

**GENERAL CONDITIONS OF SALE AND DELIVERY**  
of Visser's Aardbeiplanten BV, Midden Peelweg 10, 5966 RE America, The Netherlands  
Filed with the Chamber of Commerce for Limburg under number 12028448

**ARTICLE 1 APPLICABILITY**

- 1.1 In these general conditions of sale and delivery, "Visser's Aardbeiplanten" means: Visser's Aardbeiplanten BV (Midden Peelweg 10, 5966 RE America) or an affiliated company. In these general conditions of sale and delivery, "plant" or "plants" means plants, in the broadest sense of the word, offered or delivered by Visser's Aardbeiplanten.
- 1.2 These general conditions of sale and delivery apply to all offers and/or agreements made or concluded by Visser's Aardbeiplanten with third parties (hereinafter: the "Counter Party") and to the execution or performance thereof.
- 1.3 These general conditions of sale and delivery apply to the exclusion of any general conditions used by the (potential) Counter Party.
- 1.4 Deviations from and/or additions to these general conditions of sale and delivery may only be invoked by the Counter Party if and to the extent that they have been accepted in writing by Visser's Aardbeiplanten.

**ARTICLE 2 OFFERS, ORDERS AND AGREEMENTS**

- 2.1 All offers from Visser's Aardbeiplanten shall be without obligation. Orders and acceptances of offers by the Counter Party shall be irrevocable.
- 2.2 Visser's Aardbeiplanten will only be bound after it has confirmed the order in writing or has started its execution.
- 2.3 Any errors in the order confirmation from Visser's Aardbeiplanten shall be communicated to Visser's Aardbeiplanten in writing within 5 days after the date of the order confirmation, failing which the order confirmation will be deemed to reflect the agreement accurately and fully and binding upon the Counter Party.
- 2.4 Oral arrangements or agreements by or with personnel of Visser's Aardbeiplanten shall only be binding upon it after they have been confirmed in writing by Visser's Aardbeiplanten.
- 2.5 These general conditions of sale and delivery shall apply fully to any amendments to the agreement.

**ARTICLE 3 CONFORMITY**

- 3.1 All statements from Visser's Aardbeiplanten regarding quantities, quality, properties, dimensions and/or other specifications with regard to its plants, including the provision of samples, are made with the utmost care. Visser's Aardbeiplanten cannot guarantee, however, that deviations will never occur. The Counter Party shall inspect on receipt of the plants whether the plants delivered correspond to the quantities and/or other specifications and/or other specifications agreed with Visser's Aardbeiplanten. Samples and statements from Visser's Aardbeiplanten with regard to quantities, quality, properties, dimensions etc. are estimates and without obligation.
- 3.2 Samples, pictures, descriptions, catalogues, advertising materials, information and offers shown on the website are not binding upon Visser's Aardbeiplanten.
- 3.3 The Counter Party shall ascertain whether the plants it intends to order and/or has ordered and the associated packaging, labelling and other relevant information comply with the government regulations of the country of destination. The use of the plants and the compliance of this use with government regulations are for the risk of the Counter Party.

**ARTICLE 4 PRICES**

- 4.1 The prices stated by or agreed with Visser's Aardbeiplanten are calculated on the basis of delivery from the business of Visser's Aardbeiplanten and excluding VAT, costs associated with the *Nederlandse Algemene Keuringsdienst* (Dutch General Inspection Service), transport costs, import and export duties, packaging tax, duties and other taxes or levies imposed on or charged in respect of the plants.
- 4.2 If factors determining the cost price, including taxes, duties, import duties, currency exchange rates, wages, the prices of goods and/or services (whether or not purchased by Visser's Aardbeiplanten from third parties) change after the offer was made and/or the agreement concluded, then Visser's Aardbeiplanten will be entitled to change the prices accordingly.

