

GENERAL CONDITIONS OF SALE OF SCHERPENHUIZEN B.V.

Whereas it is advisable to apply sales conditions to all sales contracts concluded by it in the context of its business, Scherpenhuizen B.V., with its registered office at De Schakel 7, 5651 GH Eindhoven, or, as the case may be, its legal successor(s) and/or companies allied to it, hereinafter to be referred to as “the seller”, established the following sales conditions:

Article 1: Applicability

1. Sales contracts that the seller concludes with third parties, hereinafter to be referred to as “the buyer”, will be subject exclusively to the following conditions, unless explicitly agreed upon otherwise.
2. Terms that depart from these conditions will be binding only if agreed upon in writing.
3. Applicability of general (purchase) conditions applied by the buyer will be explicitly excluded by us. A reference by the buyer to its general (purchase) conditions will not be accepted by us.

Article 2: Offers, Quotations

1. All our offers will be without obligation.
2. If the buyer has not, immediately upon receipt, lodged objection by registered letter against the contents of our confirmation of order, our confirmation of order will be deemed to accurately reflect the contract.
3. Any subsequently made additional arrangements of changes will only bind the seller if these have been confirmed by the seller in writing or, as the case may be, in so far these have been performed.
4. With respect to activities and deliveries for which, by their nature and scope, no quotation or, as the case may be, confirmation of order has been sent by us, the invoice / delivery voucher will be considered to be also the confirmation of order, which will equally be deemed to accurately and completely reflect the contract.
5. Orders by telegraph or telephone will be accepted by us only at risk of the buyer. Any ensuing inaccuracies will be for account and for risk of the buyer.

Article 3: Prices

1. All our prices will be in EURO and will be excluding transport costs, unless stipulated otherwise.
2. Unless explicitly agreed upon otherwise, our prices will be exclusive of VAT.
3. We will not be obliged to honour a contract at a listed price that is evidently the result of a printing or writing error.
4. Payment must be made exclusively in the place where our registered office is located or, as the case may be, at the offices of a bank to be designated by us.

Article 4: Place and Method of Making Delivery

1. All deliveries will be deemed to be made in the place where the registered office of the seller is located.
2. Delivery will be made ex warehouse of the seller. If it has been agreed that transport will be performed by or per instructions of the seller, delivery will have been made when the goods have been loaded onto the mode of transport.
3. When the goods are stored, by or per instructions of the seller, for the buyer on the premises of the seller or of third parties, delivery will have been made the moment that the goods will have been placed in storage. From this moment onward the goods will be for account and risk of the buyer.
4. Periods of delivery agreed upon between the seller and the buyer will consistently be stated by approximation. These periods will therefore not be absolute periods of delivery. The seller will be in default only at the moment that the buyer sends it a written demand, in which it is granted a reasonable period to as yet make delivery of the goods purchased by the buyer. The notice of default will not be required when de buyer is to understand from an announcement of the seller that the latter will not proceed, not as a consequence of a written demand either, to make delivery of the goods purchased by the buyer. Minor exceeding of periods of delivery will not entitle the buyer to dissolve the contract with the seller.

Article 5: Risk

The risk entailed with the moveable property will be for the buyer from the moment delivery of the moveable property has been made and, if buyer fails to afford its cooperation to making of the delivery, from the moment that taking delivery has been refused. In such an event the seller will place the moveable property in storage for account of the other party. Moreover, the seller will be entitled to dissolve the contract or demand compliance with the contract and/or claim damages.

Article 6: Quantity Delivered

The quantity delivered will be deemed, in terms of number and weight and in terms of requirements prescribed under public and/or private law, to satisfy what has been agreed upon, prescribed, respectively, subject to counterproof to be supplied by the buyer.

