

1. Scope of application

These General Terms and Conditions shall apply to all agreements, quotations, offers, orders, (pro forma) invoices and credit notes applicable between PLANT SELECT NV, having its registered office at 2310 Rijkevorsel, Sint-Lenaartsesteenweg 93, and registered with the Crossroads Bank for Enterprises under number 0444.851.205 (hereinafter referred to as the "Seller") and a natural person or (public or private) legal entity (hereinafter referred to as the "Customer"), except in case of an explicit deviation made in writing. These General Terms and Conditions shall apply only between companies, in commercial transactions that lead to the delivery of goods or to the provision of services in connection with an (wholly or partly) independent professional or economic activity. These General Terms and Conditions constitute an integral part of the agreement between the parties. By accepting a quotation or placing an order with the Seller, the Customer acknowledges and confirms prior knowledge as well as acceptance of these General Terms and Conditions, and waives the applicability of its own general terms and conditions, by whatever name known. Deviations from these General Terms and Conditions shall only be possible with the explicit and written consent of the Seller, and such deviations shall only apply to the agreement in question, without prejudice to the applicability of these General Terms and Conditions to all other agreements between the parties. The Seller reserves the right to amend its General Terms and Conditions with prior notice to the Customer.

2. Formation and amendment of the Agreement

2.1. All offers and quotations made by the Seller, in any form whatsoever, shall be free of obligation unless the offer also stipulates a period for acceptance. An agreement shall be concluded by written (including by e-mail) (order) confirmation from the Seller.

2.2. In the case of day trading, the agreement between the Seller and the Customer shall only be effective after written (including by e-mail) (order) confirmation or approval of the transport order, by the Seller. These General Terms and Conditions shall fully apply to such agreements in connection with day trading.

2.3. The weights, dimensions, capacities, colours and other data contained in catalogues, advertisements, illustrations, price lists and on websites and/or (trading) platforms are only intended to be approximations. The plant sizes are subject to growth and weather conditions.

2.4. In case there are obvious clerical errors or mistakes in the offers and quotations, the Seller shall no longer be bound to perform the agreement and/or to fulfil any obligations to pay compensation arising therefrom, even after the agreement is concluded.

2.5. The Seller reserves the right to suspend the performance of an order in case of a negative balance of the Customer's account with the Seller or if there are signs of financial insolvency or negative solvency on the part of the Customer.

2.6. The Customer shall request changes or additions if any to the order in writing, and must always be confirmed and accepted in writing by the Seller.

3. Prices

3.1. Unless otherwise specified, all prices are wholesale prices, expressed in euros and excluding VAT. These prices are exclusive of transport costs (if any), insurance costs, packaging costs, export costs and other costs and charges, unless explicitly specified otherwise in writing. The price shall not include special additional import and/or customs clearance costs or other levies imposed by the authorities in respect of the goods to be delivered to the Customer by the Seller, and the same shall therefore be borne by the Customer. The Seller reserves the right to correct the price in case of material errors. If the Seller uses a price list, it reserves the right to amend it at any time. The new prices shall immediately apply to orders placed after the new price list is published. Prices may vary according to minimum order quantities, shortage of supply in the market, weather conditions, etc.

3.2. The order confirmation by the Seller contains amounts based on the prices, exchange rates, wages, taxes and other factors relevant to the price level as they exist at the time of issuing the same. If the price changes between the date of the (order) confirmation and the date of delivery, the price applicable at the time of the (order) confirmation shall be payable, except where the price changes as a consequence of objective reasons, including but not limited to changes in the cost structure of the Seller, devaluation or change in the parity of the Euro. If the price increases by more than 10% of the total agreed amount, the Seller shall notify the Customer within five (5) working days after the price change, and the Customer may cancel the order within eight (8) calendar days for the quantities still deliverable at the increased price.

4. Payment

4.1. Unless stipulated otherwise, all the Seller's invoices shall be payable at the Seller's registered office within one (1) month of the invoice date. Unless otherwise agreed, the Buyer may not claim any form of discount whatsoever from the Seller, and the Customer may also not offset any claim against the Seller against the amounts charged by the Seller. Early payment shall also not be eligible for any discount.