**ARTICLE 5 DELIVERY DATE AND DELIVERY**

- 5.1 The delivery dates stated are approximate and shall not be regarded as deadlines. A failure to meet a delivery date shall not make Visser's Aardbeiplanten liable for damages, nor give the Counter Party the right to terminate or suspend fulfillment of its obligations under the agreement. However, the Counter Party will be entitled to terminate the agreement if and to the extent that Visser's Aardbeiplanten fails to still execute the order within the reasonable period set by the Counter Party. Visser's Aardbeiplanten will in that event not be liable for damages.
- 5.2 The delivery date is based on the working conditions existing at the time of conclusion of the agreement and timely delivery of the goods needed by Visser's Aardbeiplanten to perform the agreement. If a change in the working conditions and/or late delivery of the goods needed by Visser's Aardbeiplanten cause or causes a delay, the delivery date shall be postponed accordingly.
- 5.3 The delivery shall be deemed made when the plants have been set apart for the Counter Party. The plants shall be for the risk and account of the Counter Party from the date of delivery, even if the title has not yet been transferred.
- 5.4 Visser's Aardbeiplanten shall determine the manner in which and the party by which the plants will be transported, unless otherwise has been agreed in writing. Transport shall be carried out for the account and risk of the Counter Party. The Counter Party shall take receipt of the plants immediately on arrival at the place of destination. The Counter Party shall be responsible for adequate loading and unloading facilities and expeditious unloading.
- 5.5 If a plant ordered by the Counter Party cannot or no longer be delivered or not within a reasonable period, Visser's Aardbeiplanten shall, reasonably possible, deliver a plant similar to the one ordered at the same price.
- 5.6 If the Counter Party does not take receipt of the plants or does not come to pick them up/has them picked up, they will be stored for the account and risk of the Counter Party, for so long as Visser's Aardbeiplanten shall deem appropriate. In this case and in case of any other (attributable) failure on the part of the Counter Party, Visser's Aardbeiplanten shall be entitled to claim performance of the agreement or terminate the agreement (in or out of court), everything without prejudice to its right to recover the damage it has suffered and the lost profit, including the costs of storage.
- 5.7 Visser's Aardbeiplanten may perform an agreement in parts and claim payment for the part of the agreement it has performed.
- 5.8 The Counter Party may never sell samples made available to it by Visser's Aardbeiplanten to a third party, nor use them for any purpose other than the purpose for which Visser's Aardbeiplanten has provided the samples to the Counter Party.

**ARTICLE 6 PACKAGING**

- 6.1 Visser's Aardbeiplanten shall determine the manner in which the plants are packaged.
- 6.2 Reusable packaging remains the property of Visser's Aardbeiplanten, while the Counter Party shall use the reusable packaging with due care.
- 6.3 The Counter Party shall as soon as possible return reusable packaging to Visser's Aardbeiplanten in its original condition, at its own expense.
- 6.4 The Counter Party shall not keep reusable packaging unnecessarily, nor use it for other purposes.
- 6.5 Visser's Aardbeiplanten charges a deposit for the use of reusable packaging. Visser's Aardbeiplanten is entitled to charge the Counter Party an amount equivalent to the deposit if reusable is not returned by the Counter Party as specified in paragraph 3 of this article.
- 6.6 Visser's Aardbeiplanten does not accept the return of non-reusable packaging.

**ARTICLE 7 FORCE MAJEURE**

- 7.1 If Visser's Aardbeiplanten is prevented from performing the agreement by force majeure, it will be entitled to suspend performance of the agreement. The Counter Party will in that case not be entitled to compensation for damages, costs or interest.
- 7.2 Force majeure includes: war, threat of war, strikes, fire, accident or illness of personnel, business interruption, delay in transport, interfering statutory provisions, restrictions on import/export, problems during production or transport that were not foreseen by Visser's Aardbeiplanten, poor weather conditions - such as drought, flood, frost and storm -, failed harvest, growth problems, disruptions in the supply of energy, exposure damage and any other circumstances that are not controlled exclusively by Visser's Aardbeiplanten, such as non-delivery or late delivery of goods or services by third parties engaged by Visser's Aardbeiplanten.
- 7.3 In case of force majeure, Visser's Aardbeiplanten will have the right to terminate the part of the agreement that cannot be performed by written notice to the Counter Party. If the force majeure situation lasts longer than 10 weeks, then the Counter Party will also be entitled to terminate the part of the agreement that cannot be performed, by written notice to Visser's Aardbeiplanten.
- 7.4 If, at the time the force majeure situation arises, Visser's Aardbeiplanten has already fulfilled a part of its obligations or can fulfil only a part of its obligations, it will be entitled to submit a separate invoice for the part it has already delivered or will deliver and the Counter Party will be obliged to pay this invoice as if it was issued under a separate agreement.
- 7.5 In case of a complete or partial failure of the cultivation, complete or partial decay of the plants during storage, full or partial rejection by the General Inspection Service of the cultivation or the plants or a full or partial downgrading in quality class of the cultivation or the plants, the agreement between Visser's Aardbeiplanten and the Counter Party shall be deemed terminated without Visser's Aardbeiplanten being liable for any damages to the Counter Party on that ground. If the cultivation fails, Visser's Aardbeiplanten will be entitled to charge the Counter Party the costs incurred by it for the cultivation.

