



General Terms and Conditions

for the Tissue Culture section of Plantum NL, as filed at the Chamber of Commerce and Industry in Rotterdam, Gouda office.

1 Scope

1. The present General Terms and Conditions apply to all offers, orders and agreements and the execution thereof made by members of the Tissue Culture section or entered into with third parties.
2. The user of these General Terms is: a tissue culture company engaging by virtue of a purchase agreement to another party to supply tissue certain culture products at an agreed price. The user is hereinafter referred to as the 'seller' and the other party as the 'buyer'.
3. Provisions deviating from these General Terms and Conditions must be agreed on explicitly in writing and will be deemed to supplement the provisions of the General Terms and Conditions inasmuch as they do not replace them.

2 Offers

1. Offers are not binding unless they include a deadline for acceptance. If an offer contains a non-binding offer and it is accepted by the buyer, the seller is entitled to revoke the offer within five business days after receipt of the acceptance.

3 Agreements

1. Agreements are concluded at the moment of explicit acceptance of the order by the seller in the manner that is customary in the tissue culture trade.

4 Prices

1. Prices are exclusive of VAT, costs of packing, quality control and/or phytosanitary examination, import duties, government and other public levies, as well as plant breeder's fees and other fees and apply to delivery ex works.
2. Prices will be considered to have been quoted in Euro.
3. Agreed prices may not be increased without the buyer's consent.

5 Delivery

1. The seller engages to deliver the agreed quantities, notwithstanding the provisions of section 6 (2) of the present General Terms and Conditions.
2. Delivery dates indicated are never to be considered absolute deadlines, unless explicitly agreed otherwise. In the event of late delivery, the seller must therefore be given formal notice, whereby the buyer must set a reasonable period for the seller to fulfil his obligations nonetheless. The seller will warn the buyer in time if deviations from the delivery times indicated are expected.
3. If delivery has not been taken of the products ordered after expiry of the agreed delivery, the risk of any loss of quality as a result of the additional storage period shall be for account of the buyer. The products ordered will be at his disposal and stored at his expense and risk. If, however, after a limited conservation period has elapsed that may be considered reasonable in view of the product type, the buyer has not taken delivery and the risk of loss of quality and/or deterioration of the products leaves no other choice, the order will be deemed to have been cancelled by the buyer. The buyer is liable for the resulting damage.
4. If the buyer cancels an order in whole or in part, he will owe the seller the agreed sale price for products manufactured to date. For products still in progress, the buyer will owe the seller the cost of hours worked to date.
5. The seller reserves the right not to carry out orders if the buyer has not paid for previous deliveries within the agreed payment period. The seller is not liable for any damage to the buyer as a result of non-delivery. The buyer must be informed in time of the enforcement of this right.

6 Force Majeure

1. At the seller's option, after consultation with the buyer, the obligation to deliver may be cancelled in whole or in part or suspended in the event of force majeure.
2. Force majeure is understood to mean: any circumstance beyond the seller's direct control, as a result of which execution of the agreement can no longer be reasonably required, such as, strikes, fire, extreme weather conditions or government measures, etc.
3. If the seller cannot deliver the quantities ordered because of force majeure, he will be entitled to reduce the quantities to be delivered. If the case as indicated in the preceding sentence occurs, the buyer will have the right of annulment, after discussion, if there is a significant deviation from the agreed

quantity.

4. The seller is not liable for damage incurred by the buyer as a result of non delivery, late delivery or incomplete delivery because of force majeure.
5. The seller agrees to inform the buyer in writing of his choice in the events indicated in parts 1 and 3 of this section. If suspension is chosen and the delivery is thereby delayed by more than 21 days, the buyer is entitled to state in writing that he considers the agreement to have been annulled; this will not occur, however, until after he has given the seller formal notice by means of a write or registered letter, in which case the buyer must set a reasonable period for the seller to fulfil his obligations after all.