Article 7: Reservation of Title

1. The seller will remain owner of all goods sold to the buyer until the moment that the buyer will have fully satisfied all financial obligations towards the seller.
2. Our title will include the new product created as a result of the incorporation of the goods delivered under reservation of title. The buyer will manufacture the new product for us, while excluding its own acquisition of title, and will hold this for us. This does not result for him in any claims towards us.
3. In the event of incorporation of our goods delivered under reservation of title together with goods of other suppliers, whose title also includes the new product, we will acquire together with this other supplier – while excluding any acquisition of joint title by the buyer – joint title to the new product at its full value (including the added value) as follows:
 - a. Our share in the joint title will be equal to the ratio of the invoice value of our goods delivered under reservation of title to the total invoice value of all incorporated goods delivered under reservation of title.
 - b. Should there remain a residual share, as yet not coming under reservation of title because other suppliers have failed to extend the reservation of title to include the value increase by the buyer, then our share in the joint title will be increased by this title share. Should, however, other suppliers have also extended their reservation of title to exclude this title share then to us will attach in relation to him only a share to be established from the ratio of the invoice value of our goods delivered under reservation of title to the invoice value of the incorporated goods of these other suppliers.
4. The buyer will already now transfer to us as security his claims from the sale of the goods delivered under reservation of title from our present and future deliveries, plus all accessory rights in the scope of our title share. In the event of incorporation in the context of a contract for contract work, the claim in wages will already now be transferred to us in the amount of the proportionate amount of our invoice for the incorporated goods delivered under reservation of title.
5. For as long as the buyer duly complies with his obligations from the commercial relation with us he will be permitted to dispose of the goods included in our title in the context of normal business practices and personally collect the claims transferred to us. Should the buyer be in default in the compliance with his payment obligations, or in the event of reasonable doubt concerning the solvability or creditworthiness of the buyer, then we will be entitled to collect the ceded claims and to take back the goods delivered under reservation of title, whereby withdrawal from the contract shall apply only after we have declared such to be the case explicitly in writing.
6. When the value of the securities granted to us exceeds our claims by more than 10% then we will, at the request of the buyer, at our discretion release securities to this extent.
7. Payments made by cheque or draft will be considered as having been settled only after collection of the draft by the seller.

Article 8: Force Majeure

1. In a force majeure situation the delivery and other obligations of the seller will be suspended. The obligations will revive if compliance with the obligations is once again reasonably feasible.

A force majeure situation on the part of seller will at least be:

 - unforeseen circumstances, relating to persons and/or material that the seller uses or is accustomed to use in the performance of the contract, which are of such a nature that as a result the performance of the contract becomes unfeasible or, as the case may be, so difficult and/or disproportionately costly that compliance with the contract can no longer be reasonably demanded;
 - strikes, wars;
 - circumstances whereby a performance, which is relevant in connection with the performance that the seller is personally required to deliver, is not, untimely or unduly delivered to it.
2. In the event of a force majeure situation the seller will not be obliged to pay any damages, unless he enjoyed a benefit in connection with the non-compliance that he would not have enjoyed in the event of due compliance. In such an event the seller will not be obliged to pay out an amount in damages higher than the amount that corresponds with the enjoyed benefit.

3. If, at commencement of the force majeure situation, the seller has already partially satisfied its obligations, or is able to satisfy its obligations only partially, then it will be entitled to separately invoice the portion already delivered or, as the case may be, deliverable, and the buyer will be obliged to settle this invoice as if it concerned a separate contract.

Article 9: Subject-to-Harvest Clause

Contracts between seller and buyer will consistently be realised subject to the cancelling conditions of a disappointing harvest in terms of quantity and/or quality of agrarian products and/or rejection of these products by the relevant qualified agencies. If the seller proves unable, as a result of a disappointing harvest or, as the case may be, rejection of the agrarian products by the competent agencies, to make delivery of the sold agrarian products to the buyer then the seller will be competent to invoke, through a single announcement to the buyer, the cancelling conditions. The seller will not in such an event be obliged to make delivery of substitute agrarian products and will furthermore not be liable for damage that has arisen due to the coming into effect of the cancelling conditions.

Article 10: Obligations on the Part of the Seller

1. At the time a delivery is made by the seller (as intended in art. 4) the buyer must immediately check the moveable property. In doing so the buyer must verify whether the delivered moveable property satisfies the contract, i.e.:
 - a. whether the accurate moveable property has been delivered;
 - b. whether the delivered moveable property satisfies the quality requirements that may be imposed in terms of normal use and/or commercial purposes;
 - c. whether the delivered moveable property agrees in terms of quantity (number, quantity, weight) with the contracted terms. If the deficiency is less than 10 % of the total then the buyer will be obliged to fully accept the delivered moveable property.
2. If delivery of the moveable property is made at a third party, who will hold said property for the buyer, then the buyer will be obliged to perform the inspection intended in sub-clause 1, or have such performed, on the day delivery is made.
3. If the buyer wishes to lodge a complaint, he will be bound to report this to the seller and such as soon as possible after discovery of the deficiency, or after he should have discovered the deficiency, but no later than within 6 hours upon delivery. This report must, if it is verbal, immediately be confirmed in writing (telex, fax, letter, bailiff's writ) to the seller. If the buyer fails to lodge a complaint on a timely basis, which is to say no later than within 6 hours upon delivery, the right to lodging a complaint will lapse.
4. The relevant consignment must remain available in its entirety and the buyer must afford the seller the opportunity to view the moveable property.
5. At all times the buyer will be bound to ensure like a prudent debtor the preservation of the moveable property.
6. In the event that a complaint is found to be without grounds then the buyer will be obliged to reimburse all costs incurred by us.

