

GENERAL SALES AND DELIVERY TERMS OF EVANTHIA FOR THE SALE AND DELIVERY OF PLANTS, SEEDS AND CULTIVATION MATERIAL OF ORNAMENTAL PLANT PRODUCTS.

The General sales and delivery terms apply on the sales and delivery of seeds, plants and growing material of floricultural products and are filed with the Chamber of Commerce in The Hague under number 24240812 on October 13, 2013.

To all services and products from the seed technology department the General Conditions of Sale and Delivery of Evanthia Seed Technology apply. These General Terms and Conditions are filed with the Chamber of Commerce in The Hague under number 24240812 on August 11, 2016.

In case of any contradiction between the Dutch version and the translation, the Dutch version shall prevail.

Artikel 1 Area of application

- These general terms apply to all offers, sales, deliveries and agreements made by the seller regarding seeds, plants and cultivation material of ornamental plant products and plant material of nutritional horticulture products, including the sale and delivery of fertilizers and crop protection, etc. (hereinafter: products). Any terms of the buyer of any type and by any name are not applicable unless expressly agreed in writing.
- Divergent provisions must be agreed expressly and in writing. Inasmuch as they do not replace the provisions of these General Terms, they are deemed to supplement these terms.
- The seller warrants to the buyer a free copy of these general terms and conditions, at the latest when concluding the agreement.
- To all agreements with and/or offers for sale aimed at buyers domiciled outside the country of residence of the seller, for as far as this is not deviated from below, the International Seed Trade Federation Rules and usages for the Trade in Seeds for Sowing Purposes are applicable.

Artikel 2 Definitions

- 'Seller' refers to the natural or legal person engaged in delivering products as indicated article 1, part 1, and concluding transactions regarding such products, in the broadest sense, including the purchase and sale of products, the rental and/or sale of products he has cultivated himself, reproducing flowers or plants.
- 'Buyer' refers to: the natural or legal person with whom the seller enters into any agreement regarding the products indicated in article 1, part 1.

Artikel 3 Offers and prices

- Offers are non-binding unless otherwise agreed in writing. An offer will be valid for a maximum of 60 days.
- The agreement is deemed to have been created by written confirmation of the offer by the buyer, unless the seller objects in writing within five days after the buyer has sent confirmation.
- If an agreement is created by the intervention of agents, travelling representatives and/or other intermediaries, these will bind the seller once they have been accepted in writing by the seller.
- Prices are exclusive of VAT and additional expenses, including: transport charges, packaging costs, cost of quality control and/or phytosanitary inspection, import duties, government and other official levies, and fees under breeders' rights and any other fees, unless otherwise agreed in writing. If no price is agreed on, the seller's price in effect at the time of delivery will apply.
- The seller is entitled to adjust the price reasonably to a level to be determined by him, if his expenses have increased significantly since the price was set.
- Unless otherwise indicated, prices are in Euro (€).
- If the buyer cancels the agreement, he will immediately owe 25% of the gross sale value of the products to be delivered as a cancellation charge.
- In the event that the products in question prove to be unsealable, or saleable only at a lower price, as a result of said cancellation, the buyer will be liable for any price differences and other damages incurred by the seller.
- Both parties are obliged to limit damages as much as possible.

Artikel 4 Conditions of sale

- Orders for plants and/or cultivation material that is not yet fully grown at the time of purchase will be accepted subject to the normal cultivation average of good plant material with a good appearance.
- Partial or complete failure of the cultivation or harvest of starting material, seed harvest or partial spoilage during storage for any reason will release the seller from the obligation to deliver and his other obligations, unless attributable to gross negligence on the part of the seller.
- The seller is also entitled to assure a replacement delivery, which will occur on the same terms as originally agreed.
- The buyer has no right of damages, if the seller makes a reservation in relation to harvesting and processing conditions.
- If the delivery of a type that has been ordered is not possible for any reason, the seller will be entitled to deliver a type that is equivalent as much as possible or to cancel the order; if the type ordered cannot be delivered, or the buyer does not accept a different type; the seller will endeavour to deliver a different type.

