



# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF BOOMKWEKERIJ RICHARD DE BIE B.V.

(VERSION OF 1ST OF SEPTEMBER 2016)

## 1. Definitions

**1.1. The seller:** The private company with limited liability under Dutch law *Boomkwekerij Richard de Bie B.V.* (Chamber of Commerce number 20082808), currently located at the address Bredaseweg 15B in Zundert (the Netherlands), postal code: 4881 DC. 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 person or legal entity that purchases goods or services from the seller.

## 2. Applicability

**2.1.** These General Terms and Conditions of Sale and Delivery (hereinafter referred to as General Terms and Conditions) are applicable to all offers and/or all agreements of sale or purchase made by the seller or entered into with third parties. Variance from these General Terms and Conditions is only binding if and insofar as the parties have explicitly agreed this in writing.

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

**2.3.** In these General Terms and Conditions, the term “in writing” shall mean: by letter, e-mail or fax.

## 3. Quotation

**3.1.** The seller submits a written, dated quotation, free of engagement, unless stated otherwise in the quotation. All quotations and price estimates are conditional on interim sales and growth.

**3.2.** Any 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 Terms and Conditions that applied at the time of the conclusion of the relevant agreement.

## 4. Agreement

The sales and purchase agreement (with the exception of cash sales or purchases) and additions and/or modifications concerning them, only become binding following a written order confirmation by the seller. The content of the order confirmation is qualifying for the content of the agreement.

## 5. Prices

**5.1.** All prices of sales are expressed in Euros and do not include VAT and are ex works the seller’s company premises (EXW Incoterms 2010).

**5.2.** Unless expressly otherwise agreed, the costs for packaging and shipping and suchlike including all other levies imposed on or charged for the products of the seller and transport are for the account of the buyer.

**5.3.** In case the invoice amounts € 25.- or less, the buyer will be charged for € 5.- administration costs.

## 6. Payment

**6.1.** Unless expressly otherwise agreed, the amount on the invoice must be paid within 30 days of the date on the invoice, without deductions of discounts or other settlements.

**6.2.** All payments must be made without any deduction to a bank account indicated by the seller.

**6.3.** New discountable certified bank drafts will only be accepted by the seller if expressly agreed upon in writing. Costs and dues related to the discounting are for the account of the buyer.

**6.4.** Payment will only be considered received when the seller may access the amount unhindered; the acceptance of bank drafts and cheques is only valid as a method of payment and they will not be considered as actual payment.

**6.5.** Liberating payment may not be made to persons employed by the seller who do not have an explicit mandate.

**6.6.** If at any moment the seller may have reason to doubt the creditworthiness of the buyer, the seller has the right before complying (further), to demand an advance on the purchase amount from the buyer, or that the buyer provides valid security for the full amount that the seller still has to claim from the buyer.



**6.7.** The seller retains the right, in spite of other allocation for payment by the buyer, to first pay off the buyer's older debts. If costs and interests have already accumulated then the seller is entitled to first pay the costs, then the interest and only then settle the main claim.

## **7. Late or outstanding payments**

**7.1.** Payment cannot be suspended on the grounds of claims of inferior shipment or on the grounds that the shipment is not yet complete or based on any other professed claim by the buyer. Neither is the buyer entitled to settlement or return for reimbursement of the purchase price nor discount of the purchase price unless the seller has given explicit written permission.

**7.2.** If the buyer remains in default of the required advance payment in accordance with the previous article under paragraph 5 and also fails to supply the required security, then the seller is entitled to dissolve the agreement, either in its entirety or partially.

**7.3.** From the moment that there is a question of non-compliance with the obligation to pay by the buyer, the buyer becomes liable to pay interest on the amount owing at a rate of 1% per month.

**7.4.** All costs, both judicial and extra judicial, with a minimum of € 250.-, related to late or outstanding payment of whatever the buyer owes, is for the account of the buyer. Extra judicial costs cover all costs for summonses and serving notice as well as the advances and fee of whoever has been assigned by the seller to collect the monies owing. If the bankruptcy of the buyer must be filed for, then he is not only liable for the principle sum and the extra judicial costs and contractual interest, but also the costs for the bankruptcy petition.

