthly as from the date that the buyer is in default of fulfilling the payment obligation indicated in part 2, with a partial month being counted as a whole month. In the event of the buyer's default, the seller shall also be entitled to charge the exchange rate loss suffered as a result of that.

8. If the buyer is in default or otherwise falls short in fulfilling any of his obligations, all reasonable costs to obtain satisfaction, both legal and extra-legal, will be at his expense.

9. The seller reserves the right to not carry out, or no longer carry out, orders or agreements if previous deliveries have not been paid for by the buyer or the buyer has not fulfilled or is at risk of not fulfilling his obligations to the seller. The seller is not responsible for any damage to the buyer as a result of not carrying out orders.

10. Without prejudice to subsection 1 of this article, seller is authorized to request an advance of payment of her activities, disbursements or costs.

11. If the financial position or the payment behaviour of the buyer in opinion of the seller gives reason, seller is authorized to require the seller to provide immediate (supplemental) security in a form determined by the seller. If the seller neglects to provide the expected security, the seller is authorized – without prejudice to other rights – to immediately suspend or terminate the further execution of the agreement and all that the buyer owes to the seller is immediately claimable.

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

1. Force majeure refers to any circumstance outside the direct sphere of influence of the seller, as a result of which fulfilment of the agreement can no longer reasonably be expected. This may include strikes, fire, extreme weather conditions or government measures and diseases and plagues on the one hand or faults in the materials supplied to the seller on the other hand.

2. If the seller cannot fulfil its obligations because of force majeure, the seller must inform the buyer of the circumstances in writing as soon as possible.

3. In the event of force majeure, the parties will agree a change to the agreement or complete or partial dissolution of the agreement.

4. If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may then apply to the court.

#### **Article 12 Unforeseen circumstances**

1. In the event of unforeseen circumstances on the part of one of the parties that are so serious that, in view of the requirements of reasonableness and fairness, the other party may not expect that the concluded agreement will remain in effect unchanged, the one party will inform the other party about the unforeseen circumstances in writing and the parties will consult about a

change of the agreement or about the complete or partial dissolution of the agreement.

2. If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may apply to the court.

#### **Article 13 Guarantees and complaints**

1. The seller guarantees that the products that are to be delivered on the basis of the order will comply with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time of concluding the agreement.

2. The seller does not guarantee the trueness to variety of the products that are generally known to branch back.

3. The seller does not guarantee the growth and blossoming of the products delivered.

4. The buyer will at all times be provided with all requested cultivation information to the best of the seller's knowledge and abilities, by or on behalf of the seller, but without any liability on behalf of the seller.

5. Complaints regarding visible defects, including those regarding the quantity, size or weight of the products delivered, must be indicated to the seller within two days after delivery and the seller must be informed in writing within eight days.

6. Complaints regarding non-visible defects must be indicated to the seller immediately after detection (within two days at the latest) and the seller must be informed in writing within eight days.

7. Complaints must also be indicated to the seller at such a time that the seller can check the product.

8. A complaint must at least include:

a. A detailed and accurate description of the defect;

b. The storage location of the product to which the complaint refers;

c. A specification of facts on the basis of which it can be determined that the products delivered by the seller and those rejected by the buyer are the same.

9. When the products delivered are rejected by the buyer under the terms of this article and the buyer and the seller do not immediately agree on an amicable settlement, the buyer must then appeal to an independent, officially accredited expert who will compile an expertise report. The costs of the expertise report will be for the seller if the rejection is justified and for the buyer if it is not justified. In any case, the buyer shall advance the costs in question.

10. Complaints regarding a portion of the products delivered cannot give rise to rejection by the buyer of the entire delivery.

11. The buyer is obliged to check the delivered quantity of the shipment delivered, or have this checked, on receipt and to report a deviation of the quantity to the seller.

12. Expressing a complaint does not suspend the buyer's obligation to pay, regardless of any justification of a complaint.

#### **Article 14 Liability**

1. All liability with regards to untimely delivery are hereby excluded, unless the final agreed date of delivery (as mentioned in article 5, subsection 2) is exceeded with more than seven days.

2. In case of exceedance of the date of delivery with more than seven days seller has to be given written notice of default, in which the buyer has to give the seller a reasonable period in which seller still has to fulfill his duties.

