

## **GENERAL CONDITIONS OF SALE AND DELIVERY OF TREE NURSERY COMBINATIE MAURITZ B.V. (version of 1 May 2020)**

### **1. Definitions**

#### *1.1 The Seller:*

The private company with limited liability under Dutch law Combinatie Mauritz B.V. (Chamber of Commerce number 11029577), currently located at the address Lakemondsestraat 2a in Opheusden (the Netherlands). The Seller can only be duly represented by a (legal) person who according to the relevant information registered in the Trade Register is authorised to do so.

#### *1.2 The Buyer:*

Any natural or legal person who buys goods from the Seller, or who concludes or wishes to conclude an agreement with the Seller for the delivery of goods.

### **2. Applicability**

2.1 All offers (or quotations) made by the Seller and all purchase agreements concluded with the Seller and the execution thereof shall be governed by the (most recent version of these) General Conditions that applied at the time of the conclusion of the relevant agreement.

2.2 The applicability of any other (general) conditions, including any general conditions applied by the Buyer, is herewith expressly excluded, also if the Buyer (in his general conditions) has stipulated that his general conditions prevail over the General Conditions of the Seller.

2.3 A deviation from these General Conditions can only be invoked if the Seller has expressly agreed with that deviation in writing. That deviation shall as then only apply in respect of the relevant agreement.

2.4 If these General Conditions and the purchase agreement contain conflicting provisions, the provisions contained in the order confirmation shall apply.

2.5 If these General Conditions have also been drawn up in another language than Dutch, the Dutch text shall in case of discrepancies be decisive.

2.6 In these General Conditions the term "in writing" shall mean: by letter, e-mail, fax or via our website [www.combinatiemauritz.nl](http://www.combinatiemauritz.nl).

### **3. Offers and Conclusion of an Agreement**

3.1 All offers and quotations made by the Seller shall be without engagement for the Seller, also if they include a deadline for acceptance. All offers shall be subject to the reservation of interim sale to a third party, and on the proviso of growth of the goods to be sold.

3.2 An agreement will only be concluded when the Seller has confirmed the order in writing, and also when any agreed payment security, including an irrevocable (confirmed) letter of credit, has been accepted by the Seller in writing. Each agreement is concluded by the Seller subject to the resolute condition that the Buyer, solely at the discretion of (the credit insurer of) the Seller, is sufficiently

creditworthy for the financial performance of the agreement.

3.3 Any additional arrangements, agreements and/or amendments, as well as oral promises made by personnel of the Seller or made on behalf of the Seller by its agents or by other representatives working for the Seller, will only bind the Seller as from the moment that they have been confirmed by the Seller in writing.

3.4 Plant names will be described in accordance with the List of Names of Woody Plants ("Naamlijst van Houtige Gewassen") and the List of Names of Perennials ("Naamlijst van Vaste planten") published by PPO in Lisse.

#### **4. Prices**

4.1 All prices for the goods are established in the agreed currency (or if no currency has been agreed: in Euros), excluding VAT, import duties and other taxes, levies and/or duties. The prices are ex-nursery Opheusden, the Netherlands, unless agreed otherwise in writing.

4.2 If after the order confirmation but before delivery of the products one or more of the cost factors change, the Seller reserves the right to adapt the agreed price(s) accordingly.

4.3 All costs relating to transport, packing materials or packing, insurance and control or inspection (for example by the NVWA and/or Naktuinbouw) shall be for the account of the Buyer. All (foreign) import duties, levies and/or taxes that are or will become due in relation to the agreement concluded between the Seller and the Buyer, both directly and indirectly, shall exclusively and fully be for the account of the Buyer and cannot be deducted from any amounts due by the Buyer to the Seller.

4.4 If the Seller and the Buyer agree that the price is in another currency than in Euros, the Euro exchange rate at the date of the order confirmation shall apply.

4.5 In the event of an unforeseeable increase in the cost price, the Seller shall have the right to increase the price accordingly, on the understanding that the Buyer has the right to terminate the agreement in case of a price increase of more than 10%.

#### **5. Payment**

5.1 Unless the parties agree otherwise in writing, payment for the goods sold by the Seller will have to be made in the agreed currency within 30 days after the invoice date.