Artikel 5 Delivery and transport

- Delivery is ex works unless otherwise agreed. On delivery, the risk of the products in question is transferred to the buyer with everything that is connected thereto.
- After consultation with the buyer, the seller will determine the delivery date. Delivery dates indicated are not considered deadlines. If a delivery date is agreed on, the seller will endeavour to maintain that date for delivery. If the seller cannot deliver on the agreed date or within the agreed period, he will inform the buyer as quickly as possible. After consultation with the buyer, the seller will determine the delivery date.
- If the buyer receives the products ordered before the agreed delivery date or period as indicated in part 2, the resulting risk is entirely for the buyer.
- If the buyer receives or wishes to receive the products ordered after the agreed delivery date, the risk of any loss of quality resulting from longer storage will be entirely for the buyer.
- Any extra costs due to taking earlier or later delivery of the products as referred to in part 2 or 4 of this article will be charged to the buyer.
- If, after a certain storage period that may be considered reasonable in view of the type of product, the buyer has not received the product and the risk of loss of quality and/or spoilage of the products leaves no other option, the order will be deemed to have been cancelled by the buyer, in which case the buyer is obliged to pay the damage incurred by the seller as a result.
- Should in a seed order, the quantity as ordered deviate from the standard quantity as used by the seller or a multiple of this, then the seller is at liberty to supply the nearest higher quantity.
- At execution of their obligation to supply, the seller will make the utmost effort at all times.
- Under decent honoring of the supply obligation, by the seller is also understood delivery with a small deviation in size, packaging, quantity or weight.
- The seller is allowed to deliver sold objects in instalments. Should the objects be delivered in instalments, then the seller is authorized to invoice each instalment separately.
- The Incoterms applicable at the moment of conclusion of the agreement will be applicable to the agreement.

Artikel 6 Packaging/carts/pallets

- Single-use packaging will be charged at cost and returns not accepted.
- All packaging except single-use packaging remains the property of the seller.
- The seller is entitled to charge the buyer an agreed user fee for reusable packaging and other durable material, to be indicated separately on the invoice.
- The buyer is obliged to return the packaging to the seller at his own expense and in good condition, within 30 days from delivery or immediately after planting. If it has been agreed that the seller is to collect the packaging, the buyer must ensure that the packaging remains in good condition until the date indicated by the seller and store it so that the seller may collect it in a normal manner.
- The buyer may not keep the packaging in use or allow it to be used by third parties.
- Carts, rolling containers, reusable pallets must be returned immediately unless agreed otherwise. It is not permitted for the buyer to use them for his own purposes or give them to third parties.
- After usage, the buyer commits to return the supplied packaging clean to the supplier, that is to say free of (residue of) plant protection products. Should the packaging not be clean when returned to the supplier, then the buyer is answerable for the costs involved in having the packaging cleaned. The buyer is also responsible for any damage as a result of packaging that is returned without having been cleaned.
- In the event of damage to reusable packaging, carts, rolling containers, pallets, etc., the buyer is obliged to pay the cost of repairs or replacement and any additional rental charges resulting from late returns.

Artikel 7 Payment

- The seller is entitled to request an advance of 50% on the invoice amount from the buyer.
- Payment must occur within thirty days after the invoice date.
- The buyer is not entitled to reduce the purchase price he is to pay by any counter-claim he may make.
- The buyer is not entitled to suspend the fulfilment of its payment obligation in the event of a complaint he has submitted to the seller regarding the products delivered, unless the seller expressly agrees with the suspension in exchange for a guarantee.

- All payments will be made at the offices of the seller or by deposit or transfer to a bank account to be indicated by the seller.
- Payment must be made in euro (€) unless otherwise indicated on the invoice, in which the seller is entitled to charge rate fluctuations on to the buyer.
- 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 at 1% monthly from the date that the buyer is in default of fulfilling the payment obligation indicated in part 2, with a partial month being counted as a whole month. The seller is also entitled to charge the buyer for the exchange rate loss incurred by the buyer's default.
- If the buyer is in default or otherwise falls short in fulfilling one of his obligations, all reasonable charges in obtaining satisfaction, both legal and extralegal, will be at his expense.
- The seller reserves the right not to carry out, or no longer to carry out, orders or agreements if previous deliveries have not been paid for by the buyer or the buyer has not fulfilled or is at risk of not fulfilling his obligations to the seller. The seller is not responsible for any damage to the buyer as a result of not carrying out orders.
- The buyer located in a different EU Member State than the Netherlands will inform the seller in writing of his correct VAT identification number. Furthermore, the buyer shall provide all necessary information and documents that the seller requires as proof that the products have been delivered in a different EU Member State than the Netherlands. The buyer will indemnify the seller for all claims resulting from and all negative consequences of the buyer not or not entirely complying with the provisions in this article. The seller reserves the right to increase the price payable by the buyer with the VAT rate that would apply to the delivery in question in the event of delivery within the Netherlands.
- In the case of liquidation, bankruptcy or moratorium of the buyer, the buyer's obligations to pay will be immediately claimable and the seller is authorized to put any further execution of the agreement on hold or to annul the agreement, without prejudice to the seller's right to claim damages.
- If payments in instalments were agreed, the entire outstanding sum becomes immediately claimable when a payment is not received on time without the need for serving notice. What is defined in paragraph 7 is similarly applicable.