3. The seller is not liable for damages due to force majeure as indicated in article 11, subsection 1.

4. Compensation in the event of a complaint can only take place if the complaint, submitted in accordance with article 13, proves to be justified and provided that there is culpability or conscious negligence on the part of the seller. Moreover, the compensation shall be limited to the invoice value of the delivered goods to which the complaint pertains.

5. In the event of a partial failure of the cultivation at the buyer as a result of the delivered products, then, if the seller is required to pay compensation for damages, the compensation of damages payable by the seller shall not exceed the percentage of the invoice value of the delivered products, of which the percentage at maximum equals the portion of the cultivation that failed at the buyer. If, when the damage is reported, the seller and the buyer jointly determine or a third party determines the percentage of deviating, diseased or weak plants, this percentage will determine the seller's maximum liability. Buyer is obligated to take care that damage caused by abnormal, diseased or weak products is limited as much as possible.

6. The buyer may not deduct damage compensation from any outstanding amounts payable to the seller and damage compensation does not entitle the buyer not to pay the invoice amount or not to pay this timely.

#### **Article 15 Transfer of ownership, retention of ownership and surety**

1. Except for the terms of subsection 2 of this article, ownership of the products is transferred to the buyer at the time of delivery under article 5 of these General Terms and Conditions.

2. The seller remains the sole owner of all delivered and to be delivered products, and the products arising therefrom, remain the sole property of the seller, until all claims that the seller has or acquires vis-à-vis the buyer, have been paid in full.

3. If there is any doubt in the mind of the seller regarding the ability of the buyer to pay, the seller will be entitled to defer performances until the buyer has provided surety for the payment, aforementioned in article 10 of these General Terms and Conditions. If the buyer has not provided surety for the payment within fourteen days after being ordered to do so, the seller is entitled to terminate the agreement by cancellation. In both cases, the buyer will be liable for the expenses incurred by the seller.

#### **Article 16 Protection under breeders' rights or contractual protection of original varieties**

1. Starting material and plant material of species protected by a breeders' right applied for or granted in the Netherlands or any other country or by a contractual transfer provision may not

a. be used to further reproduce the variety

b. treated for the purpose of reproduction,

c. brought into the realm of commerce,

d. traded further,

- e. exported,
  - f. imported, or kept in stock for one of these purposes.
2. The delivered products may only be used by the buyer to cultivate end products at the buyer's business premises. The end product may only be sold by the buyer under the relevant variety name and trademark if applicable.
  3. The seller is entitled to access to the business premises of the buyer or lots under the buyer's control where the starting or plant material delivered by the seller is located to view and/or assess said material. The seller will inform the buyer of his arrival in a timely manner.
  4. The buyer is obliged to provide immediate access to his business and the crops to inspection authorities carrying out inspections on behalf of the owner of a variety delivered to him. Upon request, the buyer must also provide immediate access to his records, such as invoices, that are relevant to this inspection.
  5. If the buyer finds a mutant in the protected variety, he must immediately inform the holder of the breeders' right and/or his representative by registered letter.
  6. At the written request of the holder of the breeders' right and/or his representative, the buyer will provide the holder of the breeders' right and/or his representative, within two months of receiving the request, with test material of the mutant, free of charge.
  7. The buyer is aware that the finder of a mutant, being an essentially derived variety, in the protected variety requires the permission of the holder(s) of the breeders' right regarding the 'parent variety' to exploit the mutant.
  8. In particular, the buyer is aware that the finder of a mutant requires the permission of the holder of the breeders' right regarding the 'parent variety' to carry out the actions indicated in subsection 1 regarding all material of the mutant, including harvested material (therefore also flowers, plants and/or plant parts).
  9. The buyer is obliged to provide all cooperation desired by the seller, including cooperating in collecting evidence, in the event that the seller becomes involved in proceedings regarding breeders' rights or other industrial property rights.

#### **Article 17 Dispute settlement**

1. Dutch law applies to all agreements to which these General Terms and Conditions apply in whole or in part.
2. All disputes (even those deemed as such by only one party) regarding or arising from the agreements concluded between the seller and the buyer, to which these General Terms and Conditions apply, can be settled by the Dutch court that is competent in the area in which the seller is established.

#### **Article 18 Final clause**

If and inasmuch as any part or provision of these General Terms and Conditions proves to be contrary to any compulsory provision of national or international law, it will be deemed not agreed on and these General Terms will otherwise bind the parties. The parties will then confer to arrive at a new provision corresponding as much as possible to what the parties intended.