

General Terms and Conditions of Delivery and Payment for Young Plants

Scope of application

All offers, sales and deliveries of young plants are subject to the following terms and conditions, accepted by every customer at the latest by placing an order. Other conditions shall apply only if confirmed in writing by the seller. The seller shall agree to the provision of goods only by confirming the order in writing, but the delivery contract shall become valid at the latest by means of tacit delivery following an order.

1. Prices:

All prices quoted are net prices unless expressly stated otherwise in the order form. The prices comprise the net value of goods without any import duties, transport insurances or taxes. The applicable value added tax is calculated separately. All offers are subject to change. A newly published price list renders past prices invalid. The seller may charge additional fees for any special services such as delivery of small quantities, special treatment of young plants or other services. The prices include delivery to an agreed destination or deposit location, carried out by the seller or a service commissioned by the seller. Any special requests regarding plant varieties, pot sizes or packaging can be taken into account only after consultation with the seller and if the quantity is sufficiently large.

2. Delivery:

The seller shall carry out the delivery. In the absence of a separate agreement on delivery, the seller shall be entitled to carry out the delivery in the manner most suitable to him. The seller shall not be obligated to provide replacement if extraordinary events (traffic incidents, storms and others) beyond the control and responsibility of the seller prevent proper delivery. If feasible, the seller shall meet any previously agreed delivery date. In case of weather conditions affecting growth, the delivery may arrive several days before or after the delivery date. If the goods are accepted before or after the agreed delivery date at the purchaser's request, the purchaser shall bear the risk for any quality defects. In the absence of an agreed delivery date, the time of delivery of the ordered goods is at the seller's discretion. If the purchaser provides for transport, the purchaser must inspect the goods with regard to defects before accepting them.

3. Empties:

For the most part, the plants are delivered in stackable, company-owned PVC crates, which remain our property. Lost empties shall be charged at cost price after the close of the delivery season. The empties shall be kept free of soil, plant residues and pests as well as ready for collection in a freely accessible and fixed location. If the crates were delivered on pallets, the empties shall be kept ready for collection on pallets in the same way. The purchaser shall not put the empties to use. Failing this, the seller shall be entitled to charge the purchaser for the crates or to demand a rental fee.

4. Payment:

All invoices shall be payable within 30 days without any deduction unless expressly agreed otherwise. Unjustified deductions shall be settled subsequently. In the event of delayed payment, bank interest on arrears shall be charged from the due date. Any expenses incurred may be charged as well.

5. Complaints:

In the case of apparent defects, incorrect deliveries and shortfalls in quantity, complaints shall be reported directly to us in writing (e.g. by fax, mail, e-mail) immediately and at the latest within two days of receiving the goods. This also applies if the customer was not present at the time of delivery and was unable to confirm receipt on the delivery note. Otherwise, the assertion of claims is excluded in this regard. This does not apply if we fraudulently concealed the defect.

Later complaints may be taken into account only if they were unrecognizable during this period upon thorough inspection. This does not apply in the event of an infection caused by bacteria or viruses. In the event of hidden defects unrecognizable upon proper inspection, the complaint shall be communicated immediately after the defect is discovered or as soon as the defect is identifiable.

In the event of incorrect deliveries, shortfalls in quantity and defects on our part, we shall be entitled at our own discretion to supplementary performance in the form of rectification of defects or a replacement. If a replacement or a rectification is impossible or unacceptable for the customer or rejected by us, the customer may demand withdrawal from the contract.

Under all circumstances, the customer shall bear the burden of proof for defects in the delivered goods at the delivery date. In the event of death, infestation with pests or other diseases of the plant, the customer shall bear the burden of proof, even within 6 months after the transfer of risk, that these conditions were already present at the time of delivery and were not caused by improper handling on the part of the customer. We do not assume any guarantee for the growth and development of the plants during their further cultivation, as this depends on external influences beyond our control.

For any defects reported by the customer, the customer shall afford us the opportunity to inspect the defects ourselves and / or have them inspected by third parties commissioned by us. If the customer commissions third parties – in particular experts – to inspect the plant or to confirm any defects, we shall only be obligated to bear the costs incurred if we refrain from performing our own inspection and the inspection reveals defects for which we are in fact responsible or when we have agreed to the commissioning beforehand in writing.

Any claims for warranty or damages by the customer do not entitle the customer to withhold his payments to us.

We shall be liable to pay damages for breach of duty solely in the events of intent and gross negligence, unless we harm life, body or health of the customer. The liability for gross negligence does not apply if it is not blatant or particularly severe. Our liability shall be limited to dangers and damages that are foreseeable and typical for this contract, but at most up to the value of the order! We shall not be liable for any resulting loss of earnings or consequential damage, in particular damage that can be covered by insurance. We also shall not be liable for loss of profit of the customer or third parties or legal costs. Likewise, we shall not be liable for financial losses incurred by the customer in consequence of an increased workload and associated expenses for the purpose of rectifying the subject matter of the contract.

Any liability other than that stipulated in this contract is excluded irrespective of the legal nature of any asserted claim. The limitations and exclusions of liability stated above shall not however apply to any no-fault liability prescribed by law or any liability under no-fault warranty.

The limitations and exclusions of liability stated above shall be applicable to the same extent to the personal liability of our staff, employees, representatives, bodies and vicarious agents.

6. Obligation to deliver:

We shall be released from our obligation to deliver in the event of force majeure, e.g. frost, damage by hail, storm and flood, or other unusual weather conditions or because of crop failures beyond our control, and other unforeseeable extraordinary circumstances for which we are not responsible, e.g. war-like conditions, catastrophes, fires and other impediments to production or delivery, (lawful) strikes, lock-outs, disruptions to production or delivery, interruption of operations, intervention by a public authority, contagious diseases, pandemics, epidemics, shortages of raw materials, energy supply difficulties etc., even if these affect the upstream supplier. This also applies to specific failings or failures in the cultivation of young plants.

If the delivery of a particular variety is impossible, we shall have the right to deliver a variety equivalent to the greatest possible extent or to cancel the order.

Claims for compensation in consequence of non-performance or late delivery to us cannot be raised. Claims for compensation in consequence of incorrect deliveries or unsuccessful cultivation or mistaken varieties may only be met up to the percentage of the damage or loss incurred, corresponding with the incorrectly delivered quantity of plants, and may not exceed the purchase price of the incorrectly delivered plants.

We shall be entitled to charge the full purchase price if the customer cancels the order after sowing has taken place. This does not apply if the cultivation has failed in consequence of blatant gross negligence on our part.

The above-mentioned circumstances of force majeure and other unusual weather conditions as well as other unforeseeable extraordinary circumstances for which we are not responsible shall lead to an exclusion of liability on our part provided they prevent or unreasonably impede the performance of the contract.

Severability clause:

If any individual provisions of the contract concluded with the customer, including these General Terms and Conditions, are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision that most closely approximates the economic purpose of the invalid provision.

7. Choice of law and jurisdiction:

All disputes arising out of or in connection with the present legal transaction are subject to Austrian law. In matters of disputes connected with or arising from the present legal transaction the parties agree to submit to the exclusive jurisdiction of the court of subject matter jurisdiction for 1010 Vienna.