

ANTHOS PURCHASE CONDITIONS NURSERYSTOCK

Article 1 Definitions

1. Buyer: The party who undertakes to purchase what has been agreed;
2. The Seller: The party who undertakes to deliver what has been agreed;
3. Batch: the entire number of products of each type delivered in a single delivery, unless a mixed purchase has been made or a purchase has been made, sorted according to size in accordance with the purchase agreement, in which latter case, each size is considered to be a Batch;
4. Products: woody crops, perennials, cuttings, seeds, grafts, ophthalmic eyes, flower bulbs and related and supplied items, including non-returnable packaging material, whereby the foregoing is understood in the broadest sense;
5. Own Cultivation: the Products that are cultivated by the Seller itself or that are cultivated by third parties for the account and responsibility of the Seller, including contract cultivation;
6. Size : for all products - unless otherwise agreed - the size that is determined by the quality standards that are customary for that product;
7. Hidden Defect: a defect in the Product that can only reasonably be discovered by the Buyer after expiry of the limitation period for complaining about non-hidden defects;
8. Business Day: Any day that is not a Saturday, Sunday nor a statutory public holiday;
9. Agreement: The oral agreement and/or agreements in writing between the Buyer and the Seller concerning the delivery of products. The term 'in writing' encompasses fax, e-mail and EDI messages.

Article 2 Applicability

1. These purchase conditions apply to all agreements between the Buyer and Seller concerning the delivery of Products. The terms and conditions of the Seller are emphatically rejected.
2. Deviations from these purchase conditions are only valid if explicitly accepted in writing by the Buyer and deviations apply only to the agreement to which they relate.
3. If any provision of these purchase conditions is null and void or is annulled, the other provisions will remain in full force.

Article 3 Realisation of the agreement

1. An agreement can be concluded directly between the parties or through the type of intermediary mechanism customary in the sector (including auctions).
2. Prices are stated in Euros per piece, per 1000 pieces, or kilograms and excluding VAT.

Article 4 Transfer of obligations arising from an agreement

The Seller may only transfer its rights and obligations under an agreement (in whole or in part) to a third party after having obtained the prior written consent of the Buyer.

Article 5 Payment

1. The Seller and the Buyer establish in mutual consultation the payment deadline applicable to the purchase agreement.
2. In the event of agreements that have not been made through the intermediary mechanism customary in the sector (including auctions), the Buyer is entitled at all times to set off those amounts payable by the Buyer to the Seller with all those amounts payable by the Seller to the Buyer, regardless of the reason for such amounts being owed.

Article 6 Delivery

1. Delivery takes place by delivery of the Products by the Seller to the Buyer on the date, and at the place and/or the time as agreed. Agreements for several partial deliveries are regarded as the same number of obligations to deliver on a specific date and/or at a specific time. Agreed delivery dates count as deadlines. Not meeting a deadline constitutes a breach of contract without any warning or notice of default being required.
2. Delivery takes place at the expense and risk of the Seller. If it has been agreed that the Buyer arranges transport, then delivery shall take place at the expense and risk of the Buyer.
3. In the event of on-demand delivery, the Seller is obliged to deliver the products by the agreed deadline after the Buyer has called the delivery on-demand, whereby the Buyer is obliged to take the delivery by that deadline.

Article 7 Packaging

1. The Seller is obliged to make its delivery in the packaging provided by the Buyer or agreed with the Buyer.
2. If the Buyer provides reusable packaging, the Buyer must provide the packaging to the Seller on time and at its own expense. The Seller must treat the packaging with due diligence and in case of damage to or loss of the

packaging, the Seller is obliged to pay the actual damage, whereby compensation is paid based on the value for new packaging.

3. If it has been agreed to deliver using the Seller's reusable packaging, the Buyer must return the packaging at its own expense within 45 working days at the latest or after a corresponding request to do this has been made by the Seller. If the Buyer is negligent in this respect, then Seller is entitled to collect the packaging from the Buyer. The costs thus incurred will be borne by the Buyer.
4. If delivery has been agreed upon by the Seller in packaging that is only suitable for single use, then this single-use packaging can be charged to the Buyer at cost price.
5. If the Buyer refuses a delivery, then if the delivery was made using the Buyer's packaging, the Seller must return the packaging to the Buyer within 10 working days after the refused delivery is back in the Seller's possession. In case of a legitimate refusal, the costs of returning the delivery are at the Seller's expense. If the packaging is not returned within the stipulated deadline, then the Seller shall be obliged to compensate the Buyer for the value of new packaging, unless the Buyer makes a claim for the return of its own packaging.

