

## General Terms and Conditions van ABB Growers B.V.

### Article 1 DEFINITIONS

In these terms and conditions, the following terms will have the following meanings:

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

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

**Buyer:** the party with which the Seller has concluded a purchase agreement, or to which the Seller issued a quotation or which placed an order with the Seller;

**Working Days:** all days except Saturdays, Sundays, 1 January, Easter Monday, Ascension Day, Whit Sunday and Whit Monday, Christmas Day and Boxing Day, the days (to be) designated as public holidays by the government and the official birthday of HM the King;

**Days:** all calendar days;

**Agreement:** any agreement between the Seller and the Buyer.

### Article 2 SCOPE

2.1

These General Terms and Conditions apply to all offers and all Agreements, including their formation, content and performance, which the Seller issues to and/or concludes with the Buyer, to the exclusion of purchase terms and conditions, general terms and conditions or other terms and conditions on the Buyer's part.

2.2

These Terms and Conditions also apply to all Agreements with the Seller whose performance involves or requires the engagement of third parties.

2.3

Any (purchase) terms and conditions on the Buyer's part are expressly excluded and rejected, and will only apply if it has been expressly agreed in writing that they will apply to the Agreement between the Seller and the Buyer to the exclusion of these General Terms and Conditions.

2.4

Derogations from these Terms and Conditions must be expressly

agreed in writing. Any agreed derogations will not affect the validity of the remaining provision and will apply to one transaction only, being the transaction in respect of which the derogation was agreed in writing. The Buyer will be unable to derive any rights from the agreed derogation with regard to future Agreements.

2.5

The Seller is entitled at all times to amend these General Terms and Conditions, without being obliged to pay the Buyer any compensation.

### Article 3 QUOTATIONS, OFFERS, PRICES

3.1

All offers, quotations and estimates, no matter how and/or where they are issued, will always be free of obligation and will be issued on the basis of the prices and specifications applicable at that time. Because asparagus, blueberries and other fresh products are subject to daily price fluctuations, the Seller is entitled to pass on price increases in the event of price changes between the moment of acceptance and the moment of delivery, for example in terms of exchange rates, wages, raw materials or packaging materials.

3.2

If a period has been specified for the acceptance of an offer, the acceptance of the offer will only be valid if it takes place within the period specified. The electronic acceptance of an offer by the Buyer will only be valid if it has been confirmed by the Seller. If no acceptance period has been specified, the offer will remain in force during two Working Days, provided that the subject of the offer has remained unsold.

3.3

If the acceptance by the Buyer differs (also on manifestly minor points) from the offer laid down in the quotation, the Seller will not be

bound by this acceptance. In that case, the Agreement will not be formed in accordance with this deviating acceptance, unless the Seller indicates otherwise.

3.4

A combined quotation/estimate will not oblige the Seller to perform a part of the contract in exchange for a corresponding part of the price specified in the quotation.

3.5

Offers and/or quotations will not automatically apply to repeat orders.

3.6

Any order confirmation dispatched by the Seller will be deemed to be correct, unless written objections to this confirmation are received within two Working Days of its dispatch.

### Article 4 ORDERS

An Agreement/order concluded between the Seller and the Buyer will be fully binding on the Buyer. The Seller is entitled to cancel or terminate the Agreement within 12 Days of its formation, stating the reason for the cancellation or termination. Under no circumstances will the Seller be obliged to pay the Buyer any compensation. The Seller will in any case have the right to cancel or terminate if the Buyer is not creditworthy according to information received from a credit reference agency and/or the Seller's credit insurer.

### Article 5 CALL-OFF ORDERS AND TAKING DELIVERY

5.1

A call-off order is understood to mean an order in which the time of delivery depends on a call-off by the Buyer. If nothing has been agreed with regard to the moment of call-off, this moment will be the delivery date or the last day of the delivery period.

