

General Terms and Conditions of Huverba B.V. in Opheusden

General:

Article 1.

1.

These General Terms and Conditions are applicable to and constitute part of all offers, commissions, agreements and commitments entered into by Huverba with a counterparty.

2.

Deviation from these General Terms and Conditions is possible in mutual consultation, however shall exclusively take place in writing.

3.

By accepting an offer made by Huverba the counterparty exclusively accepts the applicability of these terms and conditions. Deviations from and/or additions to these terms and conditions are only valid if and to the extent that Huverba has expressly accepted these in writing. This kind of acceptance shall only regard the delivery in respect of which the acceptance took place and never any other transactions between Huverba and the counterparty.

Offers:

Article 2.

1.

The offers made by Huverba are subject to normal growth of that which is being offered and for that matter also without engagement, unless the offer specifies a deadline for acceptance.

2.

The prices specified in the offer are, unless indicated otherwise, excluding turnover taxes and ex the nursery.

3.

The offer applies to the whole of that which is being offered and hence not to separate components.

4.

The measures specified in the offer are approximate.

5.

Provided samples and/or pictures are considered a guideline for the average of a delivery possibly carried out later.

6.

Huverba is not held to deliver at a price specified in the offer if this price is based on a printing or a clerical error. Errors or obscurities in offers or order confirmations cannot lead to a deviation from that which Huverba actually meant and Huverba shall neither be liable for any damages possibly deriving there from.

7.

In case of orders placed by telephone and/or by fax and/or by email Huverba shall not be liable for incorrect delivery and/or invoicing originating from the relevant order placed by telephone and/or by fax and/or by email. Written confirmations of orders placed by telephone and/or by fax and/or by email received after the date that the deliveries of the goods ordered by telephone and/or by fax and/or by email have in the meanwhile taken place shall not alter this.

Agreement:

Article 3.

1.

An agreement comes into being if Huverba confirms a commission in writing or actually starts carrying out the same.

2.

Reservations of plants by the counterparty based on, for example, size, species, quantity, etc. shall only lead to an agreement if the booking is converted into a commission by the counterparty and Huverba confirms this commission in writing or actually starts carrying out the same. For the remainder bookings by Huverba are always without engagement.

3.

As long as a commission has not been confirmed in writing by Huverba and Huverba did not actually start carrying out the same, Huverba shall be free not to accept the commission.

4.

Each and every agreement is concluded by Huverba under the suspensive condition that the creditworthiness of the counterparty has sufficiently been demonstrated and/or has at the request of Huverba been guaranteed by the counterparty by way of sufficient securities.

5.

During the execution of the agreement Huverba shall be entitled to, at the expense of the counterparty, request security concerning the creditworthiness of the latter.

Price:

Article 4.

1.

With the publication of new pricelists the old pricelists lose their validity. With regard to agreements that have already been concluded at that time article 4 paragraph 6 applies.

2.

All prices are without discount or surcharge and excluding payable taxes and duties as applicable at the time of the delivery, unless otherwise agreed upon in writing.

3.

Prices are subject to change.

4.

The prices are applicable ex the nursery in Opheusden, unless expressly indicated otherwise.

5.

Packing costs like those of general purpose package, pallet boxes, packing cases, plastic and the like are at the expense of the counterparty.

6.

If more than three months have lapsed between the conclusion of an agreement and the delivery and the prices of materials, raw materials or semi finished products, salaries, premiums of whatever nature, freights, taxes, exchange rates and/or other cost price factors of Huverba have increased such during this period that the cost price for Huverba increased by more than 5% Huverba shall be entitled to pass on the higher sales price corresponding with the cost price increase without the counterparty being entitled to dissolve (have dissolved) the agreement whilst in pursuance of the foregoing Huverba shall by no means be held to pay any compensation for damages.

Delivery time and delivery on call:

Article 5.

1.

Unless expressly otherwise agreed upon in writing, the delivery times indicated by Huverba cannot be considered as fatal deadlines.

2.

In case of untimely delivery Huverba shall only be in default after a written notice of default by the counterparty in which an additional and reasonable deadline for delivery is provided whilst the counterparty is unabatedly held to purchase. The foregoing is equally applicable in case of any other failure of Huverba in complying with its obligations vis-à-vis the counterparty. In case of default the counterparty shall never be entitled to compensation for damages. If the delay in the delivery remains within reasonable limits, despite default, then this shall neither give the counterparty reason to dissolve the agreement.

3.

Delivery on call of orders by the counterparty must take place at least 4 days in advance.

4.