**ARTICLE 8 PROTECTION UNDER PLANT BREEDERS' LAW OR CONTRACT OF ORIGINAL BREEDS**

- 8.1 Without prejudice to the provisions of the Seeds and Planting Materials Act and patent legislation, the provisions of the following paragraphs of this article apply to the protection of the breeds under plant breeders' law or contract, unless otherwise has been agreed in a written license contract.
- 8.2 Plant material of breeds protected under plant breeders' law, patent legislation or a contractual perpetual clause may not be used for multiplication.
- 8.3 The product derived from the plant material delivered to the Counter Party may only be sold by the Counter Party under the relevant (breed) name and brand name, if any.
- 8.4 If the Counter Party finds a mutant in a breed, it shall immediately notify Visser's Aardbeiplanten by registered letter.
- 8.5 On request, the Counter Party shall make the material available to Visser's Aardbeiplanten for testing as soon as possible after finding the mutant, free of charge. If the Counter Party maintains the mutant, Visser's Aardbeiplanten will be entitled to ask for material of the mutant for a period of two years after the finding of the mutant was reported to it in writing by the Counter Party, and the Counter Party will be obliged to make such material available free of charge.
- 8.6 If the Counter Party intends to operate the mutant as a separate breed, the Counter Party shall give Visser's Aardbeiplanten a first right to participate in the operation of the breed (i.e. the commercial multiplication and marketing of cultivation material).
- 8.7 If the Counter Party intends to sell the mutant as a separate breed, then Visser's Aardbeiplanten shall have a right of first refusal in respect of the rights to the mutant, which shall be offered to it on reasonable terms.
- 8.8 If requested, the Counter Party shall always give Visser's Aardbeiplanten access to that part of its business where the goods delivered are located, so that it can, inter alia, inspect the use of the goods, give advice on the cultivation and discover sports or mutations.
- 8.9 The Counter Party shall compensate Visser's Aardbeiplanten for any damage suffered by Visser's Aardbeiplanten as a result of an infringement of breeders' rights or other intellectual property rights and/or a violation of a perpetual clause by the Counter Party.
- 8.10 The Counter Party shall render all assistance required by Visser's Aardbeiplanten, including assistance in securing evidence, if Visser's Aardbeiplanten becomes involved in proceedings on breeders' rights or other intellectual property rights.

**ARTICLE 9 DEFECTS AND COMPLAINTS**

- 9.1 Visser's Aardbeiplanten guarantees the soundness of the plants delivered by it, in accordance with what the Counter Party may reasonably expect pursuant to the agreement. Should defects nevertheless occur in the plants delivered by Visser's Aardbeiplanten, then Visser's Aardbeiplanten shall replace all or part of the plants concerned or grant a reasonable price reduction, everything to the sole discretion of Visser's Aardbeiplanten. Visser's Aardbeiplanten in no way guarantees the further growth and/or flows of the plants delivered.
- 9.2 In any case excluded from the guarantee of 9.1 are defects that occur during or are (partly) due to the processing or reselling of the plants by the Counter Party, the normal ageing of the plants, (extreme) weather conditions, the transporting, treatment, planting, use, working or storage of the plants by (personnel of) the Counter Party, improperly or contrary to instructions given by or on behalf of Visser's Aardbeiplanten, or any use of the plants beyond their normal intended use.
- 9.3 The Counter Party shall carefully inspect or have inspected the plants on receipt, on pain of forfeiture of any right to complain and/or to request a price reduction. Any complaint regarding the quantity or another defect in the plants that is visible on delivery shall be recorded on the delivery note on receipt, failing which the delivery note will constitute compelling evidence against the Counter Party, in the sense that the right quantity of plants will be deemed delivered and the plants delivered will be deemed to have been in good condition (and therefore in the agreed condition).
- 9.4 If Visser's Aardbeiplanten arranges for the transport, any complaint regarding transport damage shall be recorded on the consignment note or the delivery note on receipt, failing which the consignment note or the delivery note will constitute compelling evidence against the Counter Party that the plants have been received in good condition and without transport damage.
- 9.5 The Counter Party shall complain to Visser's Aardbeiplanten in writing within eight days after it becomes aware of a defect that has arisen after the delivery. In the absence of a timely complaint, any claim against Visser's Aardbeiplanten will lapse.

