

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY FROM VREUGDENHIL BREEDING & SEEDS B.V.

Article 1: Applicability

1. These terms and conditions are applicable to all agreements between Vreugdenhil Breeding & Seeds B.V., (hereafter called: the seller), and the buyer, with regard to the sale, purchase and delivery of seeds in so far as one or more of these conditions have not been explicitly deviated from in writing by the parties.

Article 2: Offers, agreements, prices

1. Offers made by the seller are non-binding. A non-binding offer can be revoked by the seller up to three working days from the date of receipt of the acceptance by the buyer. Prices quoted in an offer are exclusive of sales taxes and/or any other tax or levy imposed by relevant authorities. Prices are given in Euro, EXW De Lier, Incoterms 2020.
2. The seller reserves the right to adjust its prices periodically. Any new price quotation supersedes the former quotation as regards orders placed after the date of the new quotation.
3. If in an order the required quantity differs from the seller's standard packing unit or its multiple, the seller will be free to supply the next higher quantity.
4. All given weights and numbers are net weights and numbers.
5. An offer made to the buyer or a sale agreement between the seller and the buyer does not imply and may not be interpreted by any means as an implied licence to the buyer with regard to any intellectual property on the seeds offered or sold.
6. No order which has been accepted by the seller may be cancelled by the buyer except with the agreement in writing of the seller and on terms that the buyer shall indemnify the seller in full against all loss (including loss of profit after selling the seeds at the best price readily obtainable and after deducting all reasonable storage and selling expenses), costs, damages, charges and expenses incurred by the seller as a result of cancellation.

Article 3: Order documentation

When placing its order, or at the seller's first request, the buyer must specify in writing what information, specifications and documents are required pursuant to the regulations of the country in which the delivery is made, such as those relating to: (I) invoicing and (II) transport, international certificates and other import documents or import statements. All costs incurred by the seller (I) to gain insight into the phytosanitary requirements applicable in the buyer's country and (II) to have the delivered seeds comply with these phytosanitary requirements shall be charged on one-to-one to the buyer by the seller and reimbursed by the buyer to the seller.

Article 4: Good crop and processing reservation

All deliveries are subject to the usual crop (harvest) and processing reservation, which implies a reservation on the part of the seller regarding delivery in accordance with the order due to factors and uncertainties within the natural production process, which factors and uncertainties, even if known, cannot always be controlled or influenced. In the event that the seller makes a justified appeal to this reservation, the seller shall not be obliged to deliver, but will, if possible, endeavour to deliver pro-rata quantities or comparable alternatives. In such a case the buyer is not entitled to any compensation whatsoever.

Article 5: Supply

1. The Incoterms 2020 will be applicable, in the event the seller and the buyer are not established in the same country. Delivery will take place ex works (EXW) De Lier, unless otherwise agreed.
2. If transportation is left to the seller, it will be executed in such a manner as deemed best by the seller. Any extra costs incurred by the seller as a result of special demands made by the buyer concerning transportation will be charged to the buyer.
3. The buyer is not allowed to return seeds to the seller, unless the seller gives permission thereto. The costs of possible return shipments shall be at the buyer's account.

Article 6: Delivery time

The seeds sold by the seller shall, provided that the ordered seeds are sufficiently available at the seller, be delivered within a period agreed between the buyer and the seller after the order date, unless otherwise agreed. An agreed delivery time, however, is not a final deadline. In the event that a delivery is overdue, the buyer shall therefore give the seller written notice of default in which it grants the seller a reasonable period of time to fulfill the agreement. Failure to deliver or late delivery shall not oblige the seller to pay any compensation to the buyer.

Article 7: Partial deliveries

The seller is allowed to effect partial deliveries of the seeds. This will not be applicable, however, if a partial delivery has no independent value. In the event of partial deliveries, the seller is entitled to invoice each delivery separately.