5.2

In case of a call-off order, the call-off must be made by the Buyer as

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soon as possible, but in any case within five Working Days of the formation of the Agreement. The Seller will endeavour to carry out the delivery as soon as possible. If the order or the order confirmation specifies the moment by which the goods must be ready for call-off or from which the goods can be called off, a call-off received earlier will be deemed to have been made at that particular moment. However, in such cases delivery may take place prior to the aforesaid moment, this being at the Seller's discretion.

### 5.3

If the call-off is not made in time, the Buyer will be entitled to a one-off additional call-off period of two Working Days, starting on the first Working Day following that on which the Buyer received a written demand for a call-off from the Seller. There will be no entitlement to an additional call-off period if a final deadline was agreed for the call-off.

### 5.4

If the Buyer fails to make the call-off in time, the delivery period will be extended or the delivery date will be deferred by 15 Working Days. If the order relates to goods that must be ready for dispatch at the agreed moment of call-off, the Seller will endeavour to have the goods ready for dispatch at the moment of call-off.

### 5.5

If the Buyer fails to make the call-off also within the additional period, the Seller may deliver the goods to the Buyer or store the goods in its own warehouse or elsewhere at the Buyer's expense and risk, which includes the risk of a reduction in quality. By means of such storage, the goods will be deemed to have been delivered and therefore to be at the Buyer's expense and risk.

### 5.6

If the Buyer refuses to take delivery of the goods, the Seller may proceed to store the goods in

the manner and with the consequences provided for in Paragraph 5.

## Article 6 PLACE AND MANNER OF DELIVERY

### 6.1

The goods will be delivered at the Seller's address, unless the Seller and the Buyer have expressly agreed otherwise. The Buyer is obliged to take possession of the goods it has purchased at the agreed place and at the agreed times.

### 6.2

If the Buyer fails to take possession of the goods on the day on which the goods are presented to it for delivery, the Seller will be entitled to store, sell or destroy the goods at the Buyer's expense and risk, whereby the costs of transport, storage, sale or destruction will be payable by the Buyer.

### 6.3

If the goods are stored on the Seller's premises or those of a third party by or on behalf of the Seller for the benefit of the Buyer, delivery will take place at the moment when the goods have been stored.

### 6.4

A delay in delivery will not give the Buyer the right to terminate the Agreement and/or demand compensation, by whatever name and for whatever reason. The Buyer indemnifies the Seller against all claims from third parties for compensation of any loss sustained by these third parties in such a situation.

### 6.5

The Seller will endeavour to deliver the goods on the agreed date. If an order confirmation involves several delivery dates, attempts will be made to spread deliveries evenly over the various delivery dates, unless agreed otherwise.

### 6.6

If the goods cannot be delivered on the date stated in the order on account of a force majeure situation, the Seller will not be liable for this. If delivery is possible but only on different conditions, delivery can only take place if the Seller and the Buyer have reached agreement in writing about the altered conditions.

### 6.7

If the parties have expressly agreed that the Seller will see to the transport of the goods, this will be done entirely at the Buyer's risk, including any imputable and/or negligent acts on the part of the carrier. Insofar as the Seller sees to the transport, dispatch, packaging, etc., the manner in which this is done will be determined at the Seller's discretion, except if the Buyer has issued the Seller with express instructions to this end which have been accepted by the Seller.

## Article 7 CREDIT LIMIT

### 7.1

The Seller has insured its claims with Euler/Hermes Netherlands. If the outstanding claims have reached or exceeded the maximum credit set by the credit insurer and/or the Seller, the Seller – at its discretion – may demand immediate payment of the outstanding claim from the Buyer and/or suspend any further delivery to the Buyer, without being obliged to pay any compensation.

### 7.2

At the Buyer's request, the Seller will disclose the maximum credit amount. However, the Seller is entitled at all times to set the maximum amount which the Buyer may owe to the Seller at any moment at an amount different from the maximum credit insured. Therefore, the Buyer will be unable to derive any rights from that amount.

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### Article 8 COMPLAINTS

#### 8.1

Complaints are understood to mean all grievances of the Buyer concerning the quality of a delivery.