Article 8 Information

1. At the time of delivery, the Seller shall provide the Buyer with information that includes (1) the details of the Seller, (2) the specifications of the Products, (3) information regarding any agreed Classifications and (4) other information that is relevant to the merchantability of the Products, including the requisite proofs of quality. The receipt of this information does not affect the right of the Buyer to make a complaint.
2. The Seller is obliged, if the Buyer so requests, to promptly provide a statement of the planted quantity, with a breakdown according to surface area and planting stock, as well as the location, genetic origin and status of the crop. Furthermore, the Seller grants the Buyer and its representatives the right to inspect, test and check crops in the field.
3. If and as soon as Seller can reasonably foresee that it will not be able to fulfil its obligations properly, for example if the agreed quantity cannot be delivered and/or the class or sizing changes and/or the agreed date of delivery cannot be met, then the Seller must immediately notify Buyer in writing. This notification does not release the Seller from its duty to pay compensation.

Article 9 Retention of title

The Products that are supplied in a Delivery remain the property of the Seller until such time as the Buyer has fulfilled all related payment obligations, including any obligation to pay interest and/or costs. Nevertheless, the Buyer is free to make payment for the delivered goods in a manner that is in accordance with the normal practice of the Buyer's business.

Article 10 Plant breeder's rights and intellectual property

The Seller guarantees that the products brought onto the market by the Seller in the context of contractual performance of the Agreement do not infringe plant breeder's rights or other intellectual property rights of third parties. In the event of a breach of this guarantee, the Seller will fully indemnify and compensate the Buyer for all amounts that the Buyer must pay to this third party.

Article 11 Quality

1. The Seller guarantees that the quality of the Products at the time of delivery to the Buyer is in conformity with what Buyer may expect, as well as in accordance with the applicable guidelines and regulations of the competent government authorities, inspection services and other relevant bodies that stipulate that Batches must confirm with generally prevailing or generally accepted guidelines and regulations concerning phytosanitary matters, quality, quality classification, tolerances with respect to colour, dimensions, etc., including but not limited to the inspection services (Naktuinbouw, BKD).
2. The Seller furthermore guarantees that the Products that it will deliver originate from the most recent harvest.

Article 12 Complaints about shortcomings

1. The provisions in these purchase conditions regarding complaints due to shortcomings do not affect the other rights that accrue to the Seller and the Buyer in the event of such complaints.
2. The limitation period for complaining about a defect that is not a Hidden Defect is five working days after the day of delivery to the Buyer.
3. Complaints regarding a Hidden Defect must be notified shortly after the Hidden Defect can reasonably be expected to have been identified by the Buyer.
4. Complaints after the first growth period following the delivery are only possible in case of non-authenticity or impurity. Complaints must be communicated in writing - including electronically - with as much detail as possible of the complaint.
5. Until such time as a final decision has been made on acceptance or refusal of the delivered Products, then either the Buyer or the Seller, depending on which Party has the Products in its possession, is obliged to look after these Products with due diligence.

Article 13 Compensation

1. In the event of an attributable shortcoming in the fulfilment of an obligation by one of the parties, the injured party has all rights under the law, including the right to full compensation for the damage suffered and the costs incurred, unless expressly provided otherwise in these purchase conditions or in the Agreement.
2. If the Seller has not complied with the obligation to provide information as described in Article 8 paragraph 4, the Seller is obliged at all times, even in case of force majeure, to pay full compensation.
3. When the size of a Batch changes during the growing season to such an extent that at the time of delivery, the products no longer meet what has been agreed, then the Buyer is entitled to dissolve the agreement without the Seller being entitled to compensation.

Article 14 Force majeure

A shortcoming cannot be attributed to either the Buyer or the Seller, if it cannot be attributed to that party's account due to [negligence](#), nor by operation of the law, nor by a [legal act](#) nor by [prevailing commercial standards](#).

Article 15 Bankruptcy and suspension of payments

Each party is entitled - without prejudice to its rights under law - to dissolve the agreement, without any obligation on the part of the dissolving party to pay damages, if the other party has been declared bankrupt or has applied for a suspension of payments.

Article 16 Applicable law and arbitration

1. This agreement shall be governed by Dutch law. The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
2. All disputes, including those which are only regarded as a dispute by one of the two parties, relating to the agreement to which these purchase conditions apply, arising from the resultant or arising from these purchase conditions themselves, are settled by means of arbitration by the Dutch Court of Arbitration for Nurseries, or submitted to the district court in The Hague. In those cases where this agreement has been declared applicable to agreements with sellers outside the Netherlands, a dispute will be brought before the district court in The Hague.