5.2 The date of payment shall be the date at which the Seller has received the payment. Cash payments can only be made with the permission of the Seller to a person who according to the information registered in the Trade Register is authorized to represent the Seller. Only the receipt of the Seller shall be proof of such cash payments.

5.3 The Buyer shall not be entitled to any deduction, suspension or payment discount reduction because of any allegedly faulty delivery or because of the fact that the delivery is not complete yet or because of any other claim or liability alleged by the Buyer, and also any invocation on settlement is expressly excluded, unless the parties have agreed otherwise in writing.

5.4 If the Buyer exceeds the term of payment, the Buyer shall as from the expiry of the payment period by force of the law be automatically in default, without any prior notification of default being required. The Seller shall have the right as from the payment due date to charge the statutory interest for commercial transactions (see Article 6:119a of the Dutch Civil Code), whereas also all costs of collection shall be for the account of the Buyer, both judicial and extrajudicial, which latter costs shall be at least 15% of the amount that is to be collected with a minimum of EUR 250.00. Extrajudicial costs shall include all costs relating to the recovery investigation, any payment reminders and summonses, and any notification of default, any activities intended to achieve an (amicable) settlement, in addition to the disbursements, out-of-pocket expenses and fees of the person who is charged with the recovery and collection by the Seller. If a petition is filed for the bankruptcy of the Buyer, the Buyer shall in addition to the principal sum and the extrajudicial costs and the contractual interest charged thereon, also be due the costs of the bankruptcy petition.

5.5 In the event that an order is executed in parts, the Seller shall have the right to demand payment for the partial deliveries before proceeding with any other partial deliveries.

5.6 To persons employed by the Seller who do not have an authorization for that (see the Trade Register of the Chamber of Commerce) no discharging payments can be made.

5.7 The Seller shall have the right at or after the entering into of the agreement and before making any (further) performance, to demand that the Buyer provides a security that applies to the performance of both the payment and any other obligations under this agreement. The Seller shall have the right to demand from the Buyer a deposit or a partial or full advance payment from the Buyer. Any refusal by the Buyer to pay the deposit or to make the partial or full advance payment or to provide the required security, shall give the Seller the right to suspend the performance of its obligations and shall give him the right to cancel the agreement in full or in part, without any notification of default or judicial intervention being required, this without prejudice to the entitlement of the Seller to compensation of any damage suffered by him.

5.8 The Seller shall have the right, despite any other designation of the payment by the Buyer, first to use the payment to settle older debts of the Buyer to the Seller. If any costs and/or interests have already arisen, the payment will first be used to pay the (extrajudicial) costs, then the interest and then the principal sum.

## **6. Delivery**

6.1 Unless agreed otherwise in writing, all deliveries shall be made from the tree nursery in Opheusden (the Netherlands) or from any other place to be designated by the Seller. If the goods after the expiry of the delivery period have not been picked up

by the Buyer, these shall be kept at his disposal and will be stored for his risk and account. Any costs associated with the storage shall be charged to the Buyer.

6.1.1 If the Seller and the Buyer have agreed free carriage paid delivery in writing, the following provisions shall apply:

- plants will on the basis of full loads be transported by the Seller to the place that has been agreed. Unloading etc. will have to be done by the Buyer.

- If the quantity of goods ordered by the Buyer is estimated by the Seller to be less than a full load, the relevant delivery can only be scheduled in as a combined shipment. This means that the delivery date and time can be planned less flexible in advance, and will be determined by the Seller.

6.2 Deliveries in respect of which the Seller is responsible for the transport of the goods shall be carried out by full loads. If the Buyer requests delivery of a part of his order only and this results in a partial load, the Seller shall have the right to charge the extra costs created by that through to the Buyer. Orders that are not a full load shall be delivered if to the discretion of the Seller a combination possibility arises.

6.3 In case of deliveries arranged by the Seller, the Buyer shall see to it that the unloading will be carried out professionally, unless agreed otherwise in writing.