## **8. Delivery**

**8.1.** Free deliveries are offered on the basis of full loads. If the buyer only requests delivery of part of his order, necessitating a partial load, then the seller is entitled to charge the buyer the extra costs this creates. Free deliveries that are not a full load are delivered whenever combination possibilities allow it.

**8.2.** For deliveries arranged by the seller, the buyer bears full responsibility for competent unloading unless explicitly agreed otherwise.

**8.3.** For these deliveries the maximum time for unloading a full load, unless explicitly agreed otherwise, is three hours. The unloading time for partial loads is calculated as a proportion of the number of loading metres. If the unloading time is exceeded or extra unloading addresses are added, then the seller is entitled to charge the extra unloading/waiting hours based on cost price.

**8.4.** Transporting the goods, also when transported free of charge, is at the buyer's risk.

**8.5.** If the delivery period is brought forward or delayed by the buyer, then the buyer is responsible for damage to the plants caused by premature or postponed delivery.

## **9. Regulations for exchange of empties and auxiliary materials**

**9.1.** At delivery of plants, the cost of exchange pallets, packaging and auxiliary materials, will be charged to the buyer, unless he is able to exchange the *reusable empties* simultaneously and evenly in number, type and quality at sender's loading address or the place of delivery. The term *reusable empties* refers to empty packaging materials packaging that can be used several times due to the nature of the packaging, such as pallet boxes, crates, pallets bottoms, and similar. If the buyer is able to exchange the reusable empties, he must notify the seller at least 3 days in advance.

**9.2.** If the buyer is only capable of a partial exchange of the materials listed under 9.1, seller will charge the buyer proportionately for non-exchanged numbers.

**9.3.** If at (return) receipt the seller finds that the exchanged materials such as mentioned under 9.1, partially or fully, do not meet the authenticity, brands or quality standards these materials are considered to have, seller reserves the right to refuse these materials (at the address of the buyer or the seller) or either to store or seize them temporarily upon arrival at seller's address, without any form of compensation, until there is a satisfactory solution between the seller and the buyer for payment or settlement of the materials due to seller.

**9.4.** The materials mentioned under 9.1 will be picked up at the next delivery by and at the expense of the seller if it meets the following conditions:

- a) the next delivery plants must be a free delivery;
- b) the pickup address must be within a range of 50 kilometres from Zundert. If the pickup address is farther than 50 kilometres from Zundert this will raise additional costs borne by the buyer, depending on the distance and the quantity of reusable empties to be returned. In that case, the buyer will have to confirm the seller expressly in writing that he



wants the seller to pick up the reusable empties at buyer's expense.

c) the seller takes care that all materials as mentioned under 9.1 will be stacked as compact as possible, clean and wrapped against disintegration, prior to presenting it to seller's vehicle;

d) if the buyer does not remember the balance of due materials, he will have to request it at least 3 working days prior to the next delivery or collection.

**9.5.** If a next delivery to the buyer takes place by means of transport from a third party, that carrier or third party cannot be required to return materials from seller, unless seller and buyer have entered this into a written agreement and included into a transport order to the carrier.

**9.6.** The seller is allowed to collect the materials mentioned under 9.1. partially, in case he needs the space of the cargo compartment of the vehicle for collecting goods elsewhere. Likewise, the seller is allowed, in accordance with the buyer, to collect the materials mentioned under 9.1. at any convenient moment.

**9.7.** The buyer is allowed, in a good coordination with the seller, to return the due materials at own expense to seller, during the opening hours of the seller's premises. Then the seller will credit the buyer for the returned materials, providing the above conditions of this article have been fully met.

**9.8.** The seller shall not reimburse or credit any excess of return delivered reusable empties.

**9.9.** All actions of exchange or return delivery of materials mentioned under 9.1., will have to be described and confirmed by signature(s) on a *Fustbon* (receipt note) of the seller Boomkwekerij Richard de Bie BV. An exception can be made for the exchange of europallets or CHEP pallets, for which other pallet notes, such as pre-printed pallet notes of carriers, are customary.

