

General terms and conditions of sale and delivery

Article 1: Subject

1.1 For the purposes of these general terms and conditions, "Supplier" shall mean both **Deroose Plants NV**, having its registered office at 9940 Evergem (Sleidinge), Weststraat 129A, and having enterprise number 0441.725.528, and **Exotic Plant BVBA**, having its registered office at Koewegstraat 4, 9270 Laarne, and with enterprise number 477.941.566.

1.2 These general terms and conditions shall apply to any order of products placed by a customer with the Supplier and to any sale, service and delivery of products by the Supplier to the customer (hereinafter referred to as "the buyer"). The buyer who places an order with the Supplier shall be deemed to have taken cognizance of these general terms and conditions and, insofar as not expressly accepted earlier, their order shall be considered as constituting acceptance thereof. These conditions apply to both electronic and non-electronic commerce.

1.3 In the event of contradiction between the buyer's general terms and conditions or any other contractual document issued by the buyer or the order confirmation and these general terms and conditions, these general terms and conditions shall prevail, unless otherwise agreed in writing.

1.4 Representatives or agents of the Supplier shall not be authorised to enter into commitments or receive payments in the name or on behalf of the Supplier. Orders placed with or accepted by representatives or agents of the Supplier shall only be binding after written order confirmation has been provided by the Supplier.

Article 2: Order and order confirmation - prices

2.1 All offers made by the Supplier are entirely without obligation and do not contain any obligation on the part of the Supplier to effectively enter into an agreement. An order shall only be binding for the buyer and Supplier following the Supplier's written order confirmation.

2.2 The Supplier reserves the right to withdraw or change an offer at any time prior to the order confirmation.

2.3 Unless explicitly specified otherwise, all specified prices shall be exclusive of VAT, taxes and duties of any kind, as well as other costs and fees, including but not limited to packaging costs, shipping and transport costs, insurance and delivery costs, customs costs, costs for phytosanitary studies and plant variety right fees.

2.4 All specified prices are in Euros.

2.5 All deliveries are Ex Works INCOTERMS 2010.

Article 3: Terms of payment

3.1 All invoices are payable within a period of thirty days from invoice date or by a different due date agreed in writing between the Supplier and the buyer.

3.2 Failure to make full or partial payment of the invoices on the due date shall result in interest being due by operation of law and without notice of default (1) from the day after the due date pursuant to the Act of 02.08.2002 on combating late payment and (2) the amount of the outstanding invoices shall be increased by 10% of the invoice amount with a minimum of € 125.00 per unpaid invoice. This does not prejudice any other rights or legal remedies that the Supplier may have in the event of the buyer's failure to make (full) payment.

3.3 In the event of failure to make (full) payment within the payment term, the Supplier also reserves the right to (1) demand payment of all other invoices by operation of law and without notice of default, notwithstanding the permitted payment terms and to (2) suspend the delivery of its products without compensation or acceptance of liability of any kind and subject to all rights.

Article 4: Delivery - acceptance

4.1 Delivery of the products is always when the buyer collects the products or causes them to be collected from the Supplier's premises.

4.2 If the buyer causes the products to be collected and the Supplier, at the buyer's request, agrees to arrange transport and/or insurance for the buyer, the Supplier shall organise this transport at the buyer's risk to the best of his ability, and all costs and expenses incurred in this respect shall be included in the invoice sent to the buyer.

4.3 The Supplier undertakes to make every effort to comply with the specified delivery periods for the delivery of products. However, these delivery periods are given for information purposes only and are not binding for the Supplier. Non-observance shall not give rise to any right to damages and shall not result in termination of the agreement. If no delivery period(s) are determined, delivery shall take place within a reasonable period.