4.2. The Seller shall always be entitled to deliver and invoice in full, or to invoice for partial deliveries. The Seller shall have the right to raise its invoices, including advance invoices, at any time. Unless otherwise agreed in writing between the parties, in the case of advance payments, the Seller shall invoice 100% of the price at the time the contract is concluded (especially with the accepted order). If advance payment is refused, the Seller shall have the right to rescind the contract and the Customer shall be liable for any damage suffered by the Seller as a consequence.

4.3. Invoices that are not disputed by registered letter within eight (8) calendar days of dispatch shall be deemed accepted.

4.4. Payment shall be made by bank transfer to the account number and under the reference as stated on the invoice, or by Debit/Maestro card if the Customer pays the invoice at the time of collecting the goods from the Seller.

4.5. The Seller may suspend the handover of goods it has in its possession on behalf of the Customer for the purposes of the performance of agreed work, until all payments due by the Customer to the Seller have been settled in full.

4.6. If payment is not made by the due date (see Clause 4.1), all amounts that are outstanding towards the Customer

shall become due and payable, regardless of the payment terms stipulated. If payments are made late, even partially, the Customer shall be liable, by operation of law and without the need for notice of default, to pay interest on arrears on the outstanding invoice amount as per the Act of 2 August 2002 on combating late payment in commercial transactions, with effect from the invoice's due date. Interest shall be calculated on a day-to-day basis.

4.7. If payments are made late, the Customer shall also be liable to pay liquidated damages of 10% of the outstanding invoice amount, subject to a minimum of €75, among other things, to cover collection costs incurred by the Seller.

4.8. The late, incomplete or non-payment of one overdue invoice shall render all overdue invoices due and payable.

5. Dissolution and termination

5.1. If the Customer fails to fulfil any obligation under the agreement or fails to do so on time, the Seller shall have the right, without any obligation to pay compensation and without prejudice to its rights, to dissolve the agreement wholly or in part through a written notification to the Customer and/or to demand the immediate payment of any amount payable by the Customer to the Seller and/or to invoke the right of retention of title.

5.2. The Seller shall have the right to dissolve the agreement with immediate effect, without any obligation to pay compensation and without prejudice to its rights, if the Customer applies for suspension of payments or files for bankruptcy, or if such an application is made against it, as well as in all cases of attachment of all or part of its assets. All invoiced amounts shall then become immediately due and payable.

5.3. In case of dissolution, the Customer shall also be liable by operation of law and without prior notice of default to pay liquidated damages equivalent to 35% of the invoice amount, subject to a minimum of €75, without prejudice to the Seller's right to prove the higher damage actually suffered by it.

6. Reservations

6.1. The Customer may only make a reservation for larger plants subject to the consent of the Seller and provided the agreed collection period, as indicated by the Seller, is respected. In the case of a reservation, an order confirmation shall always be drawn up by the Seller and shall constitute a sales agreement, unless otherwise agreed between the parties through a separate sales agreement signed by both parties.

6.2. If the customer cancels the reservation, the following conditions shall apply:

- a) If a reservation is only confirmed through an order confirmation from the Seller, a fixed fee of €75 shall be charged in case of cancellation;
- b) If a reservation has been agreed upon in a signed sales agreement, the Seller shall be entitled to liquidated damages as agreed upon in the sales agreement between the parties;
- c) In both cases, the following percentage of the order value shall be charged in addition to the fixed fee:
 - (i) Cancellation from three (3) months prior to the agreed date of purchase: 20% of the order value;
 - (ii) Cancellation from one (1) month prior to the agreed date of purchase: 30% of the order value;
 - (iii) Cancellation from one (1) week prior to the agreed date of purchase: 50% of the order value;

7. Force majeure

7.1. Except for provisions of mandatory law or public order, the Seller is not liable if a shortcoming is the result of force majeure. The obligations of the Seller shall be suspended as long as force majeure conditions continue. If the Seller is unable to fulfil its obligations on account of force majeure for more than three months, both parties may dissolve the agreement without judicial intervention and without any obligation to pay compensation.

