

## **General terms and conditions for deliveries**

of the limited company *Groenteverwerking en tuinbouwbedrijf Paul van den Elzen Uden BV*, having its registered office in Uden, hereafter referred to as the user. Registered with the Chamber of Commerce, registration number: 17113076.

### **Applicability**

#### *Article 1*

1. These general terms apply to all offers submitted and agreements concluded by the user.
2. The present general terms apply to all following offers submitted to and agreements concluded with the same counterparty, regardless whether they are connected with or follow from offers already submitted or agreements already concluded.
3. Adjustments or additions to these general terms must be explicitly confirmed by the user in writing, and only apply to that offer or agreement on the occasion of the submission or conclusion of which the adjustment or addition was made.
4. If and in so far as the general terms and conditions used by the counterparty are contrary to the present terms and conditions, the counterparty's general terms and conditions do not apply.

### **Offers**

#### *Article 2*

1. All offers submitted by the user are without engagement, unless the offer explicitly states otherwise.
2. An agreement will not become effective until the user has confirmed in writing that he accepts the proposal or instruction of the counterparty.  
However, proof of the agreement's existence can also be given otherwise by the parties.
3. The counterparty vouches for the information, specifications, calculations etc. he provided.

### **Prices**

#### *Article 3*

1. All prices charged are exclusive of any due turnover tax thereon.
2. Unless it is explicitly agreed otherwise, all prices are stated in Euro.

### **Delivery and risk**

#### *Article 4*

1. Delivery takes place ex works the user's company, unless an other place is agreed upon, and at the time stated in the offer or order confirmation.  
The term within which the delivery must take place starts at the moment the user has available all information, permits, instructions, documents, exemptions, allocations and supplies that are necessary for the delivery or for the production and transport of the goods to be delivered.
2. Delivery takes place ex works the user's company at the moment of the actual presentation, but in any event immediately preceding the moment the loading of the goods in a means of transport made available by or on behalf of the counterparty is started.
3. Unless explicitly agreed otherwise, the user has the right to deliver the goods to be delivered by him in stages, in which case each delivery is invoiced separately.
4. If the counterparty does not, not timely or not at the agreed place take delivery of the goods because the counterparty does not render the necessary cooperation for this purpose or because an other impediment arises from his side, the counterparty is in default by operation of law and the user has the right to transport the goods from the place where and the time when the delivery must take place and to store the goods at a place to be determined by the user, all this at the counterparty's account.  
The user then has the right to a remuneration of the damage incurred. This remuneration amounts to at least twenty percent (20%) of the price agreed upon for the delivery, without prejudice to his right to claim further damages.

5. If the counterparty has not taken delivery of the goods within 12 hours after presentation for delivery, the user has the right to dissolve without judicial intervention the agreement on the basis of which delivery takes place, and to sell the goods to be delivered.

The counterparty then owes a compensation for lost profits and all costs made with regard to the matter. This compensation amounts to at least twenty percent (20%) of the price agreed upon for the delivery, without prejudice to the user's right to claim further damages.

6. The risk of loss, damage or the full or partial deterioration of the goods to be delivered is for the counterparty's account as from the moment of delivery or as from the moment when and the place where delivery must take place according to the agreement.
7. The agreed term within which delivery must take place is aimed for by the user in accordance with the requirements of reasonableness and fairness, but is not binding.
8. Exceeding of the delivery period does not give the counterparty the right to suspend the performance of his obligations pursuant to the agreement.
9. Exceeding of the term within which the delivery must take place never results in the user's liability for direct or indirect consequences of the late delivery.
10. The costs relating to the delivery of goods, which in any event include the costs of transport, insurance, the acquisition of the necessary documents and permits, packaging, hoisting, loading and unloading, are for the counterparty's account.