4.4 The buyer shall immediately inspect the products at the time of delivery and shall notify any visible damage or defects (including but not limited to incorrect quantities or varieties) with regard to the delivered products immediately, but in any case at the latest within eight working days, either after delivery to the buyer in the buildings of the Supplier in accordance with Article 4.1 or after proven receipt in the case of transport in accordance with Article 4.2, by registered letter. In the event of a hidden defect, the buyer must notify the Supplier of such by registered letter within a period of eight working days after the discovery of such hidden defect and invite the Supplier to make the necessary findings at his company. If the buyer fails to comply with the notification requirements contained in this article, his right to object shall lapse, the Supplier shall not be liable for any such defect or damage and the buyer shall be obliged to pay for the products as if they had been delivered in accordance with these general terms and conditions and the order confirmation.

4.5 If (1) the buyer does not collect the products on the agreed or notified date, (2) the buyer refuses the products that do not show any visible defects for any reason whatsoever, or (3) where applicable, the Supplier is unable to deliver the Products on time because the buyer has not provided the appropriate instructions, documents, licences, permissions, or any other necessary information or documentation, the risk in relation to the products (including but not limited to loss of quality) shall be transferred to the buyer at the time scheduled for the non-performed delivery, and the Supplier shall store the products for a maximum period of 2 weeks pending a new collection or delivery. The purchase price shall still be owed. The costs, expenses and risks arising from such storage shall be borne in full by the buyer.

Article 5: Reservation of title

5.1 The products shall be at the buyer's risk from the time of delivery or non-delivery pursuant to Article 4.5. The Supplier shall retain ownership of the products until it has received all amounts owed by the buyer to the Supplier. Until full payment has been received (1) the buyer shall keep the products in storage according to best practices, (2) he shall store the products (at no cost to the Supplier) separately from all other goods of the buyer or any third party in such a way that they are immediately recognisable as the Supplier's property, (3) he shall not destroy, delete or render unreadable any identifying marks or packaging on or in connection with the products and (4) he shall keep the products in good condition and insure them against all risks on behalf of the Supplier for the full price.

5.2 The Supplier reserves the right to immediately repossess the products to which it has reserved ownership in accordance with Article 5.1 and to resell these products afterwards.

Article 6: Termination

6.1 The Supplier is entitled to terminate the agreement with the buyer (including all orders placed by the buyer) with immediate effect and without prior recourse to the courts, even if the order(s) placed by the buyer has (have) already been confirmed in writing by the buyer, if the buyer fails to comply with one or more of his obligations, both statutory and under these general conditions, including, but not limited to non-compliance with the payment obligations under Article 3 or the intellectual property obligations under Article 10. The agreement with the buyer, including in the event that the order(s) placed by the buyer has

(have) already been confirmed in writing by the Supplier, shall dissolve automatically and with immediate effect if the buyer is declared bankrupt. The foregoing applies without prejudice to the Supplier's other rights or legal remedies with respect to the buyer.

6.2 If the buyer cancels all or part of an order, the buyer shall owe a cancellation fee amounting to 40% of the selling price of the products that are the subject of the order. Moreover, if the products in question are wholly or partially unsellable or can only be sold for a lower price as a result of this cancellation, the buyer shall be obliged to compensate the Supplier for the price differences and the damage suffered by the Supplier. The parties are obliged to cooperate in order to limit the damage as much as possible.

Article 7: Force majeure

7.1 The Supplier shall not be liable for any loss or any damage that is directly or indirectly the result of the fact that the delivery of products by the Supplier was wholly or partially prevented, made difficult or delayed because of circumstances or events over which the Supplier does not reasonably have any control, including, but not limited to industrial accidents, war, strikes, lockouts, uprisings, extreme weather conditions, fire, flooding, government measures, quarantine measures, miscrop, diseases, viruses and/or parasites, lack of transport equipment or restrictions or delays that affect the possibility of obtaining adequate materials, both at the Supplier's company and at companies acting as the Supplier's supplier.

7.2 If the Supplier is not in a position to carry out all or even part of the order(s) placed due to such force majeure, the latter reserves the right to cancel the order(s). This cancellation does not entitle the buyer to any damages.

