

# GENERAL TERMS AND CONDITIONS OF SALE OF HOLLAND BULB MARKET BV (HBM)

## 1. Applicability

- 1.1. All offers made by HBM and all contracts of sale entered into with HBM and the execution of such contracts of sale are governed by these conditions.
- 1.2. The applicability of general conditions of the buyer is expressly rejected by HBM.
- 1.3. Departures from the present conditions will only be valid if expressly agreed to in writing by HBM.
- 1.4. Insofar as these general terms and conditions are also drawn up in a language other than English, in the event of any conflict the English text shall always prevail.

## 2. Offers and conclusion of agreement

- 2.1 All offers and prices stated by HBM are free of obligations.
- 2.2 An agreement shall only come into effect once HBM has confirmed the order in writing with an order confirmation.
- 2.3 Any supplementary arrangements or amendments agreed on at a later stage, as well as any verbal promises made by HBM's personnel or on behalf of HBM by agents or other parties working for HBM, will only be binding for HBM from the moment that the latter confirms them in writing.
- 2.4 Orders less than 500 euro will not be accepted. Order less than 1.500 euro will be charged extra 15%.
- 2.5 HBM cannot be held responsible for any typographical errors that may appear in our catalogue, offers or pricelist.
- 2.6 Pallets and gross weight mentioned in the order confirmation/order form are only an indication. HBM cannot be held responsible for any errors.

## 3. Prices

- 3.1 All product prices are stated in Euro, inclusive packaging exclusive of VAT and are based on ex works (Heiloo), The Netherlands (EXW, Incoterms 2000).
- 3.2 If one or more of the cost price factors is subject to change after order confirmation but before delivery of the products, HBM shall be entitled to adjust the agreed prices accordingly.
- 3.3 The costs of transport, insurance, document costs and the inspections carried out by the Department of Phytopathology are payable by the buyer. All levies and/or taxes that are owed or become due, either directly or indirectly, on account of the agreement entered into between HBM and the buyer are payable exclusively and entirely by the buyer and may not be deducted from sums owed to HBM.

## 4. Payment

- 4.1. Unless otherwise agreed in writing, payment for goods sold by HBM must be paid before shipment.
- 4.2 The value date on which HBM receives payment shall be deemed to constitute the date of payment. Where payment is made by means of a bank transfer, the date on which HBM's bank account is credited, shall be deemed to constitute the date of payment.
- 4.3 The buyer is not entitled to make any deduction, suspension or reduced payment and all calls for settlement are explicitly excluded. In the event of late payment, HBM will be entitled to charge 1,5% per month, and also to charge any legal and extrajudicial costs incurred in collecting the amounts owed; the extrajudicial costs owed will never be less than 15% of the sum to be collected.
- 4.4 In case a delivery is effected in parts, HBM shall be entitled to demand payment for each partial delivery before proceeding with any other.
- 4.5 Upon or after entering into the agreement and before its implementation, HBM will be entitled to demand a guarantee from the buyer that both the payment obligations and any other obligations arising from this agreement will be fulfilled. Refusal by the buyer to provide the required security gives HBM the right to suspend its obligations and ultimately, without any notice of default or legal intervention, the right to dissolve the contract wholly or partially, without prejudice to his right to compensation for any damages suffered by him.

## 5. Delivery

- 5.1 All deliveries shall be ex works (Heiloo), The Netherlands (EXW, Incoterms 2000), unless otherwise agreed in writing.
- 5.2 Although the stated time of delivery will always be taken into account as far as possible, this delivery time is approximately indicated and can never be considered a fatal date. HBM shall not be in default in respect of such delivery time until the buyer notifies it in writing that it is in default, in doing so stipulates a reasonable period of time within which HBM has the opportunity to effect delivery, and the latter still fails to do so.
- 5.3 The agreed delivery time shall commence as soon as HBM has confirmed the order in writing.
- 5.4 HBM shall not be liable for any harm due to late delivery if and insofar as this is attributable to circumstances beyond HBM's control and sphere of risk, which is deemed to include late or non-compliance on the part of its suppliers.
- 5.5 The buyer's failure to comply with his duty to effect payment (or to do so on time), shall have the effect of suspending HBM's duty to effect a delivery.
- 5.6 If the shipment is not collected within a 7 day period after the shipment date (as mentioned on invoice), HBM will charge € 15,- per pallet per week storage costs. The full amount will be charged starting from the first day the transport is overdue.