#### 8.2

When the goods are delivered, the Buyer is aware that the product features may vary. The wide-ranging natural differences in colour, structure and other aspects are deviations that can be normally expected within a natural product (this being at the Buyer's discretion) and will not constitute a ground for liability or a complaint.

#### 8.3

The Buyer is obliged to inspect or arrange an inspection of the goods supplied at the moment of supply or delivery, but in any case within 24 hours. On this occasion, the Buyer must examine whether the quality and quantity of the goods supplied correspond to what was agreed.

#### 8.4

The Buyer must check the delivery note and the quantity delivered. If the quantity delivered does not correspond to the quantity stated on the delivery note, the Buyer must write this on the delivery note immediately in the presence of the carrier, failing which the Seller will have delivered the goods correctly.

#### 8.5

Complaints must be reported to the Seller in writing, online, by fax or e-mail within 24 hours of delivery. The report must describe the complaint or complaints in the greatest possible detail, so as to enable the Seller to provide an adequate response. If the goods have a use-by date and the defect entails that the goods will go off before that use-by date, complaints can be reported until the expiry of the use-by date. Complaints from the Buyer concerning invisible defects must be reported to the Seller in writing within 24 hours after the Buyer

detected, or could reasonably have detected, these defects. If the Buyer fails to submit a written report in time as referred to in this article, the Buyer will be unable to invoke failures.

#### 8.6

Complaints can only be enforced with regard to goods that are still in the condition in which they were supplied.

#### 8.7

Minor deviations in quality, quantity, weight, colour or colours, dimensions, finish, etc. that are considered permissible in commerce or cannot be technically avoided will be tolerated by the Buyer and cannot constitute a ground for complaint.

#### 8.8

Upon request, the Buyer must enable the Seller to inspect the goods supplied in order to determine whether the complaint is justified. If a complaint is well founded, the Seller will be given the opportunity to replace or supplement the goods supplied, unless this has become demonstrably pointless for the Buyer. The latter must be communicated in writing by the Buyer. In all cases, the Seller will be liable only within the limits of the provisions of Article 12 ('Liability').

### Article 9 PAYMENT

#### 9.1

The date on each invoice will be the same as that on which the goods concerned were delivered. The net payment term is 14 days.

#### 9.2

If the Buyer fails to pay in time, the Seller will have the right, without prejudice to its other rights under the Terms and Conditions and/or the law:

a) to demand immediate payment upon presentation of the goods to the Buyer (cash on delivery) and/or security for payment in respect of all current Agreements;

b) to suspend deliveries (as well as the creation or processing of the goods to be delivered), without prejudice to its right to claim security for payment either simultaneously or subsequently. Once the Buyer has fulfilled its obligations after all, the Seller may apply as the delivery period the period required for the creation, processing or delivery of the goods, taking account of the opportunities then available at its business;

c) terminate the Agreement concerned, either in its entirety or for the part not yet performed, by means of a written statement from the Seller;

d) terminate one, several or all current Agreements in respect of which the Buyer is not in default, either in their entirety or for the part not yet performed, by means of a written statement from the Seller.

The Seller may only proceed to exercise the rights referred to under a, b and c after the Seller has granted the Buyer a period of three days in which to fulfil its payment obligations after all and the Buyer still fails to do so, while the right referred to under d will only be exercised if the Buyer has failed to comply within eight days with the Seller's demand to furnish security for the payment of the amounts which the Buyer will owe under the aforesaid Agreement or Agreements. Except where the Seller has exercised its right of termination, the Seller may change its choice from the rights referred to in this article at all times.

#### 9.3

If information from a credit reference agency and/or the Seller's credit insurer reveals that the Buyer is in default towards third parties and/or may be considered to be non-creditworthy and/or insolvent, the Seller will have the rights described in Paragraph 2, without notice of

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default being required in respect of all current Agreements insofar as they have not been performed.

### 9.4

If the Buyer fails to pay the amount it owes, or fails to do so in time, it will be in default without notice of default being required.