Artikel 8 Force majeure

- Force majeure refers to any circumstances that prevent honoring of the agreement and that cannot be attributed to the seller. This will also include, if and as far as the circumstances prevent honoring of the agreement or impede this unreasonably: pest and diseases, strikes in other companies than the seller's own company, wild-cat strikes or political strikes in the seller's business, a general shortage of required raw materials and other affairs or services that are required for accomplishing the agreed performance; non-foreseeable delays at suppliers or other third parties of which the seller is dependent and general transport problems.
- If the seller cannot carry out the delivery because of force majeure, the seller must inform the buyer of the circumstances in writing as soon as possible.
- In the event of force majeure, the parties will agree a change to the purchase agreement or complete or partial dissolution of the purchase agreement. In these cases, the seller is not obliged to pay any kind of damages.
- If the parties cannot agree on a change or dissolution within 10 days after the written notice of the circumstances in question, either of the parties may then turn to a judge.

Artikel 9 Unforeseen circumstances for the buyer

- In the event of unforeseen circumstances that are so serious that the seller may not reasonably expect that the purchase agreement concluded will remain in effect until it complies with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time of concluding the agreement.
- The seller does not guarantee the genuineness of the products that are generally known to branch back.
- The seller does not guarantee the growth and blossoming of the products delivered.
- The buyer will at all times be provided with all requested cultivation information to the best of the seller's knowledge and abilities, by or on behalf of the seller, but without any liability on the part of the seller.
- If the seller has indicated a germination rate for the delivered seeds, then this is exclusively based on reproducible laboratory tests. No direct relationship can be assumed between the germination rate as indicated and germination of the seed when used by the buyer. The stated germination rate only indicates the germination power of the seed at the time of testing and for the circumstances under which the test was conducted. Germination is amongst other things subject to the location, growing measures or climatic conditions as occurring at the buyer's place of business.
- Any possible guarantee from the side of the seller becomes defunct if the buyer processes the items or has these processed, repackaged or has these repackaged or uses these inappropriately.
- The buyer needs to investigate the bought items at delivery or as soon as possible after delivery. In doing this, the buyer has to check whether the delivered goods comply with the agreement, namely:
 - Whether the corresponding items were delivered;
 - Whether the quantity of the delivered items corresponds to what was agreed;
 - Whether the delivered items comply with the agreed quality standards or, in case no quality standards were agreed upon, to the standards that can be expected to be set for normal use and/or trade activities.
- Complaints regarding visible defects, including those regarding the quantity, size or weight of the products delivered, must be indicated to the seller within two days after delivery and the seller must be informed in writing within eight days.
- Complaints regarding non-visible defects must be indicated to the seller immediately after detection (within two days at the latest) and the seller must be informed in writing within eight days.

