

## **General Terms and Conditions of Sale and Delivery of Henk Braam B.V.**

### **Article 1 Applicability**

1. The present General Terms and Conditions govern all offers made by Henk Braam B.V. and all agreements concluded by Henk Braam B.V. and customers, and the performance thereof. The present general terms and conditions shall apply to the exclusion of any terms and conditions of the customer, whatsoever their nature or purport.
2. Any derogating provisions shall only apply if they have been expressly agreed in writing. Insofar as they do not replace the provisions of the present General Terms and Conditions, they shall constitute a supplement.

### **Article 2 Definition**

1. In the terms 'customer' shall mean: a natural person or legal entity entering into an agreement in respect of the delivery of products and/or the provision of services with Henk Braam B.V.

### **Article 3 Offers and prices**

1. All offers are without any obligation, unless they specify a term. In all cases an offer without any obligations shall be valid for a maximum period of 14 days.
2. Illustrations of products that are made available only serve as a guideline. The illustrated product may not always be identical to the product supplied by Henk Braam B.V.
3. An agreement is concluded when the order is explicitly accepted by means of an order confirmation, unless Henk Braam B.V. lodges an objection in writing within five days upon receipt of the confirmation of the customer.
4. An agreement concluded through the agency of an intermediary, shall only be binding upon Henk Braam B.V. after the agreement has been accepted in writing by Henk Braam B.V.
5. All prices are exclusive of VAT and additional charges, including costs of carriage, packaging, insurance, quality control, phytosanitary inspection, import duties, government and other statutory duties and fees based on plant breeders' rights and any other fees, unless otherwise agreed in writing. If no price has been agreed upon, the price of Henk Braam B.V. in effect at the time of delivery shall prevail.
6. Henk Braam B.V. shall have the right to adjust the price in accordance with the principles of fairness and equity up to a level to be determined at its discretion, if its costs have increased significantly since the price has been fixed.
7. All prices shall be expressed in Euros, unless otherwise provided.

### **Article 4 Cancellation**

1. If the customer cancels the contract on or before the delivery date, he shall be liable to forthwith pay a cancellation fee amounting to 25% of the gross sales value of the products to be supplied and/or services to be provided.
2. In the event that the concerned products are rendered unsaleable or are only saleable at a lower price on account of the aforementioned cancellation, the customer shall be liable for any price differences and any other damages suffered by Henk Braam B.V.

## **Article 5 Delivery**

1. Orders for products that are not yet fully grown to delivery specifications during the sale or that have to be delivered at a later date for other reasons, shall be conditionally accepted.
2. Full or partial failure of the cultivation or partial decay or damage during the storage of the product, for any reason whatsoever, shall release Henk Braam B.V. from its obligation to deliver and its other obligations, unless caused by gross negligence on the part of Henk Braam B.V.

## **Article 6 Delivery and transport**

1. Delivery shall be made by Henk Braam B.V. ex works, unless otherwise agreed in writing. The risk related to the relevant products and all related matters shall pass to the customer upon delivery. If shipment is made using a means of transport of Henk Braam B.V.'s, the place of delivery shall be deemed to be the place of delivery designated by the customer. If transport is outsourced to a shipping agent and/or carrier, the place where the product is loaded shall be deemed to be the place of delivery.
2. An agreed delivery date is no statutory limit for Henk Braam B.V. but merely an indication of the delivery period. Henk Braam B.V. shall not be liable for any damages caused by delivery after the delivery date.
3. If the customer accepts delivery prior to the agreed delivery date or period set out in paragraph 2 of the products ordered, the resulting risk shall be borne by the customer.
4. If the customer accepts delivery after the agreed delivery date of the ordered products, the risk of any loss of quality caused by the longer period of storage shall be borne by the customer. In that case the products shall be stored at the customer's risk and expense.
5. If after the expiry of a storage period – which in view of the type of product can be deemed to be reasonable – the customer has not accepted delivery and Henk Braam B.V. is of the opinion that it has no other choice in view of the risk of loss of quality and/or decay of the products, the order shall be deemed to have been cancelled by the customer, in which case Henk Braam B.V. shall be entitled to sell said products. The customer shall be bound to reimburse Henk Braam B.V. for any difference between the agreed price and the obtained price, as well as any other costs and damages incurred by Henk Braam B.V.

