

General terms and conditions of Naktuinbouw for the supply of goods

*adopted by Board resolution No. 2013/03, dated 12 July 2013,
and filed with the Chamber of Commerce in The Hague under No. 41150707.*

General

Article 1.

1. These General Terms and Conditions shall apply to all contracts entered into, all offers and quotations from, and all goods or materials supplied by or on behalf of the 'Stichting Nederlandse Algemene Kwaliteitsdienst Tuinbouw' [Netherlands' Inspection Service for Horticulture], hereinafter referred to as 'Naktuinbouw', including the supply of goods and materials, such as plant/reference material and plants for testing, mould and bacteriological cultures and inoculates, documentation and (coloured) labels (other than official trade marks), symbols, pieces of evidence and seals as referred to in the Naktuinbouw Inspection Regulations, to which Naktuinbouw is a party, with the exception of incidental amendments, which Naktuinbouw shall expressly confirm in writing at the time.
2. Stipulations other than those contained herein shall only apply in the event that the parties have agreed their acceptance in writing, and shall only apply for the contract concerned. In all other respects, the provisions in these General Terms and Conditions shall remain in effect.
3. The General Terms and Conditions of the other party shall only be given effect if and insofar as they are not inconsistent with the General Terms and Conditions contained herein. In the event of doubt as to whether any such inconsistency exists, Naktuinbouw's terms and conditions shall prevail.
4. A contract to which these General Terms and Conditions apply, does not come into existence until the moment that Naktuinbouw has confirmed in writing its acceptance of a request, the offer or the order received from the other party. The parties may also provide evidence of the existence of a contract by other means.
5. Once the other party has entered into a contract with Naktuinbouw to which these General Terms and Conditions apply, the other party is deemed to have tacitly agreed to the applicability of these terms and conditions to a subsequent offer made/quotation provided by Naktuinbouw or a subsequent contract entered into with Naktuinbouw or a supply of goods and materials by Naktuinbouw, unless Naktuinbouw expressly deviates from the provisions in these General Terms and Conditions.

Offers/quotations

Article 2.

1. All offers made by Naktuinbouw, including everything stated by Naktuinbouw in application or order forms and in quotations, catalogues, advertisements, images or samples, together with specifications in respect of capacity, conditions, colour quality, composition, times, data, performance or results provided in any other manner, are as accurate as possible and, unless otherwise agreed, must be regarded as having been provided without obligation and as indicative only. Naktuinbouw shall neither be bound by these specifications nor be liable for the consequences of any errors or anomalies in the details it has provided.
2. Naktuinbouw shall try, if applicable, to meet the delivery date agreed in writing, however, Naktuinbouw cannot give any guarantees. In the event that the specified delivery date is exceeded, Naktuinbouw shall notify the other party in a timely manner. In the event that a delivery date or an agreed deadline is exceeded, Naktuinbouw shall be entitled to a reasonable period of grace in which to make good on the delivery.
3. The other party shall not be entitled to cancel a contract once Naktuinbouw has started the process of carrying out its obligations under the contract.

Price (adjustment)

Article 3.

1. All prices agreed upon are binding and exclude any associated sampling and inspection costs, Value Added Tax, and transport, dispatch and packaging costs.
2. All prices are stated in € (Euros), unless otherwise agreed in writing.

Deliveries

Article 4.

1. Delivery occurs from Naktuinbouw premises (in Roelofarendsveen, the Testing Centre in Horst (L.) or the branch office in Wageningen [all located in the Netherlands])
2. A failure to meet the agreed delivery date does not entitle the other party to refuse acceptance of the goods or materials subsequently delivered, or to defer its obligations under the contract. Naktuinbouw shall at no time be liable for the consequences of a late delivery.
3. Naktuinbouw shall be entitled to make partial deliveries.
4. The other party shall be required to accept the delivery at the time and place indicated by Naktuinbouw, failing which the delivery shall be transported and stored at a location and in a manner to be determined by Naktuinbouw, at the expense and risk of the other party.
5. The risk of loss, total or partial destruction or damage of the goods to be delivered shall transfer to the other party at the time that Naktuinbouw loads the goods to be transported at the direction and expense of the other party, or at the time that the goods are made available and the other party refuses to accept them.

Warranty

Article 5.