6.4 If the Seller delivers free carriage paid, the maximum unloading time of a full load shall be three hours, unless expressly agreed otherwise in writing. The unloading time for partial deliveries shall be calculated in proportion to the number of loading meters. In case of excess of this unloading time or addition of extra delivery addresses, the Seller shall have the right to charge the extra unloading/waiting hours at cost price. These extra hours shall be charged supplementary per hour, in which a part of an hour will be counted as a full hour.

6.5 Packing materials shall be charged through to the Buyer in accordance with the prices published by the Auxiliary Materials Foundation. The Buyer may return the packing materials to the Seller in the same season of delivery, clean and in good condition, after which the Seller will refund a fixed amount to the Buyer.

6.6 Auxiliary materials supplied by the Seller, such as slings, chains, holsters, etc., shall be charged to the Buyer by the Seller and will only be credited if they have been returned to the Seller for the risk and account of the Buyer in good condition within one month after delivery.

6.7 Although the stated delivery time will be observed wherever possible, this delivery time shall be an estimate and can never be considered as a deadline. The Seller shall not be in default with respect to the delivery time until after he has been placed in default by the Buyer in writing, and the Buyer in that has given the Seller the opportunity yet to deliver within a reasonable period of time and the Seller has not done that.

6.8 The agreed delivery period shall commence as soon as an agreement has been concluded in accordance with Clause 3.2.

6.9 The Seller shall not be liable for any damage resulting from late delivery.

6.10 The failure by the Buyer to make any payment (in time) shall suspend the delivery obligation of the Seller.

6.11 If no delivery dates or periods have been agreed and delivery is made on call, the Seller shall have the right to perform autumn deliveries before 15 December of the year and spring deliveries before 15 April.

6.12 Root products will have to be delivered before 31 March, trees with wired root balls before 30 April, and pot and container plants before 15 May. Deviations must be notified to the Seller in writing. In case of deliveries on call the Seller shall always have the right to deliver root ball and pot plants after 15 May. For agreements that are concluded after 15 May, the Seller shall have the right to deliver within 14 days.

6.13 In case of a request to postpone the spring delivery until the autumn, all costs that are incurred by the Seller to make this possible shall be charged to the Buyer. In addition, the Buyer will at that moment already be charged at least 50% of the invoice amount.

6.14 The Seller reserves the right to deliver the goods in parts, in which case the (payment) conditions set out in Clause 5 will also apply to each partial delivery.

## **7. Force Majeure**

7.1 In case of force majeure - including riots, (threats of) war, mobilization, strikes, very bad weather conditions, negligence of suppliers of the Seller, crop failure, phytosanitary restrictions, viruses, natural disasters, strikes, fires, import and export restrictions - or in case of other circumstances in or as a result of which (timely) performance of the agreement cannot be demanded from the Seller, the Seller shall have the right, at his own discretion, without judicial intervention being required and without being held to pay any damages, by means of a written notification either to dissolve the agreement in full or in part, or to suspend the performance of the agreement until the moment that the force majeure situation has come to an end.

7.2 If the agreement has already partly been executed by the Seller, the Buyer shall pay the sales price of the delivered goods and the related costs (see Clause 4.3.).

7.3 In so far as the suspended term (under Clause 7.1) lasts longer than two months, the Buyer shall have the right to cancel the agreement, in so far as the Seller has not performed it yet, after the Buyer has in writing granted the Seller a reasonable period yet to deliver and the Seller has not complied with that. In such a case the Buyer shall never be entitled to any form of damages or other compensation.

## **8. Complaints**

8.1 The Buyer shall be held immediately upon delivery to inspect and examine the goods for visible and/or directly observable defects. Such defects shall include all defects that can be detected by means of normal sensory perception or a simple sample. Furthermore the Buyer shall be held to check whether the delivered goods

also in other respects are in accordance with the order. If in the opinion of the Buyer there is a defect or a non-conformity, the Buyer shall notify the carrier thereof immediately and the Seller in writing within 8 days (see further Clause 8.3). If the Buyer does not comply with his inspection obligation and his notification obligation, the Buyer shall forfeit all claims against the Seller.