7 Time and place of delivery

1. Delivery will occur ex seller's works.
2. Lading and shipment must be done efficiently. If the buyer does not prescribe a means of transportation, the seller will select the most usual form. If the buyer prescribes a means of transportation other than that proposed by the seller, transport will be at the buyer's risk.
3. The seller is liable for damage occurring until the moment of delivery of the products in the event of shipment by his own lorries.

8 Payment

1. Payment of amounts owed by the buyer to the seller as charged by the seller to the buyer must occur, in terms of the basic amount, on signing the order form in question, or within a period of 14 days thereafter. Payment of other amounts owed for execution of instructions given must be within 14 days after the date of the invoice in question sent to the buyer after delivery of the material in question.
2. The buyer is not entitled to deduct any amount from the purchase price to be paid for a counterclaim that he may make. The buyer may not suspend payment of the purchase price if the seller can demonstrate that the complaint regarding the goods delivered, on which the buyer's claim for suspension is based, is unjustified.
3. If the buyer does not fulfil his payment obligation in time, he will be deemed to be legally in default. The seller will then be entitled to charge interest of 1% monthly from the day that the buyer proves to be in default of the payment obligation indicated in part 1, with a portion of a month being counted as a full month.
4. If payment is to be made by bringing in third parties, the resulting costs will be at the buyer's expense. This means that the buyer in default, notwithstanding any costs of the proceedings, will owe an amount, due immediately, equal to 15% of the invoice amount or the actual collection charges, regarding the expenses caused by his being in default.
5. If, after concluding the agreement, the seller becomes aware of circumstances giving him reason to fear that the buyer will not fulfil his obligation to pay the purchase price, the seller will be entitled to demand surety for payment and, as long as it has not been provided to the seller's satisfaction,
 - a. to suspend delivery or
 - b. to cancel the agreement by means of termination, if surety for payment has not been provided by the buyer within 14 days after a summons to do so, notwithstanding the right to claim the resulting damage occurring to him from the buyer. The price of all products delivered or created to date will then immediately become due.

9 Retention of title

1. All products delivered to the buyer will remain the property of the seller for as long as they have not been paid for in full.
2. Before payment in full has been made for all products delivered or to be delivered by the seller, the buyer is not entitled to transfer them to third parties in ownership or pledge other than in accordance with his normal business or the normal purpose of the products. In the event of contravention hereof, the purchase price of all products delivered or to be delivered by the seller will become due immediately.
3. In the event of late payment of one or more invoices due and if the specific circumstances of the case and a reasonable evaluation of the parties' interests leaves no other choice, the seller will be entitled to take immediate possession of the products delivered and remove them from the place of storage, at which time the seller will now irrevocably be authorised by the buyer for such event to enter the premises where the delivered products are situated or to cause them to be entered by persons entrusted with the retrieval of the products.
4. After the products have been made available to the buyer, until final payment has been made, the buyer will continue to bear the risk for all direct or indirect damage occurring to or by the products regardless of the cause.
5. Inasmuch as the seller holds goods and/or products that should be considered as belonging to the buyer, including any parent material made available and tissue culture products paid for by the buyer, the seller is entitled to retain the relevant goods and/or products until full payment has

been received for all that the seller is owed at any time.

10 Packaging

1. Single-use packaging will be charged at cost price.
2. The seller is entitled to charge the buyer a user fee for re-useable packaging and other durable materials, to be indicated separately on the invoice
3. If a deposit is charged, it will be settled after the material in question has been returned in proper condition. The cost of return transportation will be charged to the buyer.