1. Naktuinbouw warrants the fair and average quality of the items supplied. The goods supplied shall be checked for quality and their suitability for the purpose for which they have been ordered/purchased. The warranty is limited by the agreed capacity, conditions, composition, performance and results as described in the order confirmation.
2. Any claim in respect of warranty lapses in the event that it has been established in Naktuinbouw's reasonable opinion, that the other party has not treated/processed the goods supplied in accordance with Naktuinbouw's regulations, stipulations or directions, or have not been used in accordance with their purpose or objective.
3. There shall be no right to claim warranty in respect of the presence of undesirable pathogens in the materials/goods that were not included in the order confirmation and for which Naktuinbouw has therefore not tested.
4. In view of the fact that it is a live product, Naktuinbouw cannot accept any liability whatsoever in respect of plant material other than what has been included in these General Terms and Conditions.

Complaints

Article 6.

1. Complaints in respect of defects in the goods or materials supplied must be reported to Naktuinbouw immediately upon being discovered. Upon being notified, Naktuinbouw shall, with due regard to the stipulations contained in Article 7. of these General Terms and Conditions, investigate whether the blame for the defect is attributable to Naktuinbouw. Notification of any defects, as far as isolates are concerned, must in any event be made within three weeks of delivery, failing which Naktuinbouw will assume that the supply was properly completed. Depending on the cultivation cycle, a reasonable period for notification must be used in respect of plant material.

2. Complaints in respect of invoice errors must be reported to Naktuinbouw in writing and within eight days of the date of the invoice, failing which Naktuinbouw will assume that the invoice is correct.
3. Complaints in respect of the goods supplied shall not put on hold the other party's payment obligations relating to the goods supplied, supplied earlier, or yet to be supplied.
4. In the event that the defects can be attributed to Naktuinbouw, Naktuinbouw shall be entitled to replace the goods or materials delivered or to credit the invoice amount. Naktuinbouw shall declare its intentions in this regard by return mail.
5. The return of a consignment shall have its carriage prepaid and shall only occur after consultation with and with the approval of Naktuinbouw.
6. The other party cannot derive any rights whatsoever from the approval referred to in Paragraph 5 of this article.
7. The other party is required to ensure that the consignments referred to in Paragraph 5 of this article, are properly packaged as supplied, together with the certification label supplied.

Liability

Article 7.

1. Naktuinbouw's liability for all direct costs and direct damages that in any way relate to or is caused by an error or shortcoming in the goods or materials supplied, whereby the provisions of Article 5 are required to be taken into consideration in the assessment of this error or shortcoming, is at all times limited to the net invoice amount for the goods or materials supplied.
2. Naktuinbouw shall at no time be liable for any indirect costs and indirect damages that in any way relate to or have been caused by an error or shortcoming in the goods or materials supplied.
3. Naktuinbouw and the other party indemnify each other against all claims by third parties for the payment of damages or in any other respects, which relate directly or indirectly, circumstantially or closely, to the execution of the contract between Naktuinbouw and the other party and/or with the goods or materials supplied.
4. The other party indemnifies Naktuinbouw against all claims by third parties in respect of infringements of intellectual property rights held by these third parties in connection with the goods/information provided by the other party.
5. When entering into contracts – and during the term of such contracts – to which these General Terms and Conditions apply, Naktuinbouw shall give due regard to its responsibilities in respect of the supervision it has to provide for the production and the sale of propagation materials referred to in the Seeds and Planting Materials Act 2005.

Force Majeure

Article 8.

1. Force majeure shall release Naktuinbouw from its obligations to the other party. Naktuinbouw shall be entitled to either terminate the contract concerned without intervention by the courts and without being held liable to pay compensation, or to defer its obligations under the contract for a reasonable period to be determined at its own discretion.
2. Force Majeure is held to be events and circumstances that have a demonstrable impact and upon which Naktuinbouw cannot exercise any influence, and as a result of which Naktuinbouw is unable to meet its obligations as a whole or in part (in a timely manner), such as: serious interruptions of the production process, delays in the supply of materials caused by suppliers, fire, hold-ups in traffic, computer failures, strikes, sickness of personnel, limitations imposed by government, external contingencies, including plant diseases and pests, as well as obvious changes since the contract was entered into of the actual circumstances that influence the direct or indirect costs and price factors or the ability to supply.
3. In the event of force majeure, Naktuinbouw shall notify the other party as soon as possible on production of the necessary evidence.

Payment

Article 9.