Article 8: Guarantee

8.1 The buyer guarantees that the plant material made available to the Supplier (1) (e.g. with a view to in vitro propagation) will be free of rights, diseases, parasites and other infections and (2) the information and instructions provided are complete, correct and relevant. Without prejudice to Article 10.2, the buyer indemnifies the Supplier against all liability, claims, damages and/or claims of third parties relating to, or arising from, the plants and materials made available by the buyer, and/or information and instructions.

8.2 Without prejudice to the provisions of Article 8.4, the Supplier guarantees to the best of his ability that the delivered products meet all applicable quality standards under Belgian law. In addition, the Supplier shall make every effort to the best of his ability to ensure that, taking into account the knowledge and technology at its disposal, the nature of the material (living plant material) and without incurring excessive costs or without making excessive efforts, the products that the Supplier supplies to the buyer (1) will match the Supplier's order confirmation and (2) will be of sufficient quality and quantity. However, the buyer acknowledges and accepts that the products delivered are living materials that depend, among other things, on the location of use, the cultivation measures and/or climatic conditions.

8.3 The Supplier shall adapt or replace products that do not comply with the guarantees referred to in Article 8.2 at its own discretion. In case of a deviation or mutation, if the Supplier is commissioned to work on plants and/or materials supplied by the buyer, the Supplier shall - without prejudice to the provisions of Article 10 - immediately inform the buyer of such. In such a case, the Supplier reserves the right to give the buyer the choice to (1) accept the entire quantity of products it ordered without any right to price reduction or damages or (2) to cancel its order(s) placed and to pay the Supplier a destruction fee in the amount of the costs incurred by the Supplier for the quantity of products already produced. The performance of one of the options provided in Article 8.3 shall fully release the Supplier from its liability for the guarantees provided in Article 8.2.

8.4 Except to the extent expressly specified and the manner determined in Article 8.2, to the extent permitted by applicable law, these general conditions do not contain any guarantee, conditions or declaration, whether express or tacit, legal or on any other basis, including but not limited to (1) the varietal identity of those products commonly known as being resprouting or mutating, (2) the absence of mutations, variations, parasites, contaminations and/or diseases (3) the accuracy and/or completeness of the cultivation and culture information provided by the Supplier, (4) the satisfactory quality of the products (including but not limited to further growth and flowering), (5) the absence of shortcomings or their suitability for any purpose (including but not limited to the resale ability of the products).

8.5 The buyer declares and guarantees that he has obtained all rights, permits and authorizations, including but not limited to (if applicable) a phytosanitary certificate or plant passport, which are necessary to transport or otherwise use the products. The phytosanitary certificate issued by the country of export is valid between the parties, even in the event of rejection by the competent authorities in the country of destination.

8.6 The Supplier declares to the best of its ability that the plant material delivered to the buyer does not constitute an infringement of the intellectual property rights of third parties, but does not guarantee this in any way and shall not be liable vis-à-vis the buyer in the event of a finding of infringement by a judicial or arbitration decision.

Article 9: Liability

9.1 With the exception of damage resulting from fraud or intentional negligence, the Supplier shall not be liable for any special, indirect and/or consequential damage, including (non-exhaustive list) (1) damage and/or losses resulting from mutations, variations, parasites, miscrop, infections and/or diseases; (2) damage and/or losses as a result of late or partial delivery, regardless of the cause; (3) damage and/or losses that occur during transport and/or the storage of the products in the event of a refusal to deliver under Article 4.5; (4) loss consequential to business interruption; (5) loss of profit, income or turnover; (6) loss of reputation and/or loss of clientele; and (7) damage arising from all third-party claims, including but not limited to the buyer's clientele and/or suppliers.

9.2 Without prejudice to Article 9.1, the Supplier's total liability shall in any case be restricted to the price (excl. VAT) of the products that gave rise to the damage, as paid by the buyer.

9.3 The buyer accepts that the limitation of liability specified in this article constitutes a reasonable limitation in view of the products to be delivered by the Supplier and applies, to the extent permitted under applicable law, regardless of whether the claim is based on a contractual basis, extra-contractual basis, no-fault liability, indemnity against hidden defects or any other legal basis, and even applies in case of gross negligence.