7.2. The term '*force majeure*' as used in the present clause shall always mean unforeseen circumstances, including those of an economic nature, which are not the fault of or attributable to the Seller or its suppliers or subcontractors, including but not limited to natural disasters, wars, hostilities, attacks, whether in Belgium or in any other country in which any branches of the Seller or its supplier companies are established, drought, high temperatures, acid rain, diseases, infections and fungi on plants, pests, technical failure of machines or systems, lack of personnel, fire or flood, epidemic, pandemic including but not limited to the Covid-19 virus and its variants, governmental order, serious disturbances in the business, cyber attacks, inevitable reduction of production, crop failure, frost damage, sabotage and destruction by third parties, strikes and lockouts, whether faced by the Seller or by its supplier companies, delays in transport or

7.3. delayed or incorrect delivery of items or materials, such as energy, raw materials or parts by third parties including the Seller's supplier companies. If the Seller has already fulfilled part of its obligations when the force majeure occurs, or can only partially fulfil its obligations, it shall have the right to separately invoice the goods already delivered or, as the case may be, the part of the goods that can be delivered, and the Customer shall be bound to pay this invoice as if it were a separate agreement.

8. Delivery

8.1. Delivery shall be made in conformity with the valid ICC INCOTERM (2020) 'Ex Works' (location of the nursery). If the Customer refuses to take delivery at the agreed time, or makes it impossible or unreasonably difficult or is negligent in providing information or instructions necessary for the delivery, the Seller shall have the right to store the goods at the expense and risk of the Customer, without prejudice to the Seller's right to dissolve the agreement.

8.2. Goods shall be deemed to have been delivered as soon as the Seller notifies the Customer that the goods are ready for collection by the Customer at the Seller's or a third party's premises, or ready for dispatch by order of the Customer. From the moment of delivery, the Customer shall bear all risks related to the delivered goods.

8.3. If, notwithstanding Clause 8.1, it is expressly agreed that the Seller shall arrange for the transport of the goods, the Customer shall bear the costs at the Seller's current rates, as well as the risk of loss or damage during transport, unless expressly agreed otherwise. In such case, the Customer is also responsible for unloading the goods itself, unless otherwise stated in writing.

8.4. If the parties agree that the goods or cargo shall be unloaded by the Seller, the Customer shall ensure that the place of delivery is easily accessible and that persons are present at the time of delivery who can provide all necessary or useful information to enable the Seller to unload the goods. In any case, the Seller can only be bound to make delivery on the ground floor. If this obligation is not fulfilled, the Seller shall always have the right to refuse to carry out the delivery. The Seller shall in such case be entitled to compensation for all costs incurred by it, including travelling expenses and working hours, without prejudice to Clause 6 of these General Terms and Conditions.

8.5. The statement of delivery times in offers, quotations, agreements or otherwise shall always be made by the Seller to the best of its ability, and the specified times shall be observed to the extent possible, taking into account the availability of the goods. The Customer acknowledges that, unless expressly agreed otherwise, this delivery date shall be purely indicative. Non-compliance with this indicative period by the Seller shall in no case give ground for the dissolution of the agreement or to a right to compensation. Partial deliveries shall always be permissible. Delays in the payment by the Customer of certain advances on the sales price may result in a proportionate delay in the delivery period. The Customer acknowledges that the ordering and delivery deadlines depend on the related season, the product group, as well as the delivery location, and shall be coordinated in mutual consultation.

8.6. If the Customer requests a change in the delivery period or the place of delivery or the circumstances at the time of the delivery, or if the Customer has provided incorrect information in this regard, the Seller shall have the right to payment of the relevant additional costs.

9. Guarantee

9.1. If the Seller (or the Seller's supplier) provides a guarantee to the Customer relating to the work or goods it has delivered or shall deliver, it shall expressly notify the Customer of the same in writing. If no such express written notification is given, the Customer may not invoke the guarantee, without prejudice to its statutory rights arising from mandatory provisions.

9.2. In case of a well-founded guarantee claim by the Customer, the Seller shall repair or replace the delivered goods - at the Seller's discretion - if possible, unless this has become demonstrably pointless for the Customer in the meantime. If the Seller notifies the Customer that it will carry out repairs, the Customer shall place the delivered goods at the disposal of the Seller again, at its own expense and risk.