The liability of Huverba for possible damages of the counterparty arising from an overstepping of an indicated fatal deadline is, in consideration of article 11 (force majeure), limited to the following:

- if an untimely compliance results in serious damages, which untimely compliance is caused by intent or gross culpability of directors of Huverba or managerial subordinates or by intent or gross culpability of other subordinates, Huverba shall fully be liable;
- the liability of Huverba in case of untimely compliance shall be limited to an amount corresponding with the invoiced amount. Huverba shall never be liable for lost profit or losses as a result of standstills.

5.

In case a fatal delivery deadline is agreed upon in writing the time of delivery is understood as the moment when the loading is started if the transport takes place by or on behalf of the counterparty. If the transport takes place by Huverba or through the agency of Huverba the time of delivery is understood as the moment when the goods have been unloaded.

6.

In case a delivery time has not been specified or agreed upon the delivery shall take place within a, according to the circumstances of the case, reasonable deadline established by Huverba.

Delivery:

Article 6.

1.

The delivery takes place ex the nursery in Opheusden.

2.

The counterparty is bound by a purchase commitment. If products offered by Huverba are not (cannot) be purchased for reasons that cannot be attributed to the same then Huverba shall be entitled to, at its sole discretion store and/or sell the products or, if storage and/or sale can within reason not be expected of Huverba, destroy (have destroyed) the same. All costs, as well as possible deficit proceeds, are at the expense of the counterparty. This does not affect any and all other rights of Huverba vis-à-vis the counterparty.

3.

If the counterparty stipulates delivery at a different location than specified in paragraph 1 of this article the transport costs shall be borne by the counterparty.

4.

Huverba determines the choice of the means of transport. The factual delivery takes place at the location nearest to the work or warehouse which the means of transport can reach and leave safely and by means of a road suitable for that means of transport.

5.

The counterparty is obliged to have the unloading take place as soon as can reasonably be expected after arrival of the means of transport. In this context the counterparty shall abide by a normal unloading time with sufficient suitable staff and material. During the unloading the counterparty is to abide by the instructions of the carrier.

6.

Delivery ex the nursery in Opheusden takes place by the actual loading of the goods onto the means of transport selected by the counterparty.

Risk:

Article 7.

1.

Despite the fact as to whether delivery takes place ex the nursery in Opheusden or in accordance with the provisions laid down in article 6 paragraph 3, the risk transfers to the counterparty at the moment of the delivery ex the nursery in Opheusden or, if the delivery takes place in accordance with article 6 paragraph 3, at the moment the plants are loaded onto the means of transport in Opheusden.

2.

During the transport and the unloading at the counterparty the risk shall be borne by the counterparty.

Cancellation, suspension, dissolution of the agreement:

Article 8.

1.

Only with the prior approval in writing of Huverba can the counterparty accomplish cancellation of an agreement in consideration of the provisions laid down in paragraph 2 of this article.

2.

In case of cancellation the counterparty shall be held to pay Huverba an amount corresponding with 50% of the order amount by way of compensation for the damages incurred by Huverba as a result of the cancellation. The counterparty shall not be held to pay this compensation if the complete commission is forwarded to the first following sales season when the counterparty is then to pay the complete amount of the commission to Huverba as advance payment of the purchase price to be determined in the new season on the basis of the then applicable prices.

3.

If the counterparty (buyer) fails to in any way whatsoever comply with its obligations with regard to the payment of deliveries already carried out by Huverba Huverba shall be entitled to suspend its own obligations vis-à-vis the buyer and to cancel pending orders or parts thereof. The same applies if it would become apparent that the alleged creditworthiness as intended in article 3 paragraphs 4 and 5 of these General Terms and Conditions is incorrect, the latter at the discretion of Huverba or of its credit insurance company.

4.

The agreement concluded by and between the parties immediately and automatically comes to an end before the end of the term if the counterparty (buyer) is declared bankrupt, is granted suspension of payment, is placed under guardianship or the (forced) sale of the company of the counterparty is being executed and

the correct compliance with the obligations arising from this agreement is not guaranteed, provided an arrangement is agreed upon by means of which the rights and obligations, as stipulated in the agreement concluded by and between the parties, are transferred to a new counterparty (buyer), such in consultation with Huverba.

Complaints, audit, right of complaint:

Article 9.

1.

Possible complaints connected with visible or easily verifiable imperfections or defects must upon delivery of the goods be specified by the counterparty on the consignment note, packing slip or driver's list which is to be signed for receipt. An appeal to imperfections or defects which are visible or easily verifiable cannot be invoked against Huverba at a later stage. All other complaints must have reached Huverba in writing and with an accurate description of the complaint within two working days after the counterparty communicated or could within reason have communicated the imperfections or defects.

2.

A notice that the delivered goods do not comply with the agreement shall no longer be possible if the counterparty started the use, processing or resale of the delivered goods.