8.2 If the delivered goods in number, quantity and weight deviate less than 10% from that which has been agreed, the Buyer shall nevertheless be held to accept the delivered goods. The Seller shall have the right in case of not deliverable varieties to deliver comparable and/or similar or equivalent varieties, or to deliver bigger or smaller or thinner or thicker goods, and charge higher or lower prices accordingly. Such deliveries cannot be qualified as defective.

8.3 Complaints regarding quality and/or quantity of the delivered goods have to be submitted in writing within eight calendar days after delivery at the latest. Complaints that have not been submitted properly will not be considered. Once the aforesaid period has expired, the Buyer shall be deemed to have approved the delivery and any subsequent complaints will not be considered. The date of the postmark, fax or e-mail shall be decisive for determining whether a complaint has been submitted in time or not.

8.4 The Buyer shall be held to store the relevant goods separately from the other goods, or to plant them separately from the other goods, in order to be able to continue distinguishing the goods delivered by the Seller. Furthermore the Buyer shall be held to handle and maintain the relevant goods with all due care.

8.5 The complaint will have to contain a description of the defect, and the Seller will at his first request have to be given the opportunity to investigate the complaint. The Buyer will have to allow that the Seller at his request will let an expert or an independent inspection body carry out an inspection of the relevant goods. If the expert is of the opinion that the complaint is justified, the costs of the inspection shall be for the Seller. If the expert is of the opinion that the complaint is not justified, the costs of the inspection shall be for the Buyer.

8.6 The right to complain can only be exercised by the direct contracting party of the Seller. The right to complain shall not be transferable.

8.7 Any right to complain shall lapse if the Buyer has not handled and maintained the goods rejected by him with all due care during the period that they are in his custody.

8.8 If the Buyer has complained to the Seller in time and correctly, and the Seller has acknowledged the complaint, the Seller shall at his own discretion exclusively be held to deliver the lacking goods, to replace the delivered goods or to refund a proportionate part of the purchase price. For replacement deliveries the Seller will have to be allowed a reasonable period of time.

8.9 By submitting a complaint, the payment obligation of the Buyer shall not be

suspended, unless the Seller has consented to that suspension in writing.

8.10 The returning of the goods shall be for the risk and account of the Buyer, and can only take place with the prior written permission of the Seller.

## **9. Liability**

9.1 The Seller shall never be liable for any regrowth, flowering of the delivered goods or any failure of the delivered goods to successfully root or grow, unless agreed otherwise in writing. It shall always be the responsibility of the Buyer to assess whether the circumstances, including the climatological, are suitable for the goods.

9.2 Save for the legal liability under mandatory law, and except in case of intent or deliberate recklessness, the Seller shall never be liable for any damage suffered by the Buyer. More specifically, any liability for any indirect, consequential, immaterial or emotional damage, trading loss, environmental damage, loss of profits or loss resulting from any liability towards third parties, is herewith expressly excluded.

9.3 If and in so far as, despite the provisions of Clause 9.1 and Clause 9.2, any liability would rest on the Seller for any cause or reason, this liability shall be limited to an amount equal to the net invoice value of the relevant goods, on the understanding that the Seller will in the aggregate exclusively be liable for at most a maximum amount of EUR 20,000.00.

9.4 The Buyer shall if necessary be held to inform his customers regarding the correct handling and treatment of the delivered products. The Buyer shall be held as the occasion arises to inform his customers of any risks or dangers associated with the delivered goods, like toxicity of the goods or intolerance upon ingestion of goods and/or parts of goods.

9.5 The Buyer shall indemnify the Seller from and against any liability towards third parties if any damage occurs as a result of any failure by the Buyer to perform the obligations set forth hereinbefore in Clause 9.1.

9.6 The Buyer shall indemnify the Seller from and against any claims of third parties for compensation of damages for which the Seller is not liable under these General Conditions.

## **10. Cancellation**

10.1 The Seller shall have the right to cancel an order if the Buyer at the time of delivery has not timely complied with any earlier payment obligations towards the Seller or towards other creditors. The Buyer can also make use of this right if the information on the creditworthiness of the Buyer is considered to be insufficient by the Seller, or if no prior full or partial advance payment has been made. The Buyer cannot derive any rights from such a cancellation, and the Seller can never be held liable by the Buyer.

