

Royal Trade Association for Nurserystock and Flowerbulbs(Anthos)

Terms and conditions for sales to the United States of America (hardy nursery stock section)

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A. General

1. These terms and conditions only apply to agreements with regard to which one of the parties is a member of Anthos at the time of conclusion of the agreement, which – within the framework of these general terms and conditions – is also deemed to include other partnerships who are (in)directly affiliated to an Anthos member company (e.g. sister company, subsidiary or parent company of the member).
2. If an agreement refers to these terms and conditions and this agreement only involves non-members, the terms and conditions below do not apply.
3. Furthermore, if an agreement refers to these terms and conditions while neither party is member of Anthos, the law and copyright law are violated.
4. When an order is given, by mail, cable or otherwise, to a member of the Royal Trade Association for Nurserystock and Flowerbulbs(Anthos) (hereinafter called the Association) by a buyer in the United States and is accepted by the seller, in writing or by shipment of the goods, the contract between buyer and seller shall be deemed to include all of the terms and conditions hereafter set forth. The contract shall not be deemed to contain any additional conditions, and no representations or warranties, expressed or implied, are made by seller except as hereafter expressly set forth, unless such additional conditions, representations or warranties are in a writing signed by seller.

B. Prices

Prices are quoted nett ex seller's nursery. Prices are based on a rate of exchange of \$ 1 to Euro 1. In case of a variation in the rate of exchange at time of shipment of more than 5% either way the total amount due will be increased or decreased by the percentage in excess of 5%.

C. Payment

Payment must be made in Euro and is due thirty (30) days after date of invoice. The buyer is not entitled to make any deduction or reduced payment and all calls for compensation are explicitly excluded. In the event of late payment, the seller will be entitled to charge 2% interest per month, being approx. twenty four percent (24%) per annum or fraction thereof, as of the due date, and also to charge any legal and extra juridical costs incurred in collecting the amounts owed; the extra juridical costs owed will never be less than 15% of the sum to be collected.

D. Cancellation by Seller

Seller may cancel a contract at any time on written notice to buyer (1) if delivery cannot be made because of shortage or failure of crop or any other cause beyond seller's control, or (2) if prior to shipment buyer has not yet settled any overdue account with seller or with any other member of the Association for reasons which the Association declares to be insufficient, or (3) if, after demand by seller, buyer has failed to make arrangements satisfactory to seller assuring seller of payment of the account or (4) if the credit limit changes for the buyer in such a manner that, because of that, the value of the goods or services (yet) to be delivered can no longer be covered by the credit insurance taken out by the seller.

E. Cancellation by Buyer

If buyer cancels an order before shipment, buyer shall pay seller and seller shall be entitled to collect and recover from buyer an amount equal to thirty percent (30%) of the invoice price as liquidated damages. Upon shipment of the goods by seller, title shall forthwith pass to buyer and thereafter buyer shall be liable to seller for the full amount of the invoice price plus the other costs, expenses and charges herein provided for.

F. Risk of Loss; Packing and Shipment; Insurance

1. Seller fulfills his obligations under the contract by placing the goods in transit to buyer at seller's nursery and thereupon all risk passes to buyer.
2. Unless buyer instructs otherwise prior to the making of shipment, seller is authorized to act on buyer's behalf and for buyer's account as buyer's agent in making all necessary arrangements for the packing, insuring and shipment of the goods.
The cost of packing, examination by the Holland Phytopathological Service, shipping, freight and like expenses are for the account of buyer and must be paid by buyer upon delivery of the goods. Seller will arrange for insurance for buyer's account and buyer must pay the premium for such insurance upon delivery of the goods.

G. Time of Delivery

If seller has contracted with buyer to make delivery by a specified time, seller shall not be liable to buyer for non-delivery by such specified time if such non-delivery is caused by frost, delays in transportation, or any other cause beyond seller's control.

H. Seller's General Responsibility and Claims by Buyer

1. Seller makes no warranty, expressed or implied. Seller is not responsible for damage by heating, frost, sea water or other cause during transportation nor for any delay occurring during transportation. The generic authenticity guaranteed by the seller is based on the List of names of woody plants and the List of names of perennials of the Research Station for Nursery Stock at Boskoop (Holland). Seller is not responsible for the result of planting or forcing of any goods supplied. Seller guarantees only that all varieties will be true to name and seller will refund an amount, not exceeding the invoice price, upon proof satisfactory to seller that the goods shipped failed to comply with this guarantee, provided, however, that unless otherwise instructed by buyer prior to shipment, seller shall have the right to send a substitute nearest to colour and size. Damages accruing from absence of necessary import permits are for the account of the buyer.
2. Buyer shall be deemed to have waived all claims against seller with respect to any shipment unless such claim is made to seller in writing within eight (8) days after the goods or documents controlling the goods are received by buyer, except those referring to plants not being true to name.

I. Disputes:

1. All disputes will be subject to the jurisdiction of the American Courts. American law shall govern any dispute.
2. In the event of a dispute between the contracting parties concerning the quality of the products delivered, and if a mutual solution cannot be found, either of the parties may put the matter before the secretary of the Association, who will attempt to arrive at an out-of-court settlement.
3. If an out-of-court settlement such as that intended in subparagraph 1 above is not reached within two months, the parties may lodge a joint request with the secretary of the Association for the appointment of an arbitration board. This board will comprise three arbitrators, who, to the exclusion of a decision reached to the contrary by an ordinary court, are authorised to act as good arbitrators in reaching an arbitration ruling or a decision to grant an arbitration award, which will be binding for both parties. The arbitration costs will be borne in equal proportions by both parties.

J. Legal and Beneficial ownership

1. The legal and beneficial ownership of the goods shall remain with the seller until full payment of the price (including any interest charged hereunder) has been received from the buyer (each order being considered as a whole), provided that if the goods or part thereof are resold by the buyer before he has made full payment to the seller as aforesaid then the buyer shall forthwith hold upon trust for the seller such sum as shall be equal to the amount then owing to the seller in respect of the goods whether or not the proceeds of such resale shall have been received by the buyer, provided that nothing herein contained shall affect the seller's rights against the buyer's customer.
2. The seller shall have absolute authority to retake, sell or otherwise dispose of all or any part of the goods in which the title remains vested in the seller.
3. For the purposes specified in condition J.2 hereof the seller or any of its agents or authorised representatives shall be entitled at any time without notice to enter upon any premises in which the goods are kept or growing.

K. Specific obligations of the buyer

1. The buyer is obliged to advise customers about the use of the merchandise supplied and ought, where relevant, to point out to customers the potential hazards associated with the (internal) use of this merchandise. The buyer is obliged to safeguard the seller from any claims for damage by third parties, if the buyer has neglected to adequately inform their customers about the use of the merchandise.
2. With regard to cases in which it is apparent from the seller's catalogue or from the agreement entered into by the parties that a variety is protected by plant breeder's rights - which is indicated by a letter R or P after the name of the variety concerned - the buyer will be bound to fulfil all the obligations the said rights entail. Where a variety is either not or no longer protected by plant breeder's rights in the Netherlands, but is still subject to patents in the United States of America, the buyer will nevertheless be bound to fulfil all obligations entailed by the said rights. Any failure to comply with these stipulations will result in the buyer being liable for the losses incurred by the seller or any third party.

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