9.3. All the guarantee obligations of the Seller shall lapse if the defects or imperfections in the delivered goods invoked by the Customer are the result of (i) any improper, negligent or incompetent handling of the goods (including dropping or collisions with the goods and improper storage without complying with the storage requirements, in which connection, the Customer shall be deemed to be a specialised buyer who makes the purchase with knowledge of the facts) or management of the goods by the Customer, its employees or third parties or, (ii) any modification to the delivered goods by the Customer, its employees or third parties to which the Seller has not consented, or (iii) due to external causes such as, but not limited to, environmental conditions such as dryness, humidity, heat or low temperatures.

10. Liability

10.1. The Seller undertakes to perform the agreement to the best of its ability.

10.2. Except in case of its own intentional act, gross negligence or that of its appointee, or non-performance of its essential obligations under the agreement with the Customer, the Seller cannot be held liable for the consequences of handling - and any consequences incurred by the Customer, a third party or their goods due to - the delivered goods. The sale is and shall remain made on the order and at the risk of the Customer, who shall be held liable for any accidents, infringements, correct storage, etc. The Customer shall also be liable for and, where appropriate, shall

indemnify the Seller for any damage caused by the goods after delivery, except in the case of attributable fault on the part of the Seller.

10.3. The Seller shall not be liable for incidental or consequential damages (including, but not limited to: injuries, property damage, financial loss, loss of profit, personnel costs, third party damage, loss of revenue, etc.).

10.4. The Seller's liability shall in any case be limited to the maximum of the price paid by the Customer for the goods.

11. Complaints

11.1. The Customer shall be bound to inspect the goods immediately after delivery or to have the same inspected. This shall include that a thorough and accurate inspection by the Customer (or arranging for the same) to establish whether the goods comply with the agreement in all respects, and more specifically whether the correct products have been delivered, whether the quantity of the products is correct (quantity, number, weight, size), as well as the (non-)conformity and the condition of the delivered goods. Complaints in this regard shall be notified to the Seller in writing immediately after this inspection under penalty of cancellation, with a precise notation of the nature of the shortcoming on the order form or consignment note.

11.2. Complaints about hidden defects (including those covered by the Seller's guarantee, which guarantee was stipulated directly vis-à-vis the Customer), which become apparent within three months after the delivery of the goods, shall, on pain of forfeiture, be notified to the Seller by means of a registered letter with statement of reasons and accompanied by illustrative photographs, no later than eight (8) calendar days after discovery of the defect or after the defect should reasonably have been discovered. After this period, any complaint shall in any event be inadmissible. Any resale of the goods shall nullify the liability of the Seller if any. Complaints and/or disputes, of any nature whatsoever, shall never give the Customer the right to suspend the fulfilment of its obligations towards the Seller, or to cancel the entire order or delivery relating to non-protested (partial) deliveries. If the complaint is well-founded, the Seller's liability shall always be limited to a maximum of the price paid by the Customer for the goods.

12. Right of retention of title

12.1. All goods to be delivered and supplied by the Seller shall under all circumstances remain the property of the Seller until the Customer pays all the claims of the Seller, always including claims relating to the payment of the price.

12.2. The Customer shall be bound to store the goods delivered under retention of title with due care and as the Seller's recognisable property.

12.3. The Customer shall have no right to pledge or otherwise encumber or partly or wholly transfer the goods delivered under retention of title to third parties until the ownership of the goods is transferred to the Customer, except where such transfer takes place in the ordinary course of business of the Customer.

12.4. Whenever circumstances so require, including but not limited to instances in which the Customer is declared bankrupt or a third party threatens to seize or has seized the goods, the Customer shall notify such third parties (e.g. a receiver or creditors) by registered letter of the Seller's right of ownership. The Customer shall immediately notify the Seller of the above by registered letter.

12.5. If the Customer does not fulfil its payment obligations towards the Seller or the Seller has good grounds to fear that the Customer will not do so, the Seller shall have the right to recover the goods delivered under retention of title. The Customer warrants - if necessary on behalf of a third party (buyer) or holder - that, at the Seller's first request, the location of the goods shall be notified to the Seller and further that the goods shall be returned to the Seller at the expense and risk of the Customer, on the Seller's request. Wherever necessary, the Seller is hereby granted a mandate to take back the goods and a mandate to enter the necessary premises for this purpose. After retrieval of the goods, the Customer shall be paid the market value thereof, which shall never be in excess of the original price agreed between the Customer and the Seller, minus the costs incurred by the Seller in connection with the recovery of the goods.

