

## General Terms & Conditions ABB Growers B.V.

### Article 1 DEFINITIONS

In these terms & conditions the following terms have the following meaning:

**Terms & Conditions:** these terms and conditions;

**Seller:** ABB Growers B.V.;

**Purchaser:** the person with whom Seller has entered into a purchase agreement, and the person to whom Seller has presented a quote, or the person who has placed an order with Seller;

**Working Days:** all days except for Saturdays and Sundays, 1 January, Easter Monday, Ascension Day, Whit Monday, Christmas Day, Boxing Day, and the days indicated as national holiday by the government, and the day on which the birthday of His Majesty the King is officially celebrated;

**Days:** all calendar days;

**Agreement:** any agreement between seller and purchaser.

### Article 2 APPLICABILITY

#### 2.1

These general terms and conditions apply to all offers, quotes, agreements, the making, the contents and the performance thereof, made by seller and entered into with the purchaser, subject to the exclusion of purchase or general terms and conditions of the Purchaser.

#### 2.2

These general terms and conditions also apply to all agreements with seller for the performance of which thirds (must be) involved.

#### 2.3

Any general (purchase) terms and conditions of the purchaser are expressly excluded and rejected and only apply if it has been expressly agreed in writing between seller and purchaser that the purchaser's general terms and conditions will apply subject to the exclusion of these general terms and conditions.

#### 2.4

Deviations from these terms and conditions must be expressly agreed in writing. Agreed deviations do not affect the validity of the further provisions and never apply to more than one transaction, this being the transaction for which the deviation was agreed in writing. The purchaser cannot derive any rights from the agreed deviation with regard to future agreements.

#### 2.5

Seller is at all times authorised to change these general terms and conditions.

### Article 3 QUOTES, OFFERS, PRICES

#### 3.1

All quotes, offers and price indications made wherever and/or in whatever manner, are without commitment and are made on the basis of the prices and specifications applicable at that time. As asparagus, blue berries and other fresh produce are subject to daily price fluctuations, seller is entitled to charge price increases on, if price changes occurred between the moment of acceptance and delivery, with regard to for instance exchange rates, wages, raw materials or packaging material.

#### 3.2

If a term was set for acceptance of the offer, the acceptance of the offer is only valid if it took place within this set term. An electronic acceptance by purchaser is only valid if it has been confirmed by seller. If no term was set for acceptance, then the offer remains valid during two working days, subject to the proviso that the offered item has remained unsold.

#### 3.3

If acceptance by purchaser (also on apparently minor points) deviates from the offer included in the quote, then seller is not bound to it. The agreement will then not be concluded in conformity with this deviating acceptance unless seller indicates otherwise.

#### 3.4

A composite quote/offer does not bind seller to the performance of a part of the order against a price corresponding with a part of the price indicated in the quote.

#### 3.5

Quotes and/or offers do not automatically apply to repeat orders.

#### 3.6

If the Seller sends an order confirmation, this confirmation is deemed to be correct, unless written objections have been received within 2 working days after the confirmation was sent.

### Article 4 ORDERS

Each agreement/order concluded or agreed between seller and purchaser is fully binding for both parties, unless within 12 days after the making of the agreement/order

seller gives purchaser a substantiated written notice stating that he cancels the agreement/order. The seller is in any event entitled to this right if purchaser is not deemed creditworthy on the basis of information from a credit agency and/or seller's credit insurer.

### Article 5 CALL-OFF AND PURCHASE

#### 5.1

A call-off order means an order of which the time of delivery is made dependant on the call by the Purchaser. If no agreements have been made concerning the call time, then this will be the delivery time or the last day of the delivery term.

#### 5.2

In case of a call-off order, unless agreed otherwise, the delivery must take place within a term of 15 working days, starting on the first working day on which the Seller has received the call in writing. If the order or order confirmation sets out the time on which the items for call-off must be ready, or sets out as of which time the items can be called, then a call received earlier is deemed to have taken place at the agreed time. In such event delivery can however take place before the time referred to.

#### 5.3

In case of a late call, the purchaser is entitled to an additional call-off time of 8 working days, starting on the first working day after which he has received a written call demand from the Seller. There is no right to an additional call-off term if a fatal term has been agreed for the call.

#### 5.4

In the event of a late call the delivery time is extended by 15 working days, except if the order relates to items which must be ready for shipment before the time of the call.

#### 5.5

In the event the purchaser has not made this call within the additional term either, then the seller can deliver the items to the purchaser or store the items in his warehouse or elsewhere at purchaser's account and risk, which also includes the risk of a deterioration of quality. In the event of such storage the items are deemed delivered. Written notification of this storage must immediately be given to the purchaser while enclosing the invoice relating to the delivery.

#### 5.6

If the Purchaser refuses to take receipt or the items, the Seller can proceed to storage of the items in the manner and with the consequences as described in paragraph 5.