**9.10.** In case the delivery of plants takes place during the autumn period, the materials mentioned under 9.1., will have to be returned to the seller prior to the 31<sup>st</sup> of December in the same calendar year, unless the delivery of plants would be in less than 45 days prior to the 31<sup>st</sup> of December. In that case the materials mentioned under 9.1. must be returned to seller within 45 days from date of delivery of the plants.

**9.11.** In case the delivery of plants takes place during the spring period, the materials mentioned under 9.1., will have to be returned to the seller prior to the 1<sup>st</sup> of May in the same calendar year, unless the delivery of plants would be in less than 45 days prior to the 1<sup>st</sup> of May. In that case the materials mentioned under 9.1. must be returned to seller within 45 days from date of delivery of the plants.

**9.12.** If seasonal or other circumstances so dictate, the seller and the buyer may differ, in mutual consultation, from those deadlines under 9.10 and 9.11 and agree in writing upon another time period.

**9.13.** If during transport or storage, damage occurs to the materials mentioned under 9.1., caused by the buyer, by the buyer's carrier or other by the buyer engaged persons, the buyer assumes full responsibility, including the necessary cost that the seller will be forced to make to replace such materials.

**9.14.** The rates of the applicable reusable empties will be mentioned in or sent simultaneously with the quotation.

**9.15.** Auxiliary materials like straps, chains, holsters etc. are charged by the seller and only credited if the buyer, at his own expense and in good order, returns them within a month.

## **10. Delivery time**

**10.1.** The delivery dates submitted by the buyer are without obligation, unless otherwise agreed, explicitly and in writing. The delivery times are subject to many circumstances beyond the control of the seller, therefore the seller is not responsible for any arrival delay of the cargo.

**10.2.** If the account of the buyer at the seller is in arrears, or if he has failed to comply in a timely manner to a predetermined payment, the delivery obligation of the seller suspends.

## **11. Cancelling an order**

**11.1.** If an order issued by the buyer is fully or partially cancelled, then the buyer must reimburse the seller for any damages caused hereby. The damage is calculated as 50% of the net amount invoiced for the cancelled order. The right to prove higher damage is reserved to the seller.

**11.2.** When delivery is refused, then the buyer is liable for all resulting costs and damages, unless refusal of delivery is the result of an erroneous delivery or transport damage, hindering or making impossible the use of the entire delivery or a great part thereof. Calculating damages is done on the basis of the contents of paragraph 1.

**11.3.** If delivery is refused without satisfying the abovementioned conditions, then the seller is free to sell the plants for the account of the defaulting buyer without prior notification and at a price that he thinks acceptable.



## **12. Force Majeure**

**12.1.** Exceeding the delivery time because of force majeure and other unforeseen circumstances that the seller cannot be held responsible for, making it exceedingly difficult or impossible for the seller to deliver – this includes growth damage or decay caused by unforeseen and/or weather damage, official prohibition on delivery and/or other orders, interruption of operations, strikes etc. Also if the circumstances occur at the suppliers of the seller – the seller is not liable in spite of binding delivery agreements. Such events give the seller the right to suspend the delivery for the duration of the obstruction plus a suitable start-up time, or to dissolve, either partially or fully the not yet fulfilled part of the agreement.

**12.2.** Insofar as the obstruction lasts longer than four weeks and the seller cannot be held responsible for these obstructions, the buyer may only dissolve the agreement, after he has proposed a reasonable subsequent delivery period in writing to the seller, to which the seller has failed to comply.

## **13. Damage**

**13.1.** All responsibility on the part of the seller and his personnel for all damage, whatever sort of damage, directly or indirectly, including loss of profits, damage to movable property or real estate or to persons and prosecution damage are expressly ruled out except in the case of intent or negligence bordering on intent.

**13.2.** The seller accepts no responsibility for any damage resulting from the use of products from his suppliers; the same applies to transport. In any event the liability of the seller will be limited to at the most the amount stated on the invoice with regards to the individual sales agreement concerned with a maximum of € 40,000.-.

## **14. Inquiry Obligation of the Buyer**

**14.1.** The buyer is obliged to inform his customers, where necessary, of the correct treatment of the products supplied and in the applicable cases to advise them in particular of the dangers related to the products, like the degree of toxicity of the plants, intolerance upon ingestion of plants and/or parts of plants.