### **Retention of title**

#### *Article 5*

1. As security for the correct and complete performance of the counterparty's engagements, the user retains the right of ownership of the delivered goods until the moment the counterparty has performed all his engagements.  
In this matter, the term engagements means engagements with respect to the consideration owed to the user with regard to:
  - a. the goods delivered or yet to be delivered under this agreement;
  - b. activities to be performed under this agreement for the counterparty;

- c. the claims due to failure in the performance of this agreement.
2. If the user has both claims towards the counterparty for which the right of ownership is retained and claims towards the counterparty for which no right of ownership is retained, a payment by the counterparty will first serve to settle the claim for which no right of ownership is retained.
3. If the claims for which the ownership of the delivered goods is retained have been fully settled by the counterparty, the user will, if he considers this desirable, retain a non-possessory pledge at the moment he provides the ownership of the delivered goods, serving as security for the present and future claims of the user on the counterparty.  
The counterparty is then obliged to render his cooperation for the establishment of this non-possessory pledge, on penalty of an immediately payable fine which is not open to moderation, for an amount of 50% of the net invoice amount for the delivered goods for which the right of ownership is retained.
4. As long as the ownership of the delivered goods has not passed to the counterparty, the counterparty is not allowed to pass the ownership of the delivered goods, to encumber them with a real right or with a right pertaining to the law of obligations or to sell them, under any title whatsoever.
5. As long as the ownership of the delivered goods has not passed to the counterparty, the counterparty is obliged to keep the delivered goods for the user with due care and diligence and to such high standard of quality as it is reasonable for the user to expect in all the circumstances.
6. As long as the ownership of the delivered goods has not passed to the counterparty, the counterparty is obliged to store the delivered goods in a clear and recognizable manner, if the delivered goods are solely determined by sort and weight.
7. As long as the ownership of the delivered goods has not passed to the counterparty, the counterparty is allowed to treat or process the delivered goods or to sell and transfer them to third parties in the context of his normal business activities, provided in the event of resale that he retains the ownership of the delivered goods towards the user, or immediately pays the purchase price owed by him to the user, or provides the user with a pledge on the claim on his purchaser upon the user's request.

8. If and in so far as the counterparty fails to comply with any obligation towards the user, or if the user is in the opinion that he is in financial difficulties, the user has the right to take back the delivered goods under retention of ownership.
9. The counterparty now for then gives the user the irrevocable right to enter the counterparty's company buildings or to have a third party to be appointed by the user enter the counterparty's company buildings, if the user wishes to take back the delivered goods or if he wishes to check the actual presence of the delivered goods in those company buildings.

### **Quality**

#### *Article 6*

1. The user guarantees that the delivered goods comply with legal provisions applying in the Netherlands and that the quality requirements agreed upon with the counterparty are met. If no quality requirements have been agreed upon by the user and the counterparty, the goods are delivered in accordance with the quality requirements usually applying to such goods in Dutch social and economic life.
2. If goods are delivered to a counterparty established outside the Netherlands, they are inspected by a Netherlands approved inspection institute prior to delivery. The inspection report will serve as proof of the delivered goods' quality between the user and the counterparty. The costs for the inspection are for the user's account. Prior to delivery, the user will send the inspection report to the counterparty by facsimile or electronic mail. If the counterparty does not object to the contents of the inspection report within 2 hours after it was sent to him, they are deemed to have been accepted by the counterparty.

### **Complaints**

#### *Article 7*

1. The counterparty must submit complaints to the user within 1 hour after receipt of the goods, stating the invoice and packing slip number, with a detailed specification of the nature of the complaints, failing which the counterparty is deemed to have accepted the delivered goods unconditionally. In case of a just complaint, the user has the right to fully or partially replace the delivered goods or to (partially) credit the invoice.
2. The user is not liable for direct or consequential loss as a result of any defect that is the basis of the complaint, such as purchase of alternative goods by the counterparty or a trading loss for the counterparty.