13. Intellectual property

13.1. The Seller is and shall remain the exclusive owner of all intellectual property rights vested in the goods, including but not limited to all registered and unregistered rights of all intellectual property anywhere in the world, including but not limited to plant variety rights (including but not limited to all of the Seller's and others' protected plant varieties as listed in the catalogue), copyrights, trademark rights (including but not limited to the 'Bamboo Select' and 'Ilex Select' marks), patent rights, rights in unpatented know-how, drawing and design rights, trade name rights, as well as, if applicable, the right to make applications for the registration of such rights. The Customer undertakes to respect the intellectual property rights of the Seller at all times. This means, among other things, that the Customer shall refrain - and shall ensure that the parties affiliated with it refrain - from reproducing the delivered goods (or having them reproduced) and/or marketing prunings or other plant parts (or having the same marketed).

13.2. Each infringement of the Seller's intellectual property rights, in particular the plant variety right or the prohibition on reproduction as described above, shall make the Customer liable to pay, by operation of law and without the need to issue any notice of default, a lump sum of five thousand (5,000) euros per infringement, without prejudice to the Seller's right to claim higher demonstrable damages from the Customer

and/or third parties. The aforementioned lump sum shall be independent of any consequences in terms of agreements or contracts relating to the plant variety right over the species concerned.

- 13.3. The Customer shall not acquire any intellectual property rights from the Seller and shall fully indemnify the Seller against third-party claims relating to the Seller's intellectual property rights that are used by the Customer in an unlawful or non-authorized manner.

14. **Empties**

14.1. **WOODEN CONTAINERS**

- 14.1.1. Pallet boxes and pallets shall only be taken back if they are presented to the Seller in Rijkvorsel in an undamaged, empty and FRANCO carriage paid condition, in conformity with the following conditions:
- 14.1.1.1. Return is possible until a maximum of three (3) months after collection of your order, subject to prior contact with our sales back office to check your balance;
 - 14.1.1.2. Reimbursement shall only be possible if the Customer has a negative balance (negative = accepted quantity is greater than the returned quantity). A positive balance shall not be registered or refunded;
 - 14.1.1.3. Only pallet boxes and pallets of similar quality to our delivery quality will be taken back.
- 14.1.2. If inferior containers are brought in, the Seller reserves the right to charge for the processing and disposal of the inferior containers as waste.
- 14.1.3. Containers with an ISPM-15 certificate or other exclusive properties will not be taken back, except at the applicable rates for regular containers.

14.2. **CC CONTAINERS**

- 14.2.1. CC plant trolleys are immediately exchanged or processed through the official CC administration.
- 14.2.2. If the Customer does not return the CC trolleys to the Seller within the required time as per the deadline stipulated by the Seller, the Seller reserves the right to charge the costs thereof and to recover from the Customer any further damage such as rental costs, suffered in connection with the same.
- 14.2.3. In case of damage or loss of multi-use and/or durable packaging material, the Customer shall be bound to reimburse the repair or replacement cost to the Seller along with any further damage such as extra rental costs or purchase value, which the Seller may have suffered in this connection.
- 14.2.4. All disputes relating to the quality of CC trolleys and its associated plates shall be settled on the basis of the general quality instruction of the CC Central Office.

15. **Severability**

- 15.1. To the extent possible, the provisions of these General Terms and Conditions and of the Agreement shall be interpreted in a manner that is valid and enforceable under applicable law. In case of a difference in interpretation between the Dutch version of these General Terms and Conditions and the version in another language, the Dutch version shall prevail.
- 15.2. The (partial) nullity, unenforceability, non-opposability or unenforceability of one or more provisions of these General Terms and Conditions or of the agreement shall not affect the application of the remaining provisions and or the validity thereof.
- 15.3. The parties shall endeavour to replace any provision deemed null and void, unopposable, or unenforceable with a provision that corresponds to the intentions of the parties.

16. **Applicable law and jurisdiction**

- 16.1. All agreements concluded with the Seller as well as any disputes relating thereto shall be exclusively governed by Belgian law, to the exclusion of the Vienna Sales Convention.
- 16.2. In the event of disputes arising from the agreement or these General Terms and Conditions, which form an integral part thereof, the Enterprise Court of Antwerp, Turnhout Division, shall have exclusive jurisdiction.