- 9.6 Complaints regarding the pedigree shall be communicated to Visser's Aardbeiplanten at a time when it can inspect the cultivation or plants in a relevant stage.
- 9.7 If the Counter Party complains, it shall give Visser's Aardbeiplanten the opportunity to inspect or have inspected the plants for the defect. The Counter Party shall keep the plants to which its complaint relates available for Visser's Aardbeiplanten, or penalty of forfeiture of any right to complain and/or replacement.
- 9.8 Returning sold plants to Visser's Aardbeiplanten, for whatever reason, is subject to the prior written authorization and shipping instructions and/or other instructions of Visser's Aardbeiplanten. All transport and associated costs shall be borne by the Counter Party.
- 9.9 The plants will always remain for the account and risk of the Counter Party.
- 9.10 Defects in a part of the plants delivered will not give the Counter Party the right to reject or refuse the entire consignment.
- 9.11 The Counter Party shall report any inaccuracies in invoices of Visser's Aardbeiplanten to Visser's Aardbeiplanten in writing within 5 days after the invoice date, failing which the Counter Party will be deemed to have approved the invoice.
- 9.12 Complaints do not suspend the Counter Party's payment obligations.
- 9.13 Once the Counter Party has found a defect in a plant, it shall do everything to prevent or limit the damage, including immediate cessation of use, processing and marketing of the plant.

**ARTICLE 10 RETENTION OF TITLE**

- 10.1 Visser's Aardbeiplanten retains title to the plants delivered and to be delivered until its claims in respect of the plants delivered and to be delivered have been paid by the Counter Party, including any claims for failure to comply with one or more agreements.
- 10.2 The provisions of paragraph 1 above apply regardless of the manner in which the plant material delivered or the plants resulting therefrom has or have been planted and/or has or have been connected to a nutrient soil and/or substrate.
- 10.3 If the Counter Party fails to fulfil its obligations, Visser's Aardbeiplanten will be entitled to recover or have recovered the plants belonging to it from the place where they are located, at the expense of the Counter Party.
- 10.4 The Counter Party will not be entitled to pledge unpaid plants or transfer the title to them otherwise than in the ordinary course of its business operations.
- 10.5 The Counter Party shall keep plants delivered under retention of title with due care and recognizable as property of Visser's Aardbeiplanten.
- 10.6 The Counter Party cannot invoke any right of retention against Visser's Aardbeiplanten in respect of plants delivered by Visser's Aardbeiplanten.

**ARTICLE 11 PAYMENT**

- 11.1 Unless otherwise agreed in writing, the invoices of Visser's Aardbeiplanten shall be paid upon delivery. If no payment has been made upon delivery and no other payment term has been agreed in writing, payment shall in any case be made within 14 days after the invoice date.
- 11.2 Visser's Aardbeiplanten may at any time claim full or partial prepayment and/or otherwise obtain security for payment.
- 11.3 Visser's Aardbeiplanten may invoice partial deliveries separately.
- 11.4 If payment is not received on time, the Counter Party will owe interest on the invoiced amount at 1.5% per month, from the due date until the date of payment, without further notice of default being required.
- 11.5 All costs associated with collection shall be borne by the Counter Party. The extrajudicial collection costs will be calculated in accordance with the Extrajudicial Collection Costs (Fees) Decree, with a minimum of EUR 40.
- 11.6 The Counter Party waives any right to offset amounts the parties owe to each other. Visser's Aardbeiplanten may at any time deduct what it owes to the Counter Party from what the Counter Party and/or affiliated companies of the Counter Party owes or owe to Visser's Aardbeiplanten, due and payable or otherwise.
- 11.7 The entire invoice amount becomes immediately and fully due and payable if an agreed instalment is not paid on the due date, as well as if the Counter Party goes bankrupt, applies for a (provisional) suspension of payments, is declared subject to the Debt Management (Natural Persons) Act (WNSNP) or placed under guardianship and/or if attachment is levied of goods and/or claims of the Counter Party. If any of the above situations occurs, the Counter Party shall immediately notify Visser's Aardbeiplanten.
- 11.8 Payments made by the Counter Party will first be applied to outstanding costs, then to any interest due and finally to the oldest payable invoice, even if the Counter Party indicates that the payment relates to a later invoice.

**ARTICLE 12 CANCELLATION**

- 12.1 The Counter Party may not cancel an order given. If the Counter Party nevertheless fully or partially cancels an order given, it shall reimburse Visser's Aardbeiplanten for all costs reasonably incurred to execute the order, the work of Visser's Aardbeiplanten and the profit lost by Visser's Aardbeiplanten, increased by VAT.