Article 8: Retention of title

1. The seller shall retain the ownership of all seeds delivered or to be delivered and/or the products resulting from the delivered or to be delivered seeds until the buyer to the seller has paid in full: (I) the purchase price and (II) all other claims because of failure of the buyer to comply with agreement(s).
2. In case the buyer does not comply with the obligations referred to in subsection 1 of this article, the seller is entitled to recover the seeds and/or the products resulting from the seeds belonging to him (or have them recovered) from the place where they are located, at the expense of the buyer. The buyer hereby grants the seller irrevocable power of attorney and permission to enter the premises at or in use by the buyer or to have them entered for that purpose in that case. The buyer does not have the right to claim any means of compensation. Seeds delivered by the seller and/or products arising from seeds delivered which are subject to retention of title pursuant to subsection 1 of this article a) shall be stored and/or used at all times in such a way that the seeds and/or products are easily identifiable as the seller's property, and b) may only be resold or used and sold in the context of normal business operations. In the event of resale, the buyer shall be obliged to stipulate a retention of title for the seller's benefit and shall impose the obligations of this article 8 on its customers.
3. The buyer is not permitted to pledge the seeds or to allow any other claim on them. The buyer hereby commits to pledging to the seller upon his first request to that end and who will then accept this pledge in that case, all seeds of which the buyer shall be (co-)owner by specification, investigation, mixing/blending with the seeds delivered or to be delivered by the seller, as well as all claims the buyer will have on their customers as a result of resale by the buyer to their customers of seeds that were sold and delivered to the buyer, such as security for everything the seller may claim or may have at some point in time from the buyer. The buyer shall sign a pledge deed drawn up by the seller upon seller's first request. The buyer has further irrevocably authorized the Seller by the applicability of these general terms and conditions and with the right of substitution, to pledge those seeds and claims as referred to before in this article to himself on behalf of the other party, repeatedly if necessary, and to do everything that is required for the pledging.

Article 9: Terms of Payment

1. Payment is due within 30 days from invoice date or as indicated otherwise by the seller on the invoice. In exceeding this term the buyer is automatically in default; the buyer owes an interest of 1% per month to the seller on the amount due as of the moment the default commences. During the period of default, the seller reserves the right to suspend or cancel further deliveries to the buyer.
2. In the event of liquidation or bankruptcy or suspension of payment on the part of the buyer, the buyer's payment obligations shall be immediately due and payable, and the seller shall be authorized to suspend further performance of the agreement or to dissolve the agreement, all of this without prejudice to the seller's right to seek compensation or any other legal remedy.
3. If payments in instalments were agreed upon between the parties, and the buyer defaults on one instalment, the full remaining amount will fall due immediately and without further notice. The interest as mentioned in subsection 1 of this article will be applicable accordingly.
4. The bank charges shall be for the buyer's account.
5. The buyer is not entitled to set off, suspend or dissolve the agreement, not even in the case of complaints.

Article 10: Debt collection charges

If the buyer defaults on one or more of its obligations, then all extrajudicial (collection) costs actually incurred by the seller (including the costs of drawing up and sending reminders, conducting settlement negotiations and other actions in preparation for possible legal proceedings) as well as the legal costs shall be reimbursed by the buyer.

Article 11: Liability, Indemnification and expiry

1. In the event that, in the seller's opinion, a complaint by the buyer is justified, the seller shall, to the extent possible and at its sole discretion and costs, either refund to the buyer the price of the seeds (or a proportionate parts of the price) or replace the seeds with non-defective seeds, in which case the seller shall have no further liability to the buyer. The buyer shall in that event give its full co-operation to the seller.

2. The seller shall not be liable for damage suffered by the buyer caused by or otherwise related to the delivery of defective, damaged or non-conform seeds, including their packaging, unless such damage is the result of intentional misconduct or gross negligence on the part of the seller.
3. If the seller is liable for any damage incurred by the buyer, regardless of the legal ground for liability, the seller's liability shall never exceed the net purchase price excluding VAT of the seeds concerned, as charged to the buyer by invoice. The seller shall in any event not be liable for any indirect damage suffered by the buyer such as (but not limited to) consequential damage, trading loss, or loss of profits.
4. The seller shall furthermore in any event not be liable for damage caused by an alleged delay in the delivery of the seeds.
5. Any potential claim of the buyer shall lapse within six months after the date of delivery of the seeds.
6. The buyer indemnifies the seller against all claims and demands from third parties for compensation of damage that is (allegedly) caused by or is otherwise connected with any seeds delivered by the seller to the buyer, including claims and demands that are made against the seller in its capacity as producer of the seeds on the basis of any regulation on product liability in any country whatsoever, unless such damage is the consequence of an intentional act or omission or gross negligence on the part of the seller.
7. If the seller engages a third party for the production and delivery of the seeds, the seller shall not be liable for any errors made by such third parties. If such a third party wishes to limit its liability, the seller shall be authorised to accept this limitation of liability also on behalf of the buyer.