1. All payments must be made at the offices of Naktuinbouw or by transfer to a bank or Giro account specified by Naktuinbouw, within 30 days of the date of invoice, without discount or off-set against other debt, even in the case of bankruptcy.
2. In the event that the other party has not paid within the period referred to in Paragraph 1 or a period otherwise agreed, the client shall be ipso jure in default and Naktuinbouw shall have the right without further warning or notice of default, to charge the other party interest at 1% per month (or part thereof) from the due date up to the date of full settlement, without prejudice to any other rights to which Naktuinbouw may be entitled.
3. All costs that arise as a consequence of a legal and/or extra-legal collection procedure in respect of an amount due and payable by the other party, shall be paid by the other party.
4. In the event that the collection process is handled by a third party, the extra-legal collection costs shall be fixed in advance at 15% of the invoice amount, with a minimum of € 250.00 (excluding VAT).
5. The total amount that Naktuinbouw is owed by the other party is payable on demand if and insofar as the other party's payment is overdue and in default, also in the case of bankruptcy, WSNP [Debt Management (Natural Persons) Act], an application for a moratorium or suspension of payments, or a winding up of the other party's company.
6. Naktuinbouw reserves the right to request full or partial payment of the agreed price in advance.
7. In the event that the other party does not meet its obligations under the contract concerned, Naktuinbouw shall be authorised to defer the return of the materials supplied by the other party for the purposes described in the order confirmation (right of retention) until the other party has paid all amounts due and payable under the contract.

Retention of title

Article 10.

1. Naktuinbouw retains title to the goods or materials supplied until such time as the other party has paid in full all amounts due and payable to Naktuinbouw.
2. Naktuinbouw has the right to take back the goods or materials supplied under 'retention of title' if and insofar as the other party defaults on any of its obligations in respect of Naktuinbouw, or if, in Naktuinbouw's opinion, the other party is in payment difficulties.
3. As long as title to the goods or materials supplied has not transferred to the other party, the other party shall not be permitted to transfer ownership, either as security or otherwise, of the goods or materials supplied, or to encumber or dispose of them on any legal basis whatsoever.
4. Having regard to the stipulations in this article, the other party shall be entitled to work with or process, sell and supply, the goods or materials supplied by Naktuinbouw under 'retention of title' within the context of its normal business activities, provided the other party meets its payment obligations and, in the case of non-cash sales, the other party stipulates a 'retention of title' condition on behalf of Naktuinbouw for its customers, based on the provisions of this article.
5. The 'retention of title' by Naktuinbouw also extends to items created or acquired by specification with or by the work on or the processing of the goods or materials supplied under 'retention of title' by the other party or third parties. The items acquired by specification shall be immediately transferred in ownership to Naktuinbouw in the event that the other party does not meet its obligations.
6. Contrary to the stipulations of Naktuinbouw's Inspection Regulations and should the occasion arise, the other party shall give Naktuinbouw an irrevocable power of attorney to enter the premises of the other party or to instruct a third party to enter on its behalf, in the event that Naktuinbouw wishes to take back the goods or materials supplied, with or without being processed, or if Naktuinbouw wishes to ascertain or has instructed a third party to ascertain the actual existence of the goods or materials supplied on the premises, whereby any inspection or other documents in, on or attached to the goods or materials supplied, may be reclaimed by Naktuinbouw.

7. Notwithstanding the stipulations contained in these General Terms and Conditions, Naktuinbouw reserves the rights and powers to which it is entitled under intellectual property law. Naktuinbouw reserves the right to use the increased knowledge gained through the supply of the goods or materials for other purposes, insofar as it does not involve passing on confidential information to third parties in the process. Any variations from this provision shall be included in the contract.

Confidentiality

Article 11.

1. Both parties are required to refrain from disclosing all confidential information they have received in the context of this contract either from each other or from alternative sources. Information is deemed to be confidential when this is stated by one party or when it is self-evident from the nature of the information.
2. If, pursuant to a regulatory provision or a court order, Naktuinbouw is required to disclose confidential information to third parties specified by law or by a competent court, and the other party cannot claim a legal right or rely on a decision by the court for refusing to provide the information, Naktuinbouw shall not be liable for the payment of damages or compensation, and the other party shall not be entitled to cancel the contract on the grounds of any damages that may arise as a result of such disclosure.

Applicable law and jurisdiction

Article 12.

1. All offers and orders, as well as the contracts with the other party, shall always be governed by the laws of the Netherlands.
2. Only the version of these General Terms and Conditions written in the Dutch language shall be legally valid. In the event that a translation varies from the original Dutch text, the Dutch text shall prevail.
3. All proceedings in respect of disputes arising from the contracts referred to in Paragraph 1 of the article must, in the first instance, be instituted before, and adjudicated by, the Courts in The Hague [in the Netherlands].