**ARTICLE 13 ADVICE**

- 13.1 All advice given by Visser's Aardbeiplanten and statements made and information given by Visser's Aardbeiplanten regarding inter alia, the properties of the plants to be delivered by Visser's Aardbeiplanten shall be without obligation and are made and given by Visser's Aardbeiplanten by way of non-binding information. Visser's Aardbeiplanten does not give any guarantee in this regard.
- 13.2 Visser's Aardbeiplanten shall not be liable for any direct or indirect damage, in whatever form and on whatever ground, arising from information and/or advice given by Visser's Aardbeiplanten. The Counter Party shall indemnify Visser's Aardbeiplanten against all claims from third parties in this regard, unless intent or gross negligence on the part of Visser's Aardbeiplanten is involved.

**ARTICLE 14 LIABILITY**

- 14.1 Other than under the provisions of article 9, the Counter Party shall have no claim against Visser's Aardbeiplanten for defects with respect to the plants delivered by Visser's Aardbeiplanten. Visser's Aardbeiplanten is therefore not liable for any direct and/or indirect damage, including personal injury and property damage, immaterial damage, consequential damage (loss of income, stagnation damage, etc.) and any other damage, however caused, unless intent or gross negligence of Visser's Aardbeiplanten is involved.
- 14.2 Visser's Aardbeiplanten is also not liable in the above sense for acts of its employees or other persons within its control, nor even if intent or (gross) negligence of such persons is involved.
- 14.3 Damage to plants resulting from damage to or destruction of the packaging is for the account and risk of the Counter Party.
- 14.4 In all cases in which Visser's Aardbeiplanten is liable for damages, the compensation will not exceed the invoice value of the goods delivered in connection with which the damage has been caused, with a maximum of EUR 25,000. If the damage is covered by the liability insurance of Visser's Aardbeiplanten, the compensation will also not exceed the amount actually paid by the insurer in the case.
- 14.5 If, based on facts and/or circumstances then known to it, Visser's Aardbeiplanten proceeds to exercising a suspension or termination right, and it is subsequently irrevocably established that the exercise of this right has been unjustified, Visser's Aardbeiplanten will not be liable and not obliged to pay any compensation, unless intent or gross negligence on its part is involved.
- 14.6 Any claim against Visser's Aardbeiplanten, other than those acknowledged by it, expires by the mere lapse of 12 months since the claim has arisen.
- 14.7 The Counter Party shall indemnify Visser's Aardbeiplanten, its employees and any auxiliary persons engaged by it for the performance of the agreement against claims from third parties, including claims based on product liability, in connection with the performance of the agreement by Visser's Aardbeiplanten, regardless of the ground, as well as against any costs arising therefrom for Visser's Aardbeiplanten.

**ARTICLE 15 REPRESENTATION**

- 15.1 If the Counter Party acts on behalf of one or more other parties, it will be liable to Visser's Aardbeiplanten as if it was a Counter Party, without prejudice to the liability of the parties represented by it.

**ARTICLE 16 FINAL PROVISIONS**

- 16.1 The invalidity or nullity of any provision of these conditions or of agreements to which these conditions apply does not affect the validity of the remaining provisions. Visser's Aardbeiplanten and the Counter Party shall replace the invalid or nullified provisions by valid provisions, the purport of which shall as much as possible be the same as that of the invalid or nullified provision.
- 16.2 The place of performance shall be deemed to be the place where Visser's Aardbeiplanten has its registered office.
- 16.3 International treaties on the sale of tangible movable goods do not apply and are hereby expressly excluded, to the extent that their operation can be excluded by the parties. More specifically, the parties expressly exclude the applicability of the Vienna Sales Convention 1980 (CISG 1980).
- 16.4 All disputes between Visser's Aardbeiplanten and the Counter Party will be settled by the exclusively competent Dutch court in the district where Visser's Aardbeiplanten has its registered office, unless another Dutch court has jurisdiction under mandatory provisions of the law. In derogation from the above, Visser's Aardbeiplanten is authorized to apply to the court of the place of residence/business of the Counter Party.
- 16.5 All agreements concluded by Visser's Aardbeiplanten are governed exclusively by Dutch law.
- 16.6 In case of a difference of opinion on the meaning and/or interpretation of a provision of these general conditions, the Dutch text will be binding.

Version 2012