### Article 6 DELIVERY

#### 6.1

The delivery is deemed to have taken place as soon as the goods have reached the destination agreed between seller and purchaser. Delivery is carried out, at the moment the goods are made available to the purchaser on the vehicle at the place of destination. The purchaser must unload the goods.

#### 6.2

As from the moment of delivery, the goods are at the purchaser's risk.

#### 6.3

If items cannot be dispatched as a result of circumstances the seller is not liable for, then the seller is deemed to have performed his delivery obligation by keeping the items available for the purchaser, subject to the proviso that he has given the purchaser written notification thereof within 6 working days after which the items became available for dispatch. In this event the payment term starts on the day on which the seller could have delivered the items.

### Article 7 DELIVERY TERM

#### 7.1

With regard to the delivery time a date or a term can be agreed subject to the proviso that the duration of an agreement should be at least 7 working days. If the delivery time is only indicated as "urgent", "without delay", "from stock" or words with a similar purport, then purchaser and seller are deemed to have agreed a delivery time of 10 working days, starting on the date the agreement was made. If the delivery time is not indicated, the purchaser and seller are deemed to have agreed a delivery time of 30 working days, starting on the starting date of the agreement.

#### 7.2

The seller is entitled to a pre-delivery term of 10 working days, which terminates on the day before the delivery date.

#### 7.3

The seller is, except for the stipulations in paragraph 4, entitled to a further delivery term of 10 working days, starting on the day after the lapsing of the delivery term or starting on the day after the delivery date.

#### 7.4

There is no entitlement to a further delivery:

a) if the duration of the agreement does not exceed 10 working days;

b) in case of call-off orders relating to items which must be ready for shipment at the agreed call time.

#### 7.5

Goods, which are delivered after the term for further deliveries or in cases referred to in paragraph 4 after the delivery time or after the delivery term, can be refused by purchaser or returned to seller at the seller's expense within 5 working days, while failing this the purchaser is deemed to have accepted the goods.

#### 7.6

The purchaser can only claim compensation for suffered loss with regard to non-delivery or non-timely delivery, if he has demanded the seller in writing after the lapsing of the further delivery time or if there is no entitlement to a further delivery, after the delivery date or after the lapsing of the delivery time, to perform his delivery obligation within 6 working days after dispatch of the demand, and the Seller remains in default.

#### 7.7

By way of derogation from the stipulations in the previous paragraphs, the agreement is deemed to be terminated by operation of law, if and insofar as it is not performed within three months after the lapsing of the delivery term, unless the exceeding of the delivery term or delivery date has taken place at the seller's request or is a result of a non-timely call from the purchaser or the suspension of delivery in the cases referred to in article 9 paragraph 2 et seq. In case of termination by operation of law neither of the parties is entitled to compensation. The provisions in this paragraph do not apply if the purchaser has, before the lapsing of the term of 3 months, demanded termination or performance of the agreement and/or compensation in conformity with paragraph 6.

### Article 8 COMPLAINTS

#### 8.1

Complaints are all grievances which the purchaser has with regard to an aspect of a delivery.

#### 8.2

Purchaser is bound to investigate the delivered goods at the moment of delivery, or at least within 24 hours, or let another do this on his behalf. This also means that the purchaser must investigate whether the quality and quantity of the delivered are as agreed.

#### 8.3

Purchaser must check the delivery note and the delivered quantity. If the delivered quantity is not in accordance with the quantity set out on the delivery note, then purchaser must immediately, in the presence of the transporter, set this out on the delivery note, when failing this, the seller has delivered correctly.

#### 8.4

Complaints must be reported to seller in writing, electronically, by fax or e-mail within 24 hours after delivery. The notification must contain a description of the complaint(s), which is as detailed as possible, so that the seller can respond adequately.

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8.5 Complaints can only be brought forward if the goods to which they are related are still in the same condition as they were delivered in.

8.6 Minor deviations in quality, quantity, weight, colour(s) measurements, finishing and such which are common in the trade or cannot be avoided technically, will be allowed by purchaser and cannot form a basis for complaints.

8.7 Purchaser must at the seller's first request give seller the opportunity to inspect the goods as to the correctness of the complaint. If a complaint is founded, seller will be given the opportunity to replace or supplement the delivered goods, unless this has become demonstrably useless for the purchaser. The purchaser must inform the seller of the latter in writing. Seller is in all events only liable within the limits of the provisions set out in the article 'Liability'.

### Article 9 PAYMENT

9.1 All invoices are dated on the day the goods are delivered. The payment term is, unless agreed otherwise, 14 days net.

9.2 With regard to the purchaser who has not paid in time, the seller has, without prejudice to his other rights under the heading of the terms and conditions and/or the law, the right to:

- a) immediate payment upon the offering of goods to purchaser (cash on delivery) and/or demand a security deposit for the payments relating to all current purchase agreements;
- b) suspend the deliveries (and also the production or processing of items for this purpose), without prejudice to his right to claim security for payment simultaneously or afterwards. After the purchaser has performed his obligations, the seller has a delivery time available which is required for the production, processing or delivery, taking into account the possibilities existing in his business at that time;
- c) terminate the relevant purchase agreement entirely or insofar as not performed, by a written statement originating from the seller;
- d) terminate one, more or all ongoing purchase agreements, with regard to which purchaser is not in default, entirely or insofar as not performed, by a written statement originating from the Seller.