Artikel 10 Guarantees and complaints

- The seller guarantees that the products to be delivered on the basis of the order will comply with the requirements set out in the applicable regulations of Dutch testing authorities in effect at the time of concluding the agreement.
- The seller does not guarantee the genuineness of the products that are generally known to branch back.
- The seller does not guarantee the growth and blossoming of the products delivered.
- The buyer will at all times be provided with all requested cultivation information to the best of the seller's knowledge and abilities, by or on behalf of the seller, but without any liability on the part of the seller.
- If the seller has indicated a germination rate for the delivered seeds, then this is exclusively based on reproducible laboratory tests. No direct relationship can be assumed between the germination rate as indicated and germination of the seed when used by the buyer. The stated germination rate only indicates the germination power of the seed at the time of testing and for the circumstances under which the test was conducted. Germination is amongst other things subject to the location, growing measures or climatic conditions as occurring at the buyer's place of business.
- Any possible guarantee from the side of the seller becomes defunct if the buyer processes the items or has these processed, repackaged or has these repackaged or uses these inappropriately.
- The buyer needs to investigate the bought items at delivery or as soon as possible after delivery. In doing this, the buyer has to check whether the delivered goods comply with the agreement, namely:
 - Whether the corresponding items were delivered;
 - Whether the quantity of the delivered items corresponds to what was agreed;
 - Whether the delivered items comply with the agreed quality standards or, in case no quality standards were agreed upon, to the standards that can be expected to be set for normal use and/or trade activities.
- Complaints regarding visible defects, including those regarding the quantity, size or weight of the products delivered, must be indicated to the seller within two days after delivery and the seller must be informed in writing within eight days.
- Complaints regarding non-visible defects must be indicated to the seller immediately after detection (within two days at the latest) and the seller must be informed in writing within eight days.
- Complaints always have to be communicated to the seller at such a time that the seller is able to check the delivered items.
- Complaints must also be indicated to the seller at such time that the seller can check the plant material.
- A complaint must at least include:
 - An extensive and precise description of the defect;
 - The storage location of the cultivation material to which the complaint refers;
 - A listing of the facts on the basis of which it can be determined that the products delivered by the seller and those rejected by the buyer are the same.
- In case of a permanent dispute between parties it is possible to have the items (re)examined by Naktuinbouw (NAK Horticulture), domiciled in Roelofsarendsvveen (Netherlands) at the request of one of the parties, on condition that the loser shall pay. The re-examination is carried out on the basis of an acknowledged sample. The re-examination is binding for both parties, without prejudice to the right of both parties to present disputes about the consequences of this result to the bodies as mentioned in article 15.
- Complaints with regard to a part of the delivered items cannot be any reason for the buyer to reject the entire delivery.
- Issuing a complaint does not suspend the buyer's obligation to pay, regardless of any justification of a complaint.

Artikel 11 Information provision

- Any information as provided by the seller of any nature is entirely free of engagement. Descriptions, recommendations, and illustrations in brochures and leaflet are adjusted as accurately as possible to experiences and practical tests. However, on the basis of this information the seller does not accept any responsibility for any different results in the grown product. The buyer has to decide themselves whether the items are suitable to be used for the intended cultures and/or can be used in the local circumstances.
- In the information as provided by the seller 'immune' means: the variety is immune to a specific disease (immune being an absolute concept); under 'resistant' is understood: the ability of the plant to resist or delay the development of a specific disease; by 'tolerant' is meant: the ability of the plant to sustain a specific disease or damaging environment, with minor adverse effects on its growth and production; by 'susceptible' is understood: the inability of the plant to hinder or counteract the growth or development of a specific disease or damaging environment.

Artikel 12 Liability

- All liability regarding non-timely delivery is hereby excluded, unless the ultimate agreed delivery date is exceeded by more than seven days.
- If the delivery date is exceeded by more than seven days, the seller must be given written notice, whereby the buyer set a reasonable period for the seller to fulfil his obligations nonetheless.
- The seller is not liable for damage caused by force majeure as indicated in article 8, part 1.
- The compensation as paid by the seller for any possible damages suffered by the buyer in case of a complaint submitted in conformity with article 10 and/or in case of proof of default by seller as a result of late delivery as meant in article 12, paragraphs 1 and 2, will not exceed the invoice value of the delivered, to which the apparently appropriate complaint relates, provided this is due to the

- The seller's responsibility or culpable negligence. The seller is under no circumstances answerable for any kind of consequential loss.
- In the event of a partial failure of the harvest as a result of the products delivered for the buyer, the compensation owed by the seller for the damage incurred by the buyer will not exceed a percentage of the purchase price of the products delivered, which is at most equal to that portion of the harvest that has failed for the buyer. If, when damage is reported, the seller and buyer jointly or a third party determines the percentage of deviating, diseased or weak plants, this percentage will determine the seller's maximum liability. The buyer is obliged to ensure that the damage as a result of deviating, diseased or weak plants is limited as much as possible.
- Damage compensation may not be deducted by the buyer from any outstanding account payable to the seller and does not entitle the buyer not to pay the invoice amount, or not to do so by the invoice payment date.
- Both parties are obliged to ensure that any damage is limited as much as possible.
- Each possible claim regarding compensation for damages pursuant to these General Terms expires, if and as soon as one year has passed since the delivery of the products in question when the claim has not been submitted to the seller in writing.
- Seeds of floriculture products and edible horticulture or the floriculture products produced from seeds are under no circumstance intended for human and/or animal consumption.