### **Liability**

#### *Article 8*

1. The user's liability for all direct costs and loss, in whatever way related to or caused by an error or failure in the performance of the agreement is at all times limited to the amount for which the user is insured against such harmful events and which is actually covered, or, if the user is not insured against such harmful events, the amount for which entrepreneurs comparable to the user are usually insured.
2. The user is never liable for all indirect costs and consequential loss, in whatever way related to or caused by an error or failure in the performance of the agreement.
3. The counterparty indemnifies the user against all claims of third parties to loss compensation or otherwise, directly or indirectly related to the performance of the agreement between the user and the counterparty.
4. The counterparty will not abuse the GGN from the user.

### **Force majeure**

#### *Article 9*

1. If and in so far as the user cannot fulfil or fulfil fully or in time or at the agreed place his obligations arising from the agreement due to a cause he cannot be held responsible for, he has the right to dissolve the relevant agreement without judicial intervention and without being liable for damages in this respect, or to suspend his obligations arising from the relevant contract during a term he considers reasonable.

2. Causes the user cannot be held responsible for include: every non-foreseeable discontinuation in the normal procedures of the business of the user or in the business of a third party from which the user buys goods or services, as well as obvious changes in the factual circumstances since the conclusion of the agreement which directly or indirectly influence the cost price factors or delivery possibilities, which includes fire, water damage, exceptional weather conditions, disasters, war and threat of war, contagious diseases, government measures, riot, acts of war, strikes, lock-outs, work-to-rules, defective machinery or installations, interruptions, delay in the supply or rationing of raw materials, auxiliary materials and fuel, non-compliance with an obligation by a third party from which the user buys goods or services.
3. If one of the above circumstances occur, the user will inform the counterparty of this as soon as possible, on submission of the available proof.

### **Payment**

#### *Article 10*

1. Unless agreed otherwise, all payments are due within 14 days after the invoice date, without any right to reductions or setoff, even in case of bankruptcy, at the user's office or by payment to a bank account stated by the user.
2. If the counterparty has not paid within the abovementioned period or within a period otherwise agreed upon, he is in default by operation of law, and the user is entitled to charge the counterparty an interest of one percent per month from the due date until the date of complete payment, without a warning or notice of default being required, and without prejudice to the user's other rights.
3. All costs for the user resulting from the non, non-timely or non-proper performance by the counterparty of any obligation of the latter pursuant to this agreement, are for the counterparty's account.  
These costs include costs of demand for payment, cancellation, collection and bailiff, as well as costs of the counsel/lawyer and procurator, and all other extrajudicial and judicial costs.  
The user and the counterparty have set these costs at a minimum of 15% of the principal sum due.

The counterparty is in default due to the fact of non-performance or non-proper performance.

4. If and in as far as the counterparty is in default of payment, and in case of bankruptcy, suspension of payment and stop or liquidation of his company, all claims the user has on the counterparty are payable on demand.
5. The user reserves the right to request full or partial down payments of the agreed price.
6. Upon the first demand of the user, the counterparty is obliged to give collateral security or provide the user with a letter of good standing of the bank for all the counterparty may owe to the user pursuant to this agreement or otherwise.
7. The user is entitled to compensate all payable amounts he owes to the counterparty with all claims he has on the counterparty that are valuable in money.
8. The user is entitled to suspend his obligation to deliver goods until the counterparty has complied with all his obligations towards the user, regardless of how these obligations were arisen.

**Final stipulations**

*Article 11*

1. Dutch law applies to all agreements between the user and the counterparty.
2. If one or more stipulations of these general terms and conditions are void or set aside by a court ruling, the other stipulations of these general terms and conditions remain valid. With regard to the stipulations that are void or set aside, parties will make new arrangements in mutual consultation and in accordance with the prevailing law.
3. All differences resulting from agreements between the user and the counterparty and which do not fall within the jurisdiction of the sub district court, must in the first instance be submitted to and judged by the court in 's-Hertogenbosch.
4. In case of differences regarding the interpretation of these general terms and conditions, the Dutch text applies.