10.2 Cancellation of an order by the Buyer shall not be possible. If the Buyer nevertheless cancels an order in full or in part as a result of any cause whatsoever,

the Seller shall only be held to accept that if the goods have not been delivered to the carrier for transport yet, and subject to the condition that the Buyer pays the costs of cancellation, which are at least equal to 50% of the invoice value of the cancelled goods plus VAT. The Seller shall in that case also have the right to charge to the Buyer all costs incurred until then and all costs to be incurred (including costs of preparation, care, (cancelled) transport, storage, etc.), without prejudice to the entitlement of the Seller to compensation for lost profits and other damages.

10.3 The Buyer shall be held to accept the purchased goods at the moment that they are made available to him. If the Buyer refuses to accept them, the Seller shall have the right to sell these goods elsewhere and the Buyer shall be liable for any difference in price as well as all other costs arising therefrom for the Seller, including storage costs, costs of transportation and other related costs.

### **11. Retention of Ownership**

11.1 The ownership of the goods delivered by the Seller shall not pass to the Buyer until after full payment of all amounts invoiced by the Seller (including the costs mentioned in Clause 4.3), and any interest, penalties, fines and costs, as well as all claims for any failure in the performance of the obligations of the Buyer under this agreement or any other agreements. Issue of a cheque or other negotiable paper shall in this respect not constitute payment.

11.2 The Seller shall have the right to take the sold goods back immediately if the Buyer in any way fails to perform his (payment) obligations. In that case the Buyer shall be held to grant the Seller access to his premises and his buildings for that purpose. The costs associated with taking back the sold goods shall be for the account of the Buyer.

11.3 The Buyer shall be held to store the goods on which a retention of ownership rests separately from the other goods, in order to continue to be able to distinguish the goods of the Seller from the other goods.

11.4 As long as a retention of ownership rests of the delivered goods, the Buyer shall not have the right to replant or anchor them in the ground, and the Buyer shall not have the right to alienate, encumber, pledge or otherwise bring the goods under the control of any third parties.

### **12. Cancellation and Suspension**

12.1 If the Buyer fails to perform the obligations arising for him from the concluded agreement in time, properly, in full or at all, or if there is a reasonable fear that this would happen, as well as if a petition is filed for a suspension of payments, bankruptcy or liquidation of the enterprise of the Buyer, as well as in event of his death, or the dissolution or termination of the Buyer if he is a company, or if there is any change in the corporate form or in the management of the company or in the contribution of the activities of the company, the Seller shall have the right without any notification of default being required and without judicial intervention, to



suspend the agreement for a reasonable period of time or to dissolve the agreement without being liable for damages.

12.2 The claim of the Seller in respect of the part of the agreement that has already been performed, as well as any damage resulting from the suspension or dissolution, including loss of profits, shall immediately be due and payable without any prior notification of default being required.

### **13. Intellectual Property Rights**

13.1 The Seller reserves all rights that the Seller has in the area of intellectual property relating to goods delivered by the Seller.

13.2 In cases where it appears from the catalogue used by the Seller or from the agreement concluded by the parties that plant breeder's rights rest on a variety, the Buyer shall be bound to all obligations connected with those plant breeder's rights. If a variety in the Netherlands is not protected by plant breeder's rights but in the country of the Buyer is still under a patent, the Buyer shall be held to perform all obligations relating thereto. Violation of this provision shall render the Buyer liable for all damage resulting therefrom for the Seller and third parties (including the proprietor of the plant breeder's rights).

### **14. Conflicts with Statutory Provisions**

14.1 If any provision of these General Sales and Delivery Conditions is null and void or is in conflict with public order or with the law, then only the relevant provision in question shall be deemed to have not been written, whereas all other provisions will continue to be in full force and effect. The Seller reserves the right to change the invalid provision into a provision that is valid.

### **15. Jurisdiction / Governing Law**

15.1 All disputes, also those that are identified as such by any one of the parties, will be submitted for settlement to the competent court in the place where the Seller has its registered office.

15.2 All offers and quotations made by the Seller and all agreements concluded between the Buyer and the Seller, as well as the execution thereof, shall exclusively be governed by Dutch law.

15.3 The applicability of the Vienna Sales Convention is excluded.