3.

Timely submitted complaints shall not be processed if it becomes apparent that third parties altered the goods delivered by Huverba.

4.

Complaints of whatever nature shall neither wholly nor partly suspend the payment obligation of the counterparty.

5.

Each and every right of complaint expires if the counterparty does not or not fully comply with the provisions set forth in this article and the counterparty shall in that case be deemed to have accepted the delivered goods as sound in all aspects.

6.

The onus of proof that the delivered goods, to which the complaint is related, are the same as those that have been delivered by Huverba is vested in the counterparty.

7.

The onus of proof that the delivered goods do not comply with the agreement is vested in the counterparty.

8.

In any case, the assessment as to whether that which has been delivered complies with that which has been agreed upon shall take place on the basis of the condition in which the delivered goods were at the time of delivery. Goods/products in respect of which the counterparty submits a complaint must accurately be stored by the counterparty in an unused and unprocessed condition and be rendered available at the request of Huverba for further investigation by Huverba or by a third party to be designated by Huverba. Where necessary Huverba is promptly granted access to the location(s) where the goods are located. The counterparty shall also ensure to limit and keep limited any possible damages as much as possible. All reasonably incurred costs of the investigation conducted by Huverba for the benefit of this kind of assessment are at the expense of the counterparty if the complaint appears to be unfounded.

9.

If the counterparty, in consideration of the provisions set forth in this article, submits a complaint and its complaint appears to be related to a default on the part of Huverba, Huverba shall, at its sole discretion, either replace the relevant goods, after which the replaced goods become the property of Huverba, or grant a

pro rata reduction on the price if the imperfection or defect is only of a subordinate nature or only regards a small part of the delivery. To this end the counterparty is to grant Huverba a reasonable deadline.

10.

The counterparty cannot derive any rights from the provisions set forth in paragraph 9 if and to the extent that Huverba fails to comply with its obligations.

Liability:

Article 10.

1.

The liability of Huverba vis-à-vis the counterparty for – direct or indirect – damages directly or indirectly resulting from failing, untimely, incomplete or improper compliance with the agreement or any other contractual or non-contractual obligations vis-à-vis the counterparty or third parties is excluded, unless and to the extent that there would be question of intent or gross culpability on the part of Huverba.

2.

The liability of Huverba is terminated in case of force majeure on its part in which instance on account of the permanent or temporary impossibility of compliance Huverba shall be entitled to dissolve the agreement either wholly or partly without being held to pay compensation for damages to the counterparty.

3.

If a subordinate and/or auxiliary person hired by Huverba is addressed on account of damages inflicted by the same during the performance of that which has been agreed upon with the counterparty in the service of Huverba the same shall be entitled to invoke the restriction or exemption of liability stipulated by Huverba vis-à-vis the counterparty.

4.

The counterparty indemnifies Huverba against any action of third parties who claim compensation for damages, regardless of the nature and the scope thereof, which is connected with the use in the broadest sense of the word of the goods delivered by Huverba. In this context the counterparty waives recourse against Huverba.

5.

If, in consideration of the provisions above, the liability of Huverba has been established its liability shall be limited to the amount corresponding with 100% of the invoiced amount to which a possible attributable failure is related.

Force majeure:

Article 11.

1.

Force majeure in the sense of these terms and conditions is understood as, among other things, each and every circumstance beyond the will and control of Huverba, whether or not foreseeable at the time of the conclusion of the agreement, which prevents the normal execution of the agreement or impedes the same such that this can within reason not be expected of Huverba. The following instances shall in any case, yet not exhaustively, be considered as force majeure:

- natural disasters;
- illnesses of an epidemic nature;
- wars, international or national armed conflicts and preparations thereto;
- measures of national, international or supranational governments;
- discontinuation of the supply of required components, materials, raw materials and/or semi finished products;

- blockage or impediment of transport routes, such to include traffic jams;
- delay due to defects of or damages to production means;
- strikes or labour unrest;
- loss of facilities supplied by utility companies;
- loss of facilities supplied by telecommunications companies.

2.

In case of force majeure Huverba shall be entitled to, without prejudice to additional imperative provisions attributed to the parties, (partly) dissolve the agreement concluded by and between the parties or to suspend compliance with its obligations vis-à-vis the counterparty during a reasonable period of time to be determined by the same without being held to pay any compensation for damages.

3.

If a situation of force majeure occurs when the agreement has already partly been executed the counterparty is held to comply with its obligations vis-à-vis Huverba up to that moment.

4.

If Huverba concluded an agreement with more than one counterparty concerning corresponding or similar goods and Huverba is, on account of a non-attributable failure, not able to comply with all agreements it shall be authorised to at its sole discretion determine which agreement it shall comply with and to what extent.