11 Complaints

1. The buyer is obliged to check the quantity of the batch delivered on receipt, or have it checked, and to inform the seller immediately in writing of any shortcoming found. The quantity or number of items indicated on the waybill, delivery form or any document authenticated for that purpose is recognised as correct unless errors on the proof of receipt are marked immediately after being detected by the buyer.
2. Complaints concerning visible defects in products delivered must be reported to the seller in writing by telex, fax, telegram, e-mail with confirmation of receipt or by telephone immediately after having been detected or at any rate within 72 hours of receipt of the products. A complaint reported by telephone must be confirmed by the buyer in writing within 8 days of receipt of the products.
3. Complaints concerning invisible defects in products delivered must be reported to the seller immediately after they have been detected and must at any rate be submitted in writing in such good time that the seller is able to examine the products on site or to have these examined to establish whether the complaints are justified or to arrange for the return of the products.
4. Complaints must at least contain:
 - a. a detailed and accurate description of the defect;
 - b. an account of the facts on the grounds of which it may be concluded that the products delivered and the products rejected by the buyer are identical;
 - c. an indication of the delivery number on the packing slip.
5. Complaints concerning part of the products supplied cannot be a cause for rejection of the entire delivery. Complaints submitted after the periods referred to above have elapsed will not be considered.

12 Warranty and liability

1. The seller warrants that the products to be supplied on the basis of the order will meet the requirements stipulated in the applicable regulations of the Dutch inspection authorities, which are in force at the time the agreement is concluded.
2. The seller does not warrant the growth and flowering of the products delivered by him, as this is dependent on factors which are beyond his control.
3. The seller is not liable for any defects in products supplied if, in view of the current state of science and technology concerning propagation of the relevant product category by means of the tissue culture method, he could not have prevented such defects from occurring at the time of the delivery of the products concerned.
4. In the event that the seller declares complaints regarding products delivered to be justified, compensation of any damage or loss suffered by the buyer will at no time exceed the invoice value of the products delivered to which the complaints relate, unless the buyer proves that the damage or loss was caused by wilful intent or gross negligence on the part of the seller.
5. Recommendations and information are always provided to the seller's best knowledge and ability, but without any liability on the part of the seller.

13 Protection of original species by breeder's rights or contracts

1. Tissue culture products of species belonging to the ornamental plant trade protected by breeder's rights applied for or given in the Netherlands and/or any other countries or by a contractual transfer provision may not be used for reproduction or trade.
2. Species thus protected will be indicated 'R' or 'P' by the seller.
3. The basic material provided may be used by the buyer only for the cultivation of cut flowers and/or other finished ornamental products at the buyer's business.
4. The seller is entitled to enter the premises of the buyer's business or premises under his control, where the basic material delivered by the seller is located, to view or assess the material.
5. The finished product derived from the basic material delivered to the buyer may be sold by the buyer under the (species) name and any trade name only.
6. If the buyer encounters a mutant in the protected species, he must inform the holder of the breeder's right immediately by registered letter.
7. At the written request of the holder of the breeder's right, the buyer will provide test material from the mutant to the holder of the breeder's right within two months after receiving said request.
8. The buyer is aware that the finder of a mutant in the protected species requires the permission of the breeder or breeders of the parent species to develop the mutant.

9. In particular, the buyer is aware that the finder of a mutant requires the permission of the holder of the breeder's right regarding the parent species to carry out the following actions with regard to all material of the species, including harvested material

(hence flowers, plants and plant parts as well):

- a. propagate or multiply (reproduce);
- b. condition for reproduction;
- c. offer for sale;
- d. sell or otherwise bring onto the market;
- e. export;
- f. import;
- g. store for any of the reasons in a) to f) above.

14 Disputes

1. Dutch law applies to all agreements to which these General Terms and Conditions apply in whole or in part.
2. Disputes regarding or arising from agreements concluded between the seller and a buyer established abroad to which these General Terms and Conditions apply may be decided on only by a Dutch judge who has jurisdiction in the area where the seller is established.

15 Final provision

1. If and inasmuch as any part or provision of these General Terms and Conditions may prove to contradict any obligatory provision of national or international law, it will be considered not to have been agreed on and these General Terms and Conditions will otherwise continue to bind the parties. The parties will then enter into consultation to arrive at a new provision in accordance with the relevant legislation and which complies with the intention of the parties as much as possible.
2. The Dutch language publication of these General Terms and Conditions is the authentic version and, in case of a dispute concerning the interpretation of the text, is binding and decisive.

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