### 9.5

If the Buyer fails to fulfil its (payment) obligations, or to do so in time or in full, all reasonable costs to obtain settlement out of court will be payable by the Buyer, without prejudice to the Seller's other rights, such as the right to demand compensation and performance. In the event of a monetary claim, furthermore, all the costs associated with the collection of the amount or amounts owed – both the judicial and the extrajudicial costs – will be payable by the Buyer, without prejudice to the Seller's other rights. The extrajudicial costs will be calculated for the principal in accordance with the Extrajudicial Collection Costs (Fees) Decree 2012 (*Besluit vergoeding voor buitengerechtelijke incassokosten 2012*), or at least the most recent version of this decree. However, if the Seller incurred higher costs which were reasonably necessary in order to obtain payment from the Buyer of the outstanding amount, the Buyer will have to reimburse the costs actually incurred. Any judicial costs and enforcement costs incurred will be recovered from the Buyer as well. The Buyer will also have to pay statutory commercial interest on all the amounts owed.

## Article 10 RETENTION OF TITLE

### 10.1

The Seller will retain the title to all the goods supplied or to be supplied under one or more Agreements, until payment by the Buyer has cancelled out:

a) the claims relating to the consideration for those goods;

b) the claims regarding other activities (to be) performed by the Seller for the benefit of the Buyer in implementation of one or more Agreements;

c) the claims resulting from failure to comply with one or more Agreements.

### 10.2

Goods will be deemed not to have been paid for if the Buyer has not demonstrated the payment for these goods.

### 10.3

The Buyer will be obliged to show the goods to the Seller when the latter so requests and, in the event of failure to pay and in the situations referred to in Article 9.2(c) and (d), to return them to the Seller upon demand. As regards the goods taken back pursuant to this article, the Buyer will be credited for the market value of those goods for the delivery on the day they are taken back.

### 10.4

The Buyer is not authorised to dispose of or encumber the goods subject to retention of title. However, the Buyer will be permitted to sell and transfer the aforesaid goods to third parties in the context of its normal business operations. This permission will cease to apply by operation of law at the moment when the Buyer fails in any way in respect of the claims to which the retention of title applies, is granted a provisional moratorium or is declared bankrupt. Under no circumstances may the Buyer use the goods subject to retention of title as security for claims of third parties.

## Article 11 FORCE MAJEURE

### 11.1

In this context, 'force majeure' is understood to mean any circumstance which the Seller and the Buyer respectively could not reasonably take into account and because of which the other party

cannot reasonably be expected to perform the Agreement as normal.

11.2  
The Buyer will notify the Seller without delay if it is confronted with a force majeure situation.

### 11.3

In the event of force majeure, the Buyer will be unable to claim any compensation.

### 11.4

In the event of force majeure, the parties must come to an arrangement concerning the performance of the relevant Agreement or Agreements.

### 11.5

If a force majeure situation causes the agreed date or period, including a subsequent delivery period (if any), to be exceeded by at least 20 Working Days, the Seller will have the right, in derogation from the provisions of Paragraph 4, to terminate the relevant Agreement by means of a written statement.

## Article 12 LIABILITY

### 12.1

Except in the event of wilful misconduct or gross negligence, the Seller will only be liable for losses directly resulting from the goods sold and supplied by the Seller up to the net invoice value of the invoice relating to the supply of these goods.

### 12.2

Except in the event of wilful misconduct or gross negligence, the Seller will only be liable for losses indirectly resulting from the goods supplied by the Seller, including but not limited to lost profits and/or business interruption losses, up to the amount paid out by the Seller's insurer in respect of those losses.

## Article 13 TAXES

Sales prices or other quoted prices do not include the amounts that are or will be owed with regard to the relevant transaction in VAT or other corresponding levies; all

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costs associated with these taxes  
will be payable by the Buyer.

**Article 14 APPLICABLE LAW  
AND CHOICE OF FORUM**

14.1

All Agreements will be governed  
exclusively by Dutch law.

14.2

Any and all disputes arising from  
the Agreement or Agreements will  
be submitted to the court of the  
Seller's place of business, unless  
a different court has jurisdiction  
pursuant to mandatory law.

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