## **Article 7 Plant material supplied by the customer**

1. If the services to be provided by Henk Braam B.V. consist of testing, reproducing or cultivating plant material supplied by the customer, the customer warrants that his plant material is free of any harmful organisms, diseases, etc. Failing such, the customer shall be fully liable for any arising damages and shall hold Henk Braam B.V. harmless against all claims of third parties.
2. Any intellectual property rights that may be exercised in respect of the results of the tests, reproduction or cultivation of plant material supplied by the customer shall vest in Henk Braam B.V.
3. The other provisions of the present General Terms and Conditions shall apply analogously to the return of goods, packaging, payment, etc. of plant material that has been supplied by the customer and tested, reproduced or cultivated by Henk Braam B.V., unless and only to the extent that the present article provides otherwise.
4. Henk Braam B.V. shall not be liable for any failure or damage that occurs during the testing, reproduction or cultivation of the plant material supplied by the customer, unless the failure or damage was caused intentionally or by gross negligence on the part of Henk Braam B.V.
5. The product supplied by the customer shall be stored at Henk Braam B.V. for the account and risk of the customer. Henk Braam B.V. shall not be liable for any theft or damages, unless such can be attributed to the malice aforethought or gross negligence on the part of Henk Braam B.V.
6. In the event that the provision of services consists of testing a variety that is not yet protected by any plant breeders' right, Henk Braam B.V. shall not be liable for the theft of the supplied product and

its subsequent appearance elsewhere on the market, unless it can be attributed to the malice aforethought or gross negligence on the part of Henk Braam B.V.

### **Article 8 Packaging/carts/pallets**

1. Non-reusable packaging shall be charged at cost and cannot be returned.
2. All packaging with the exception of non-reusable packaging shall remain the property of Henk Braam B.V.
3. Henk Braam B.V. shall be entitled to charge a deposit in addition to a usage fee for reusable packaging and other sustainable materials such as carts. This shall be indicated separately on the invoice.
4. The customer shall be bound to return packaging to Henk Braam B.V. at his own expense and in good condition within 30 days after delivery. If it has been agreed that Henk Braam B.V. shall pick up the packaging, the customer shall store the packaging in such a manner that it can be recognised as property of Henk Braam B.V. and the customer shall ensure that the packaging is kept in good condition up to the date provided by Henk Braam B.V. and can be picked up in a normal manner.
5. The customer may not use the packaging or allow third parties to do so.
6. Carts, roll containers and reusable pallets shall be returned immediately, unless otherwise provided. The customer shall not be allowed to use the material or allow third parties to do so.
7. In the event that the reusable packaging, carts, roll containers, pallets, etc. are damaged or lost, the customer shall undertake to reimburse Henk Braam B.V. for the costs of repair or replacement, as well as any additional rental costs as a result of their late return.

### **Article 9 Payment**

1. Henk Braam B.V. shall be entitled to demand an advance payment equal to 50% of the invoice amount from the customer.
2. Payment shall be made within 30 days of the invoice date.
3. The customer shall not have the right to deduct any amount from the purchase price on account of an instituted counterclaim.
4. The customer shall not have the right to suspend his payment obligation, even in the event that he lodges a complaint with Henk Braam B.V. in respect of the supplied products, unless Henk Braam B.V. expressly consents to the suspension of payment in exchange for a guarantee.
5. All payments shall be made at the office of Henk Braam B.V. or by deposit or transfer to a bank account to be designated by Henk Braam B.V.
6. Payment shall be made in Euros, unless otherwise provided on the invoice, in which case the Henk Braam B.V. shall be entitled to pass on any exchange differences to the client.
7. If the customer fails to timely comply with its obligation of payment, he shall be held in default by operation of law, in which case Henk Braam B.V. shall be entitled to charge interest at a rate of 1% per month from the date on which default has taken effect, whereby part of a month shall be deemed to constitute a whole month.
8. If the customer is in default or otherwise in breach of its obligations, all reasonable costs incurred in securing payment, both judicial and extrajudicial, shall be borne by the customer, with a minimum of 15% of the gross invoice value.
9. Henk Braam B.V. reserves the right to not fill orders or no longer fill orders if the customer has failed to pay previous invoices or if the customer has otherwise failed to comply with its obligations towards Henk Braam B.V. or non-compliance is imminent. Henk Braam B.V. shall not be liable for any damages suffered by the customer as a result of its refusal to carry out orders.