Artikel 13 Transfer of ownership, retention of ownership and surety

- Except for the terms of part 2 of this article, ownership of the products is transferred to the buyer at the time of delivery under article 5 of these General Terms.
- The seller will retain ownership of the products he has delivered and will retain or acquire ownership of the products arising from them until the agreed price has been paid in full by the buyer and the buyer has completely fulfilled all his other obligations to the seller on any grounds.
- If there is any doubt in the mind of the seller regarding the ability of the buyer to pay, the seller will be entitled to defer performance until the seller has stood surety for payment or to terminate the agreement by cancellation, if the buyer has not provided surety for payment within fourteen days after being ordered to do so, notwithstanding the terms of article 4, part 1. In both cases, the buyer will be liable for the expenses incurred by the seller.
- The items as delivered by the seller, which come under the reservation clause by virtue of paragraph 2, should only be sold on or used within the framework of ordinary provision may not be used to produce or further reproduce the species;
- The buyer is not allowed to pawn the items or establish any other right on this.

Artikel 14 Contractual protection or protection under breeders' rights of original species

- Starting material and plant material of species protected by a breeders' right applied for or granted in the Netherlands or any other country or by a contractual transfer provision may not be:
 - used to produce or further reproduce the species;
 - brought for the purpose of reproduction;
 - c. treated into the realm of commerce;
 - d. traded further;
 - e. exported;
 - f. imported;
 - or kept in stock for one of these purposes.
- The starting material delivered may be used by the buyer only to cultivate end products at the buyer's business and may be used by the buyer only under the relevant species name and brand name if applicable.
- The seller is entitled to access to the business of the buyer or lots under the buyer's control where the starting or plant material delivered by the seller is located to view and/or assess said material. The seller will inform the buyer of his arrival in a timely manner.
- The buyer is obliged to provide immediate access to his business and the crops to inspection authorities carrying out inspections on behalf of the owner of a protected species delivered to him. The buyer must also provide immediate access to his records, e.g., invoices, that are relevant to such inspection.
- If the buyer finds a mutant in the protected species, he must immediately inform the holder of the breeders' right by registered letter.
- At the written request of the holder of the breeders' right, the buyer will provide the holder of the breeders' right, within two months of receiving the request, with test material of the mutant, free of charge.
- The buyer is aware that the finder of a mutant, being a significant derived species, in the protected species, requires the permission of the holder(s) of the breeders' right regarding the 'parent species' to exploit the mutant.
- In particular, the buyer is aware that the finder of a mutant requires the permission of the holder of the breeders' right regarding the 'parent species' to carry out the actions indicated in part 1 regarding all material of the species, including harvested material (hence also flowers, plants and/or plant parts).
- The buyer is obliged to provide all co-operation desired by the seller, including co-operating in collecting evidence, in the event that the seller becomes involved in proceedings regarding breeders' rights or other industrial property rights.

Artikel 15 Dispute settlement

- Dutch law applies to all agreements to which these general terms apply in whole or in part.
- Unless arbitration was mutually agreed by both parties, any dispute will be settled by the civil judge with jurisdiction to hear and determine at first instance at the location of the seller, except when the applicable rules of the law selected in article 15, paragraph 1 are imperative and force parties to declare a different judge as competent.
- However, in the case of a dispute, parties will in the first instance attempt to arrive at a solution by mutual agreement or through mediation, before parties put the dispute to an arbitration committee or to the civil judge.
- If the seller and the buyer are not domiciled in the same country, then the 'United Nations Convention on the International Sales of Goods' (the Vienna Sales Convention) is also applicable, for as far as this does not divert from these terms and conditions and for as far as these are not in violation with the imperative law in the country of the seller.

Artikel 16 Applicability of the appendix

- In addition to these general terms and conditions, the 'regulation regarding surcharge percentages to be charged in the case of diverting germination rates' as included in the appendix has to be declared applicable with respect to the agreement. This means that this appendix is thus part of the agreement to which the present general terms and conditions are also applicable.

Artikel 17 Final clause

- If and inasmuch as any part or provision of these General Terms proves to be contrary to any compulsory provision of national or international law, it will be deemed not agreed on and these General Terms will otherwise bind the parties. The parties will then confer to arrive at a new provision corresponding as much as possible to what the parties intended.