5.

In case of force majeure Huverba shall be authorised to adjust the prices and/or delivery terms and conditions to the then applicable circumstances.

Reservation of title:

Article 12.

1.

Huverba reserves the title of all goods delivered to the counterparty until the purchase price for all these goods is paid. The reservation of title also applies to the claims that Huverba should acquire vis-à-vis the counterparty on account of the failure of the counterparty to comply with one or more of its obligations vis-à-vis Huverba and to claims that originate from a compensation for damages payable to Huverba by the counterparty.

2.

Goods subject to a reservation of title in favour of Huverba can only be resold within the framework of the normal business operations of the counterparty. The counterparty is not allowed to either pledge the delivered goods that are subject to a reservation of title or to grant any right vested thereon to third parties.

3.

If the counterparty fails to comply with its obligations vis-à-vis Huverba or there is question of well-founded fear that the counterparty shall not do so Huverba shall be entitled to remove or have removed the delivered goods that are subject to a reservation of title from the counterparty or from third parties that hold the goods on behalf of the counterparty. The counterparty is to grant Huverba its full cooperation on this, failing which the counterparty forfeits a penalty of 10% of that which the counterparty is due for each day the counterparty fails to comply vis-à-vis Huverba.

4.

In case third parties intend to vest or invoke rights in respect of the goods on which a reservation of title of Huverba is vested the counterparty commits vis-à-vis Huverba to forthwith inform Huverba accordingly and to inform the third parties of the reservation of title of Huverba.

5.

The counterparty commits vis-à-vis Huverba to within reasonable limitations grant its cooperation to all measures Huverba intends to take in order to protect its property rights with regard to the goods.

6.

All goods originating from Huverba present at the counterparty are, as long as the buyer still has any payment obligation vis-à-vis Huverba, the property of Huverba either pursuant to the reservation of title laid down in this article or on account of a non-possessory pledge to which end the buyer hereby already vests a right of pledge in favour of Huverba. At the request of Huverba the counterparty shall grant its cooperation to the grant of this right of pledge by means of effectuating registration.

Payment terms and conditions:

Article 13.

1.

Payment must take place without discount or settlement within 45 days after the date of the invoice, unless otherwise agreed upon and confirmed in writing.

2.

Without prejudice to additional rights allocated to Huverba, in case of untimely payment of the complete amount payable to Huverba or in case of any other attributable failure of the counterparty, the counterparty shall automatically be in default vis-à-vis Huverba without any demand or notice of default being required. All that which the counterparty is due to Huverba at that time becomes immediately claimable in its entirety. The counterparty shall then be held to pay the commercial legal interest over the yet outstanding invoiced amount or a part thereof to Huverba where a part of a month is calculated as a full month and such as from 30 days after the date of the invoice. If Huverba is to take collecting measures in order to collect outstanding invoices the counterpart shall also be held to pay extrajudicial collecting charges to Huverba for an amount of 10% of the outstanding claim with a minimum of € 275.00. All costs incurred by Huverba, judicial and extrajudicial, such to include the costs of legal assistance and advice prior to the proceedings, in connection with the noncompliance of the counterparty with any obligation vis-à-vis Huverba are at the expense of the counterparty.

4.

With regard to the goods in possession of the counterparty Huverba shall, in any case, be entitled to invoke its right of retention until its total claim against the counterparty is complied with.

Applicable law and competent court:

Article 14.

1.

Dutch law is applicable to all agreements concluded with Huverba.

2.

All disputes, such to also include those merely experienced as such by one of the parties, occurring between the parties as a result of offers, agreements or deliveries shall be settled by the competent court in the district of Arnhem.

Closing provision

1. The Dutch text of these General Terms and Conditions shall always be decisive for the interpretation thereof.

2. If Huverba deviates from one or more provisions of these General Terms and Conditions this shall not

imply that the other provisions of the relevant agreement are not applicable or that Huverba exhausted the right to in other instances desire strict compliance with the provisions.

3. If and to the extent that any part and/or any provision of these General Terms and Conditions would appear to be in breach of any imperative provision of national or international legislation the same shall be considered non-stipulated and the remainder of these General Terms and Conditions shall remain binding upon the parties. Instead of the possibly invalid provision a provision which would have been stipulated by Huverba if the original provision would have been renounced on account of its invalidity shall then apply.
4. If there is question of obscurity about the interpretation of one or more provisions of these General Terms and Conditions interpretation “in the spirit” of these provisions shall take place.
5. If a situation occurs between the parties which has not been regulated by these General Terms and Conditions then this situation must be assessed “in the spirit” of these General Terms and Conditions.