Article 12: Use and warranty

1. The seller guarantees that the seeds to be delivered by the seller conform to the best of its knowledge to the descriptions concerning those seeds. No guarantees apply to the product specifications, if any.
2. The seller does not guarantee that the seeds delivered by the seller to the buyer comply with the purpose to which they are put by the buyer. The buyer explicitly acknowledges that, even with the highest quality seeds, success in growing depends largely upon cultivation methods, soil and weather conditions.
3. All quality data provided by the seller in writing are exclusively based on reproducible tests. These data indicate only the result as it is obtained by the seller at the time of the execution of the tests and for the circumstances that applied to the tests. No direct relation may be assumed between the data as provided and the result obtained by the buyer. The result obtained by the buyer depends amongst others from location, cultivation measures, for example the sowing medium used, and/or the climatic circumstances.
4. Any and all guarantees on the part of the seller shall lapse if the buyer carries out processes on the seeds or causes processes to be carried out on them, repackages the seeds or stores them to be repackaged, or uses and/or stores the seeds incorrectly or causes them to be used/or stored incorrectly and/or improperly.
5. The seller does not guarantee in any way that the use, sale, transfer, production or any other possible act involving the delivered seeds and/or the use sale, transfer, production or any other possible act involving the products arising from the delivered seeds does not infringe any (intellectual property) rights of third parties.
6. The seeds delivered are exclusively intended for the cultivation of crops and may not be used for fodder, consumption or the production of sprouts (the product obtained from the germination of seeds and their development in water or another medium, which is harvested before the development of true leaves and is intended to be eaten in its entirety, including the seed).

Article 13: Seed treatment at the request of the buyer

1. In case the seeds, at special request of the buyer, are being treated by or on behalf of the seller, the seller does not provide any guarantee regarding the effectiveness and/or consequences of such treatment. The seller shall not be liable for any damage resulting from treatment, performed at the special request of the buyer.
2. The treatment of the seeds carried out by the seller at the request of the buyer shall be deemed to have been faulty and to have caused damage if within eight weeks after use of the delivered seeds a defect appears in the crops grown from the treated seeds.
3. If the seller suffers damage as a result of the treatment of the seeds carried out at the request of the buyer, the buyer shall fully compensate the seller for such damage.
4. The buyer shall indemnify the seller against claims, demands and claims by third parties arising directly or indirectly from the treatment of the seeds requested by the buyer.

Article 14: Defects, complaints terms

1. The buyer shall examine the seeds on, or as soon as possible after, delivery and shall inform the seller in writing within eight days after delivery in case the correct seeds were not delivered and/or the agreed quantity was not delivered.
2. Complaints concerning apparent defects to the seeds, including their packaging, must be reported to the seller in writing within eight days as from the date of delivery of the seeds to the buyer. Complaints concerning alleged non-apparent or hidden defects to the seeds, including their packaging, must be reported to the seller in writing within eight days as from the date on which the alleged defect concerned was or could reasonably have been discovered by the buyer. Complaints have to be set out in such a manner that the seller or a third party can verify them. The batch, delivery and invoice details have to be specified. The buyer should also indicate under which circumstances the seeds have been used and, in case of resale, to whom the seeds have been sold. In the event that any complaint is not reported to the seller in writing within the period as stated in this article, the complaint will not be dealt with and the buyer will lose all rights to obtain any form of recovery or remedy, including damages.
3. Complaints concerning an invoice of the seller must be submitted to the seller in writing within fourteen days as from the date of invoice. Submitting a complaint does not give the buyer any right to suspend payment of the concerned invoice.