**14.2.** The buyer indemnifies the seller from every form of responsibility to third parties, in the case of damage being caused as a result of the buyer not fulfilling the abovementioned obligations.

**14.3.** The seller's guarantee is limited to the supply of products in accordance with the description in the order confirmation.

**14.4.** The seller retains the right to supply comparable and/or equivalent species, or thicker or thinner or larger or smaller species, and to charge accordingly, for those species that cannot be supplied. Such a delivery is not considered in default. Unless explicitly agreed otherwise, if certain plants cannot be supplied then the seller may resort to supplying B quality plants.

## **15. Right of Complaint**

**15.1.** Upon receipt, supplied products must immediately be checked for transport damage, incorrect delivery and/or incorrect quantities. These sorts of complaints must be noted on the delivery note; later complaints for these sorts of damages will not be accepted.

**15.2.** The plants of which a complaint is reported, as defined in paragraph 1 of this Article, shall remain at the disposal of the seller, at the buyer's company for 10 days after the dispatch of the written complaint. The buyer has no right to destroy these plants. The seller may request the buyer in writing to keep the lot in storage at the seller's disposal up to another 10 days, for making a proposal for redelivery, compensation or another solution.

**15.3** Other complaints must be submitted promptly and in writing, with a detailed description of the reason, to the seller, and under the condition that if it concerns visible flaws, that it be within eight days following receipt or acquisition of the product.

**15.4.** Complaints that are too late and/or not correctly submitted will not be dealt with. The date of the postmark or fax is qualifying.

**15.5.** If the right of complaint is exercised timely and the complaint is justified, then the seller will, at his own choice, either supply substitute products without charge or send a credit note for the amount of the invoice. If the complaint refers to the genuineness of the species of plants delivered, then the guarantee of the seller is limited to the amount of the invoice.

**15.6.** The seller is not liable for the plants delivered by him not successfully taking root or growing. Unless explicitly agreed otherwise and in that case under the conditions of the regrowth guarantee supplied by the seller. The seller must be allowed a suitable period to be able to supply a replacement delivery.

**15.7.** The right of complaint expires at the very latest one month after a written statement by the seller declaring the complaint inadmissible, unless the buyer has submitted an objection in writing to this rejection. The seller is obliged in such a case to inform the buyer explicitly of the consequences of not responding.



**15.8.** Having submitted a complaint does not free the buyer of his obligation to pay. Only if the seller agrees in writing may the buyer reduce the amount of the invoice with the amount of the contested products.

**15.9.** The right of complaint may only be exercised by the directly contracting party. The right of complaint is not transferable.

**15.10.** All rights of complaint lapse if the buyer does not treat the plants that he has rejected with the necessary care during the period that they are in his possession.

#### **16. Condition of Ownership**

**16.1.** The ownership of the seller's goods only transfers to the buyer if the goods in question have been fully paid. The delivered goods may be reclaimed by the seller at any time until full payment has been received, and the buyer in that case is obliged to return these goods immediately upon receiving an initial request to do so.

**16.2.** The sold goods remain the property for the security of the seller as long as the seller has claims from previous or later similar agreements.

**16.3.** The buyer is not allowed to transfer the goods supplied either in title or actually to third parties or to burden them with limited rights without the permission of the seller.

#### **17. Disputes**

All disputes, even those that are only considered as a dispute by one of the parties involved, with regards to an agreement to which these General Terms and Conditions apply, agreements resulting from such an agreement or these General Terms and Conditions themselves, will be settled by arbitration by the Dutch Arbitration Board for Arboriculture (*Nederlands Scheidsgerecht voor de Boomkwekerij*) in accordance with the Regulations part of these conditions.

#### **18. Applicable law**

**18.1.** All (legal) relationships between the seller and buyer are subject to Dutch law unless explicitly otherwise agreed.

**18.2.** The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

**18.3.** If the competent court judges any provision of these General Terms and Conditions not applicable or contrary to public order or the law, then instead of such an invalid provision, a provision applies that approaches the intention of both parties as far as possible. The invalid provision in question will be regarded as not having been written, however the other provisions will remain in full force and effect.

#### **19. Effective date**

These General Terms and Conditions come into force on September 1, 2016.