Article 11: Liability on the Part of the Seller

In the event of a force majeure situation the seller will not be liable for damage on the part of the buyer that results from a deficiency of the obligation. If the situation involves attributable deficiency in the compliance with the obligation on the part of the seller then the liability on the part of the seller will be limited at a maximum to the amount that the seller will have billed the buyer in the context of the contract with the latter. The liability of the seller will confine itself to direct damage. The seller will never be liable for consequential damage.

Article 12: Packaging Material

1. Packaging material delivered via the seller, which will include pallets, crates and boxes, for which a deposit has been charged, will be accepted back at the invoice price applicable at the moment of returning, possibly increased by a standard packaging material fee under the relevant applicable arrangement. The cask to be returned must be clean and bright to such an extent that it is fit to contain fresh, edible horticultural products.
2. When packaging material is returned via seller's own transport modes, the packaging material must be ready, i.e. pre-sorted, for transport.
3. Packaging material not delivered via the seller will only be accepted back to the extent that the seller carries the relevant products in its own assortment.

Article 13: Payment

1. Payment of goods delivered must be made within 2 weeks upon the date of the invoice relating to the delivery, unless parties have departed from this arrangement by written contract.

2. Any payment of outstanding invoices will be deemed to have been made to settle the oldest outstanding items.
3. Offsetting against any other claim that the buyer has, or thinks he has, will not be permitted unless the seller has sent a credit note to the buyer or has been ordered by judicial verdict to pay a sum of money to the buyer.
4. When exceeding the period mentioned in sub-clause 1, the buyer will owe an interest charge equal to the legal interest applicable at that moment in the Netherlands plus 1 %, to be computed over the total invoice amount, for each month or part of a month that the buyer will continue to be in default in payment, without prejudice to the right of the seller to statutory indemnification.
5. If after concluding of the contract information about the buyer proves unfavourable to such an extent that the future payment will be subject to evident risk, and this factual status of the buyer was not known to the seller, then the seller will be entitled to require a bank guarantee for or advance payment of the purchase price without allowing for the payment conditions agreed upon in the contract. The seller will be required to allow the buyer a period of 3 workdays to accomplish this, and failure will entitle the seller to refuse delivery and to claim damages if appropriate.

Article 14: Dissolution and Liability on the Part of the Buyer

1. If the buyer does not satisfy (on a timely basis) his obligations as defined above then the seller will be entitled to suspend any further delivery. In such an eventuality the buyer will be in default. In such an event the seller will be competent to dissolve the contract without judicial intervention by means of a written statement and the buyer will be liable for all damage incurred by the seller, which will include loss of profit, financial loss, product damage, costs and interests, transport costs, commission, judicial and extra-judicial costs as well as any and all costs related directly or indirectly to the purchase.
2. Any and all extra-judicial costs incurred by the seller in the event of non-compliance (untimely or undue compliance) on the part of the buyer will be for account of the buyer. The extra-judicial costs incurred by the buyer will be 15 % of the total sum payable by the buyer to the seller, up to a maximum of EUR 5,000 for collection measures inside the Netherlands and EUR 15,000 for collection measures outside the Netherlands, such to be at a minimum of EUR 200.

Article 15: Industrial and Intellectual Property Right

The seller explicitly reserves all rights of intellectual and/or industrial property (brands) in connection with products delivered by him.

Article 16: Applicable Law

1. All purchase contracts concluded with the buyer will be exclusively subject to the laws of the Netherlands. The contract will be deemed to have been concluded in the place where the registered office of the seller is located, where this contract will be performed in terms of delivery and payment.
2. The wording in the Dutch language will be the criterion. In the event of transactions with foreign buyers, applicability of the *Weens Koopverdrag* (CISG) will be explicitly excluded.

Article 17: Disputes

1. All disputes ensuing from contracts concluded with the seller, including the claim to payment of overdue monetary amounts, will be settled with exclusion of any other agency by the competent Court of the place where the seller has its registered office.
- As a departure from the provisions in sub-clause 1, parties may agree to cause settlement of the dispute to be pronounced by a different agency.



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