The rights set out under a, b and c can only be exercised after the seller has granted purchaser a term of 3 days for performance of his payment obligations and purchaser remains in default, whereas the right set out under d will only be exercised if the purchaser has not complied with the seller's requirement for a security for payment to be made within 8 days for that which the Purchaser will owe under the heading of the agreement(s) referred to. Except if the right to termination has been used, the seller can at all times adjust his choice from the rights set out in this article.

9.3 If according to information from a credit information agency and/or seller's credit insurer purchaser is in default with regard to thirds and/or is deemed to be non-creditworthy and/or insolvent, then the seller has the rights described in paragraph 2 without notice of default being required relating to all the ongoing purchase agreements insofar as not performed.

9.4 If the purchaser is in default with regard to (timely or full) performance of his (payment) obligations, then all the reasonable costs incurred for out-of-court collection will be borne by the purchaser, irrespective of the other rights seller is entitled to, such as the right to compensation and performance. In the event of a money claim all the costs involved with the collection of the due amount or amounts – following court proceedings or out-of-court – will be borne by the purchaser, without prejudice to the other rights of the seller. The out-of-court costs are calculated for the principal in accordance with the "Besluit vergoeding voor buitengerechtelijke incassokosten 2012" (15% on the first € 2,500 of the amount due, with a minimum of € 40, 10% on the next € 2,500, 5% on the next € 5,000, 1% on the next € 190,000, and 0.5% on the excess with a maximum of € 6,775). However, if the seller has incurred more costs than those which are reasonably necessary, then the actual costs incurred are eligible for compensation by the purchaser. Any costs incurred for legal proceedings or collection will also be claimed from purchaser. Purchaser also owes interest on the incurred collection costs.

### Article 10 RETENTION OF TITLE

10.1 The seller retains the title of ownership of all the goods delivered or to be delivered on the basis of purchase agreements, until payment by the purchaser has been made with regard to:

- a) the claims relating to the counter performance for these goods;
- b) the claims relating to the work performed or to be performed by the seller for the performance of the mentioned agreements also for purchaser;
- c) the claims due to shortcomings in the performance of the mentioned agreements.

10.2 Goods are deemed unpaid if the purchaser has not demonstrated the payment thereof.

10.3 The purchaser is obliged to show these items at the seller's first request and in case the purchaser is in default with regard to payment and in the cases referred to in article 9 paragraph 2 c and d, return them if desired. For goods reclaimed in on the basis of this article, the purchaser will receive a credit in the amount of the market value of the goods for the supplier on the date of the return.

10.4 Purchaser is not authorised to dispose of or encumber the goods which are subjected to the retention of title. However, purchaser is allowed to sell and transfer the mentioned goods to others within the framework of the normal performance of his business. This permission lapses by operation of law at the time that the purchaser is defaulting in any way with regard to the claims to which retention of title applies, is granted a moratorium or is declared bankrupt. Purchaser is not allowed to use the goods subject to the retention of title as security for claims of thirds.

### Article 11 FORCE MAJEURE

11.1 In these terms and conditions, force majeure means any circumstance, which the Seller or the Purchaser could not reasonably take into account and as a result of which the normal performance of the agreement cannot be reasonably expected by the counter party.

11.2 The seller and the purchaser will immediately warn each other if an event of force majeure arises.

11.3 In the event of force majeure the counter party cannot claim any compensation.

11.4 In the event of force majeure parties will make arrangements for the performance of the relevant agreement.

11.5 In the event a case of force majeure leads to a exceeding of the agreed date or term, including any further delivery term with at least 20 working days, then the counter party has, by way of derogation from the stipulated in paragraph 4, the right to terminate the relevant agreement by means of a written statement.

### Article 12 LIABILITY

12.1 For loss which is a direct consequence of the goods sold by seller, seller is, except in case of intent or gross negligence, only liable up to the maximum amount of the net invoice value of the invoice which serves the delivery of these goods.

12.2 For loss, such as but not limited to lost profit and/or loss due to business interruptions, which is a direct consequence of the goods delivered by seller, seller is, except in case of intent or gross negligence, only liable up to the maximum amount that the seller's insurer pays out with regard to this loss.

### Article 13 TAXES

Sales prices or otherwise noted prices do not include the amount that is owed or will be owed for the relevant transaction on the basis of turnover tax or other similar charges; all costs caused by these taxes are borne by the purchaser.

### Article 14 APPLICABLE LAW AND CHOICE OF FORUM

14.1 All agreements are governed by Dutch Law.

14.2 The court in whose district the seller is established, is competent with regard to all disputes following from this

agreement, unless another court is competent on the basis of mandatory law.