

## ROYAL TRADE ASSOCIATION FOR NURSERYSTOCK AND FLOWERBULBS (ANTHOS)

Terms and conditions for sales to Great Britain and Ireland (hardy nursery stock section)

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### A. General

- 1.1. 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).
- 1.2. If an agreement refers to these terms and conditions and this agreement only involves non-members, the terms and conditions below do not apply.
- 1.3. Furthermore, if an agreement refers to these terms and conditions while neither party is member of Anthos, the law and copyright law are violated.
- 1.4. The mailing, telefaxing or personally placing of an order implies, if the order is accepted, an agreement to these terms and conditions.

### B. Prices

1. Prices are quoted nett ex seller's premises in Euro.
- 2.1 If the buyer requires carriage-paid prices inclusive of freight and insurance costs an appropriate percentage will be added to each invoice total or to each price quoted, to cover seller's expenses.
- 2.2 This percentage and/or the indication Carriage Paid must be clearly written on all orders and/or quotations and be accepted by both parties.
- 2.3 This condition B.2 will only apply to deliveries which exceed Euro 2269 in nett plant value.
- 2.4 This condition B.2 shall only apply if it is clearly so stated to apply on all relevant documents and the invoice.
3. All accounts must be settled in Euro.
4. Prices in the catalogue are quoted per ten, per hundred and per thousand and subject to market fluctuations. Not less than 25 of any one article will be charged at the 100 rate and not less than 500 will be charged at the 1000 rate.

### C. 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 C 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.

### D. Payment

All accounts are due thirty (30) days nett after date of invoice. Interest will be charged at the rate of 12 per cent per annum or 4 per cent above Barclays Bank Plc. base rate for the time being in force, which ever shall be the higher, on overdue accounts calculated on a daily basis.

### E. Request for delivery

1. If the buyer does not request delivery of the goods as agreed or if the buyer does not request delivery of the goods in time, then he will be automatically in breach of contract.
2. In the event of Condition E1 the seller is entitled to elect either to store the goods at the expense and the

- risk of the buyer or to sell the goods to a third party.
3. The buyer remains obliged to pay the full price, together with interest calculated on the basis referred to in Condition D and liquidated damages of 30% of the price or such higher damages as the seller is able to prove. In such a case the net profit from the sale to the said third party will be deducted from this sum.
  4. If the credit limit changes for the purchaser 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 purchaser, the purchaser is entitled to cancel any further deliveries.

**F. Postponement of seller's obligations**

1. The seller has the right to postpone his performance under the agreement as long as the buyer fails to perform any of his obligations under this agreement.
2. In the event of condition F1 any loss or damage caused to the goods shall be borne by the buyer.

**G. Cancellation of the agreement by the seller**

1. All goods are sold subject to shortage or failure of crop or other cause beyond the seller's control in which event the seller shall not be under any liability for non-delivery or otherwise.
2. If at the time of shipment the buyer has overdue accounts with the seller or with any other member of the Association the seller reserves the right to withhold shipment until such accounts have been paid and/or request the buyer to pay cash on delivery for any undelivered goods and/or to provide security acceptable to seller prior to the delivery.
3. Where the goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the buyer in respect of any one or more instalments shall not entitle the buyer to treat the contract as a whole as repudiated.

**H. Cancellation of the agreement by the buyer**

If the buyer cancels an unfulfilled order he shall pay to the seller at the seller's option 30% of the price as liquidated damages, or such higher damages as the seller is able to prove.

**I. Packing and shipment**

1. All goods are sold, taken and accepted at seller's premises.
2. All costs of packing and/or packing material will be for the account of the buyer, unless otherwise agreed.
3. If condition B.2 does not apply then all goods travel at buyer's risk and expense from seller's premises and all additional charges such as costs of freight, carriage and delivery are for the account of the buyer. Insurance will be provided for at buyer's expense, unless contrary orders are given in writing.

**J. Time of delivery**

Frost and other causes beyond control are accepted by the buyer as force majeure, if any time of delivery has been contracted for.

1. All dates for delivery are approximate only and the seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the seller in writing.
2. The seller shall not be liable to the buyer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the seller's obligations in relation to the goods if the delay or failure was due to any cause beyond the seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the seller's reasonable control:
  - 2.1 Act of God, explosion, flood, tempest, frost, fire or accident;
  - 2.2 War or threat of war;
  - 2.3 Acts, restrictions, regulations, by laws or measures of any kind on the part of any governmental parliamentary or local authority;
  - 2.4 Import or export regulations or embargoes;
  - 2.5 Strikes, lock outs or other industrial action (whether involving employees of the seller or of a third party).

**K. Guarantee and complaints**

1. The seller guarantees all plants to be true to name and conform to invoice description but otherwise gives

no warranty, expressed or implied.

In any event the seller accepts no responsibility beyond the cost of replacing any item at fault or making an allowance not exceeding the price of the goods concerned.

2. The seller is not responsible for loss or damage by any insured risk including heating, frost or seawater or otherwise during transit or for any delay in transit.  
Any such complaint should be made directly to the insurers within 8 days after receipt of the goods or such other time as the policy requires.
3. The seller is not responsible for the result of planting or forcing of any goods supplied.
4. No complaints, other than complaints as to plants not being true to name will be entertained unless made in writing to the seller within 8 days after arrival of the goods.

#### **L. Insolvency of the buyer**

This clause applies if:

- 1.1 The buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of an amalgamation or reconstruction) or;
- 1.2 If an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the buyer or;
- 1.3 The buyer ceases or threatens to cease to carry on business or;
- 1.4 The seller reasonably apprehends that if any of the events mentioned above is about to occur in relation to the buyer and notifies the buyer accordingly.
2. If this cause applies then without prejudice to any right or remedy available to the seller, the seller shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **M. Disputes**

1. All disputes will be subject to the jurisdiction of the English Courts. English 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.

#### **N. 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. The seller can never be held liable for damage in excess of the net sum of the invoice for the goods supplied, or for that part of the net sum of the invoice that directly or indirectly relates to the claim for compensation, unless the buyer is able to prove that the damage is the result of the intention or gross culpability of the seller.  
The buyer indemnifies the seller against all claims for compensation brought by third parties.
3. 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 Great Britain and Ireland, 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.

**O. Right to inform the Royal Dutch Wholesalers Association for Flowerbulbs and Nursery Stock**

The buyer is aware of and accepts the seller's right to inform the Royal Dutch Wholesalers Association for Flowerbulbs and Nursery Stock of details of his buyers who fail to perform any of their obligations under any agreement with the seller, as well as details of any buyer who has become or is to the seller's knowledge and believe insolvent.

**P. General**

If any provisions in these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provisions in question shall not be effected thereby.

c Holland Plant Exporters Association 1994

June 2002

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