

## **General terms and conditions regarding the delivery and payment of seedlings**

### **Scope of application:**

All offers, sales and deliveries of seedlings are subject to the following terms and conditions, which each Buyer accepts upon his/her placement of order. Other terms or conditions are only deemed to be valid if the Seller agrees upon them in writing. The Seller only commits to a delivery by providing a written order confirmation. However, a delivery contract becomes valid (the latest) through tacit delivery upon order.

#### **1. Prices:**

All indicated prices are net prices, unless it is explicitly noted otherwise in the delivery contract. These prices include the mere product value, without possible import tariffs, transport insurances and taxes.

The respectively applicable VAT will be charged in addition. All offers are non-binding. Former prices become invalid as soon as a new price list exists. The Seller is entitled to charge additional fees for extra services, such as delivery of small quantities, differential treatment of seedlings or other services. The prices are valid with free delivery to the place of destination or to agreed unloading locations delivered by the Seller or by a service provider commissioned by the Seller. Potential special requests regarding species, pot sizes or packaging can only be taken into account after consultation with the Seller and if the order correspondingly amounts to a certain quantity.

#### **2. Delivery:**

The delivery is performed by the Seller. In case there was no special agreement upon the terms of delivery between the Buyer and the Seller, the Seller is entitled to choose the most suitable and convenient form of delivery for him/her. In case unusual occurrences which cannot be attributed to the Supplier (e.g.: traffic incidents, bad weather or other incidents), prevent a proper delivery, the Seller is not obliged to provide replacement. If a delivery date was agreed upon, the Seller is obliged to make an effort to meet the arranged delivery date. The delivery date can either be changed to an earlier or later date (ranging within a couple of days) by the Seller because of weather-induced influences which affected the growth of the seedlings. In case the Buyer accepts the delivery prior or after the arranged delivery date, the risk regarding possible quality deficiencies shall be borne by the Buyer. In case no explicit agreement on the delivery date exists, the determination of the specific delivery date for the ordered delivery is within the Seller's discretion. If the Buyer himself arranges the transport of the delivery, an inspection of the delivery regarding possible complaints has to be conducted by the Buyer prior to the pick-up of the delivery.

#### **3. Empties:**

Most of the seedlings will be delivered in PVC-boxes, which are stackable and company-owned. The ownership of the PVC-boxes is retained by the Seller. Lost or damaged empties will be charged at the cost price at the end of the delivery season. It is required to make the empties available at a freely accessible place. The empties shall be returned in clean condition, without any soil, plant remains or vermins. In case the boxes have been delivered onto pallets, the empties have to be returned palletized as well. The Buyer is not allowed to use the empties. If the Buyer uses the empties, the Seller is entitled to charge a rental fee for the use or bring the empties to account.

#### **4. Payment:**

If not agreed upon otherwise, all invoices are due within 30 days without any deduction. Wrongful deductions will be billed subsequently. In case of a delay in payment, banking default charges will be invoiced commencing with the day of maturity. It is also possible to charge contingent expenses.

#### **5. Complaints:**

Complaints regarding quality and quantity of the delivery have to be stated immediately upon delivery or have to be received directly by the Seller the latest within two days after the delivery. This is also applicable in case the Buyer was not present at the delivery and did not sign the delivery note himself. Afterwards complaints are only taken into consideration, if it was not possible to identify defaults during the above stated period of time. In case of wrongful, incomplete or deficient delivery, the Seller is entitled to compensate to his/her terms for the time being. The Buyer is entitled to withdraw from the contract in the following cases: if there is no possibility of replacement or subsequent improvement, if replacement or subsequent improvement is not deemed acceptable to the Buyer or if replacement or subsequent improvement is denied by the Seller. Any liability of the Seller regarding warranty or damages is excluded in regards to a potential infection of tomato seedlings with bacterial tomato wilt (*Clavibacter michiganensis* ssp. *michiganensis*). The Buyer explicitly accepts this exemption from liability by the Seller. The Seller does not bear any liability for any lost revenues or consequential damages.

#### **6. Delivery obligations:**

In case of force majeure (such as frost damages, hail damages, storm damages or flood damages) or other unusual weather conditions or the failure of crops due to conditions which are not in the sphere of the influence of the Seller, the Seller is released from his/her obligation to deliver. Furthermore, there is no obligation to deliver for the Seller if particular failures or deficiencies occur in the process of cultivating the seedlings. If the delivery of a certain species is not possible, the Seller reserves the right to deliver a species which is equivalent to the greatest possible extent to the original species or to cancel the delivery. It is not possible to assert any compensation claims towards the Seller because of non-performance or because of delayed delivery.

Compensation claims due to wrongful deliveries or deficiencies in the process of cultivating the seedlings or due to a mix-up of species can be filed. These compensation claims can only be satisfied up to the percentage of the resulted damage or up to the loss which corresponds to the wrongful delivered quantity of seedlings or plants and cannot be higher than the price of the wrongful delivered seedlings or plants.

If the Buyer cancels the order after the sowing took place, the Seller is entitled to charge the entire purchase price. This does not apply if the breeding fails due to gross negligence on behalf of the Seller.

#### **7. Applicable law and place of jurisdiction:**

Austrian law has to be applied for all legal disputes which may arise from this legal transaction. This is applicable to both Parties. The regional court of Feldbach shall have exclusive jurisdiction over the venue and subject matter.