## 6. Force majeure

- 6.1. In a case of *force majeure* - for example in the event of a crop failure, viruses, natural disaster, labor strike, fire, or import and export problems - or in the case of other circumstances that make it impossible to demand HBM's fulfillment or timely fulfillment of the obligations arising from this agreement, HBM will be entitled to make a choice, without the need for legal intervention and without being obliged to pay any form of compensation, between completely or partially cancelling the agreement by means of a single written notice to that effect or the suspension of this agreement until the case of *force majeure* has come to an end.
- 6.2 Where HBM has already executed part of an agreement, the buyer shall pay the purchase price for any products that have been delivered.

## 7. Complaints

- 7.1 The buyer is obliged to check the products upon delivery for any visible and/or immediately observable defects. This means all defects that can be ascertained by means of ordinary sensory perception or a simple spot check. The buyer is moreover obliged to check whether the delivered products are also in accordance with other particulars of the order. Failure to fulfill the obligation to check the delivery shall mean the forfeiture of any claims the buyer may have vis-à-vis HBM.
- 7.2 If a delivery deviates less than 10% in terms of number, quantity and weight from that which was agreed, the buyer shall be obliged to accept the delivery in spite of such deviation. All orders are subject to crop conditions. HBM will do her utmost to ship the orders 100% complete, but occasionally HBM will need to backorder and/or adjust prices, sizes or varieties based on crop results or shortages. HBM cannot be held responsible for any damages that might occur when HBM was not able to deliver the complete order.
- 7.3 Complaints regarding the quality and quantity of the products delivered must be submitted by registered mail or telefax at the latest within 14 calendar days after invoice date for quantity issues and at the latest within 21 days after invoice date for quality issues. Defects which can only be observed at a later stage (non visible defects) shall be forthwith reported to HBM after this has been observed. Once these periods have passed, the buyer will be considered to have approved the products supplied and complaints will no longer be considered.

7.4 The complaint must contain a description of the flaw and adequate pictures and HBM must upon first request be given the opportunity to investigate the complaint. The buyer shall allow HBM to have the concerned products examined by an expert or an independent inspection service. If the complaint turns out to be well-founded, all the costs of any investigation will be for HBM's account. If a complaint is groundless, all the costs will be for the buyer's account.

7.5 If the buyer has reported a complaint to HBM in a timely manner and HBM has acknowledged this complaint, HBM shall only be obliged to deliver that which is missing, replace the delivered products or repay a proportional part of the purchase price, such as HBM's own discretion.

7.6 A complaint shall not suspend the buyer's payment obligation, unless HBM agrees expressly with such suspension.

7.7 The products can only be returned for the account and risk of the buyer and only after prior written permission has been obtained from HBM.

7.8 If applicable: The buyer is obliged to send back the Temperature/Humidity Data to HBM before any complaint can be investigated.

## 8. Liability

8.1 HBM will never be liable for the results regarding the flowering of the products supplied. It always remains buyer's responsibility to assess if the circumstances, among which the climatological, are fit for the products.

8.2 In case of a shortcoming attributable to HBM, HBM's liability is always limited to a maximum of the net invoice value of the products or to that part of the net invoice value to which a claim for compensation is directly or indirectly related.

8.3 Except in the case of legal liability pursuant to provisions of Dutch law and a deliberate act or omission, or gross negligence, any liability of HBM for any further damage, among which any direct or indirect damage, consequential damages or lost profits, is excluded.