## **Article 10 Force majeure**

1. In the event of *force majeure* the parties shall consult regarding an amendment or dissolution, either in whole or in part, of the contract of sale. If the *force majeure* situation continues for more than three months Henk Braam B.V. shall be entitled to terminate the agreement.

2. *Force majeure* shall mean: any failure to perform obligations that cannot be attributed to the malice aforethought or gross negligence on the part of Henk Braam B.V. This includes fire, extreme weather conditions, illness and plagues, strikes, government measures, etc., as well as the non-delivery or partial delivery, or faulty delivery on the part of one of Henk Braam B.V.'s suppliers.

## **Article 11 Guarantees and complaints**

1. Henk Braam B.V. does not guarantee the varietal purity of the products that are generally known as crossovers.

2. Henk Braam B.V. does not guarantee that the products delivered will grow and bloom or the accuracy of any cultivation information provided by Henk Braam B.V.

3. Henk Braam B.V. shall be informed of any complaints with respect to visible defects, including complaints about the quantity, size or weight of the product delivered, not later than 24 hours after delivery, and the complaint shall be confirmed to Henk Braam B.V. in writing within two days.

4. In the event of a complaint with respect to an invisible defect Henk Braam B.V. shall be notified immediately upon the discovery of thereof. Such a complaint shall be confirmed to Henk Braam B.V. in writing within two days. Complaints with respect to contamination with viroids such as PSTVd and similar organisms shall be handled only if the customer had a sample tested that evidently originates from the product supplied by Henk Braam B.V. by an accredited laboratory no later than one day after the delivery, and the test results indicate that the product may be contaminated.

5. Moreover, Henk Braam B.V. shall be notified of any complaints at such a time that Henk Braam B.V. is able to examine the plant material.

6. After the above-mentioned terms have lapsed, the customer shall be deemed to have approved the delivered product and the invoice, in which case Henk Braam B.V. shall no longer handle any complaints.

7. A complaint shall in any event include:

a. A detailed and accurate description of the defect;

b. The place of storage of the cultivated material to which the complaint relates; and

c. An explanation of the facts on the basis of which it can be determined that the products delivered by Henk Braam B.V. and the products rejected by the customer are the same.

8. If delivered products are rejected by the customer in accordance with the provisions in the present Article and the customer and Henk Braam B.V. cannot immediately agree on an amicable settlement, the customer shall undertake to designate an independent, officially recognised expert to draw up an expert report. In the event of a justified rejection, the costs of the expert report shall be borne by Henk Braam B.V.; if the rejection was not justified those costs shall be borne by the customer. The customer shall in any event pay the costs up front.

9. Complaints with respect to part of the delivered products shall not entitle the customer to reject the entire consignment.

## **Article 12 Liability**

1. All liability with respect to late delivery and/or *force majeure* is hereby excluded.
2. Henk Braam B.V.'s compensation of any damage suffered by the customer in the event of a complaint submitted in accordance with Article 10 shall not exceed the invoice value of the delivered products to which the complaint relates, provided any culpable negligence or gross negligence on the part of Henk Braam B.V.
3. In the event that a complaint is accepted in respect of part of a delivered product the compensation that Henk Braam B.V. owes in respect of the damage suffered by the customer shall not exceed the corresponding portion of the invoice value of the delivered products.
4. The customer shall ensure that any damages arising from deviant, sick or weak plants are limited to every extent possible.
5. The customer shall not set off any compensation and such compensation shall not entitle the customer to not or not timely pay the invoice.