Article 15: Advices for cultural practices, variety descriptions, recommendations

1. Cultural advices from the seller are without engagement. Cultural advices, descriptions, recommendations and illustrations in whatever form are based as precisely as possible on experiences in trials and in practice. However, the seller cannot accept in any case liability on the basis of such information for deviating results in the grown goods. The buyer itself will be deemed to determine whether the seeds are suitable to be used for the intended cultivations and under the local conditions.
2. As used in the information supplied by the seller, immunity, resistance and susceptibility shall mean the following:
 - Immunity: is when a plant is not subject to attack or infection by a specified pest.
 - Resistance: is the ability of a plant variety to restrict the growth and/or development of a specified pest and/or the damage it causes when compared to susceptible plant varieties under similar environmental conditions and pest pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pest pressure. Two levels of resistance are defined: High resistance (HR): plant varieties that highly restrict the growth and/or development of the specified pest and/or the damage it causes under normal pest pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pest pressure. Intermediate resistance (IR): plant varieties that restrict the growth and/or development of the specified pest and/or the damage it causes, but may exhibit a greater range of symptoms or damage compared to high resistant varieties. Intermediate resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental conditions and/or pest pressure.
 - Susceptibility: is the inability of a plant variety to restrict the growth and/or development of a specified pest.

Article 16: Force majeure

1. Force majeure is deemed to mean circumstances beyond the seller's control hampering or blocking the fulfilment of the agreement. This will include amongst other things, if and insofar as such circumstances unreasonably hamper or block the fulfilment: contamination of production locations with (plant) diseases, pests and viruses, epidemics, storms and other weather conditions, fire, war, lack of labour force, transport difficulties, export, import or transit bans, strikes in companies other than that of the seller, general shortages of required raw material and/or other materials required for the fulfilment of the agreement, unforeseeable stagnation at suppliers and/or other third parties that the seller depends upon.
2. In the event of force majeure conditions occurring, the seller will inform the buyer as soon as possible.
3. In case a force majeure condition exists for longer than two months, seller will be entitled to terminate the agreement. In such a case, the seller will not be obliged to provide any compensation.

Article 17: Further use/cultivation and inspection

1. The buyer is not allowed to use the seeds delivered for further production and/or reproduction of propagating material.
2. If the seeds delivered are sold on to a third party, the buyer must impose the stipulations of this article to that third party.
3. The buyer is under the obligation to allow the seller, or anyone who carries out an inspection on behalf of the seller, direct access to its business, including and in particular the greenhouses of its business, in order that the seller can carry out or have carried out inspections. "Business" in this article shall also mean any business activities that are carried out by a third party on behalf of the buyer. The buyer shall upon request also allow direct access to its administration with regard to the relevant propagating material.

Article 18: Usage of trademarks, logos and other signs

1. Unless otherwise agreed in writing by the parties, the buyer may not use, nor (cause to) register, trademarks, logos or other signs used by the seller to distinguish its goods from those of other enterprises, and it may not use trademarks, logos or other signs resembling them. This does not apply to the trading of the goods in their original packaging material which the seller has, or has had, provided with trademarks, logos or other signs.
2. If the seeds delivered are resold by the buyer to a third party, the buyer must impose the stipulations of this article to that third party.

Article 19: Conversion

1. If a provision of these general terms and conditions is invalid, that provision will automatically be replaced by a valid provision that corresponds as closely as possible to the purport of the invalid provision.
2. In that case the other provisions of the general terms and conditions will remain fully valid insofar as possible.

Article 20: Settlement of disputes

In the event of any disputes emanating from offers and agreements to which these terms and conditions apply, or being connected therewith, the parties shall endeavour to resolve such disputes in an amicable manner. Disputes emanating from offers and agreements to which these terms and conditions apply, which cannot be resolved amicably, shall be settled by the competent court of law at the domicile of the seller. However, the seller retains the right to bring a legal action against the buyer before the court which is competent according to the law or the applicable international treaty, and the seller retains the right to bring legal action before the court of the country where the buyer has its registered office.

Article 21: Applicable law

All agreements between the seller and the buyer are subject to Dutch law. In the event that the seller and the buyer are not established in the same country, the applicability of the "United Nations Convention on the International Sales of Goods" is expressly excluded.