8.4 The buyer shall indemnify HBM against all claims for compensation brought by third parties in respect of which HBM is not liable under these terms and conditions.

## 9. Cancellation

9.1 HBM will be entitled to cancel an order if the buyer has failed to comply with earlier payment obligations with respect to HBM or with respect to other creditors. This right may also be exercised if HBM considers the information concerning the buyer's credit rating to be insufficient. The buyer will never be able to derive any rights from such cancellations or hold HBM liable.

9.2 HBM will only be required to accept the buyer's complete or partial cancellation of the agreement, as a result of any cause whatsoever, if the goods have not yet been delivered to the transporter for dispatch and on condition that the customer pays compensation equivalent to 100% of the order confirmation value of the cancelled goods. HBM shall in that case also be entitled to charge all costs incurred up to that time.

9.3 The buyer is obliged to accept the products at the time that they are made available to him. If the buyer refuses to accept the goods, HBM will be entitled to sell them elsewhere and the buyer will be liable for the difference in price as well as all the other costs incurred by HBM in connection with this, among which costs of storage.

## 10. Retention of title

10.1 The ownership of the goods supplied by HBM does not pass to the buyer until the sums invoiced, plus any interest, penalty and costs, as well as all claims as a result of the buyer's failure to perform its obligations towards HBM under this agreement or any other, have been paid in full. The provision of a cheque or any other bill of exchange will not count as payment in this regard.

10.2 HBM will be entitled to immediately take back the goods supplied if the buyer remains in default in any way whatsoever with regard to the fulfillment of payment obligations. In that case, the buyer will be obliged to allow HBM access to the buyer's land and buildings for this purpose.

10.3 The buyer must store the goods subject to a retention of title separately from the other goods, in order to be able to continue distinguishing the goods of HBM.

10.4 As long as the delivered goods are subject to a retention of title, the buyer may not sell, encumber or pledge these goods, or otherwise place them under the control of third parties, other than as part of its normal business operations. The buyer shall, however, not be permitted to sell the goods within the context of its normal business operations if it has applied for a suspension of payments or if it has been declared bankrupt.

## 11. Suspension and dissolution

- 11.1 If the buyer fails to perform, fails to perform in a timely manner, or fails to perform to a sufficient degree any of the obligations arising from it from the concluded agreement, or if a well-founded fear exists of such failure occurring, as well as in the case of an application for a suspension of payments order, bankruptcy or the liquidation of any of the buyer's businesses, as well as in the event of the buyer's death, or dissolution if the buyer is a company, or if there is any change in the type of company or in its management or in the contribution made by the company's activities, HBM will be entitled, without notice of default or legal intervention being required, to suspend its own obligations for a reasonable period or to annul the agreement without being held liable for any compensation.
- 11.2 The claim of HBM with respect to the part of the agreement already performed, as well as damage arising from the suspension or termination, which damage includes lost profit, shall be immediately due and payable.

## 12. Intellectual property rights

- 12.1 HBM reserves all rights which it has in relation to intellectual property rights in respect of products it has supplied.
- 12.2 With regard to cases in which it is apparent from HBM's catalogue or from the agreement entered into by the parties that a variety is protected by plant breeder's rights - which is indicated by a letter R or P after the name of the variety concerned - the buyer will be bound to fulfill all the obligations the said rights entail. Any failure to comply with this stipulation will result in the buyer being liable for the losses incurred by HBM or any third party.

## 13. Severance

Should any provision of these general terms and conditions of sale and delivery be non-applicable or in conflict with public order or the law, only the provision in question shall be deemed as not having been written and the rest of the conditions shall remain fully in force. HBM reserves the right to amend the inadmissible provision in order to make it legally valid.

## 14. Jurisdiction, forum

- 14.1 Any disputes, even if only considered as such by one of the parties, will be put before the competent court in the district in which HBM is registered, without affecting the right of HBM to have the dispute heard by another competent court.
- 14.2 All offers and agreements concluded between the buyer and HBM shall be exclusively governed by the laws of the Netherlands.

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