## **Article 13 Transfer of ownership, retention of title and security**

1. Henk Braam B.V. shall retain the ownership of the delivered products and remains or becomes the owner of any resulting products until the client has paid the agreed price in full and the client has fulfilled all further obligations to Henk Braam B.V., by whichever reason.
2. As long as the ownership has not passed to the customer, the latter shall ensure that the products are clearly traceable as originating from Henk Braam B.V. and the customer shall not have the right to pledge or otherwise provide the products as a security. The customer shall notify Henk Braam B.V. forthwith in the event that third parties distraint (or wish to distraint) such products or sell off otherwise.
3. If Henk Braam B.V. has probable cause to doubt the customer's ability to make payments, Henk Braam B.V. shall be entitled to postpone its performance until the customer has provided security in respect of the payment or terminate the agreement by giving notice if the customer has not provided such security within 14 days upon the service of a summons, without prejudice to the provisions set out in Article 4(1). In both cases, the customer shall be liable for any costs incurred by Henk Braam B.V.

## **Article 14 Plant breeders' protection or contractual protection of original varieties**

1. The products supplied by Henk Braam B.V. shall not be:
  - a. used to produce or propagate the variety;
  - b. conditioned for the purpose of propagation;
  - c. offered for sale;
  - d. further traded;
  - e. exported; or
  - f. imported,or kept in stock for such purposes.
2. The customer may only use the supplied propagation material to cultivate the final product at the customer's company. The customer may sell the propagation material only under the relevant variety name and any trade name.
3. Henk Braam B.V. shall be entitled to enter the customer's company or the parcels of land under its control where the propagation material or plant material supplied by Henk Braam B.V. is located in order to inspect or assess that material. Henk Braam B.V. shall timely inform the customer of its intention to do so.

4. The customer shall be bound to grant immediate access to his company and the plants to the inspection bodies that will perform the inspection on behalf of the owner of the protected supplied variety. If requested, the customer shall allow the inspection of his records, such as invoices, that are relevant in respect of the investigation.
5. If the customer finds a mutant in the protected variety, he shall promptly inform the holder of the plant breeders' right by registered letter.
6. At the written request of the holder of the plant breeders' right the customer shall relinquish mutant test material for no consideration to the holder of the plant breeders' right within two months after receipt of the request.
7. The customer is aware that the finder of a mutant, *i.e.* a hybrid or an essentially derived variety, in the protected variety shall obtain the permission of the holder(s) of the plant breeders' right with respect to the 'parent variety' in order to turn the mutant to account.
8. In particular, the customer is aware that the finder of a mutant shall obtain the permission of the holder(s) of the plant breeders' right with respect to the 'parent variety' in order to perform the acts referred to in paragraph 1 with respect to all material related to the variety, including harvested material (*i.e.* including flowers, plants and or parts of plants).
9. The customer shall undertake to provide all assistance requested by Henk Braam B.V., including assistance in collecting evidence, in the event that Henk Braam B.V. is involved in legal proceedings involving plant breeders' rights or other industrial ownership rights.
10. In the event the plant patent will be lost or will not be granted, the customer has no claim to refunds of the amounts paid to, and/or charged by Henk Braam B.V..

#### **Article 15 Settlement of disputes**

1. All agreements to which the present General Terms and Conditions relate, either in whole or in part, shall be governed by Dutch law.
2. All disputes (even if thus considered by either party) that relate to or arise from the contractual relations between Henk Braam B.V. and a customer which are governed by the present General Terms and Conditions shall be settled exclusively by the competent court in Amsterdam.

#### **Article 16 Applicability of the Appendix**

The parties may declare the 'arrangement with respect to the charging of surcharge percentages in the event of deviant germ percentages' annexed to the present General Terms and Conditions of analogous application, in which case the Appendix shall form part of the agreement governed by the present General Terms and Conditions.

#### **Article 17 Final provision**

If and insofar as any part of or any provision contained in the present General Terms and Conditions conflicts with any statutory provision of national or international law, it shall be deemed to have been severed and these General Terms and Conditions shall continue to be binding upon the parties. The parties shall negotiate a substitute provision that is similar in tenor to the severed provision.