Article 10: Intellectual property rights

10.1 If the order, sale, delivery or service referred to in Article 1.2 relates to plant material that is protected by the Supplier or a licensor of the Supplier by means of a plant variety right, a patent or an application therefor, the Supplier shall indicate this material with the variety denomination or patent number, as the case may be. The buyer shall also use these indications in his commercial contacts with third parties. Without prejudice to any legal obligations, the buyer shall refrain from propagating or conditioning the plant material delivered to him, or from having it propagated or conditioned for the purpose of propagation, regardless of whether it is protected by any intellectual property right. Unless otherwise agreed in advance and in writing by the Supplier, the buyer shall only grow the plant material delivered to him into final plants and shall not sell it on as such to third parties. In the event of further trading of the delivered material by the buyer as authorized by the Supplier, the buyer undertakes, vis-à-vis the Supplier, to impose the obligations specified in this Article 10.1 in writing on his customer(s) and to have them accepted by those customers, on penalty of a fixed compensation of € 1,000 for each established instance of non-compliance with this obligation and without prejudice to the Supplier's right to claim compensation for the actual damage suffered. The buyer shall keep the necessary documents in this respect for inspection, including documentation that enables, for each variety of which material has been resold, the identity and address data of the customers involved to be determined, as well as the quantity of material purchased. If the buyer, when growing the delivered plant material, regardless of whether this material was protected by the Supplier by an intellectual property right, discovers a mutant or induces such a mutant, he shall immediately notify the seller in writing with proof of receipt and physically hand over all available material of the mutant to him in a way that will be notified by the Supplier to the buyer. All rights to this mutant, including the right to request intellectual property protection for it, shall automatically be vested in the Supplier. The buyer shall not be able to assert any right to the mutant thus discovered and in particular shall not perform the acts as indicated in the second paragraph of Article 10.1, without the Supplier's prior written consent. Without prejudice to the Supplier's right to prove higher actual damage in court and/or to take other legal action

against the buyer, the buyer shall owe the Supplier fixed damages of EUR 10,000 for each established instance of non-compliance in the event of non-compliance with his obligations under this paragraph of this Article 10.1.

10.2 To the extent that the sale relates to plant material supplied by the buyer to the Supplier with a view to in vitro propagation, the buyer declares that this material is free from plant variety right or patent protection or that he has all the necessary rights to have the material supplied by him propagated and/or conditioned for the purpose of propagation by the Supplier, and he indemnifies the Supplier against any claim by third parties concerning alleged infringements of the aforementioned or other intellectual property rights, or concerning third-party complicity in breach of contract. If the buyer supplies plant material that he or a licensor has protected by means of a plant variety right, a patent or a patent application, the Supplier shall be deemed to carry out the propagation and subsequent delivery to the buyer pursuant to a free (sub)licence provided by the buyer to the Supplier, the duration of which runs until the risk and ownership of the material has transferred in full to the buyer. If the buyer supplies plant material that he or a licensor protects by means of patent or plant variety right, the Supplier shall notify the buyer immediately if he discovers a mutant and physically hand over all the available mutant material in a way that will be notified by the buyer to the Supplier. All rights to this mutant, including the right to request intellectual property protection for it shall automatically be vested in the buyer. If a third party enforces its rights against the Supplier or a person affiliated with it in relation to the alleged infringement of an intellectual property right or third-party complicity in a breach of contract, the Supplier reserves the right to immediately cease all deliveries or other services vis-a-vis the buyer, to invoice the buyer for the products and services already delivered to the buyer, and, for the services yet to be performed that are no longer carried out as a result of the aforementioned enforcement of rights, to demand payment by the buyer of damages amounting to 50% of the commercial value of the services no longer carried out for that reason. The Supplier also reserves the right to release or destroy the plant material (or cause to have it destroyed) on its site which was delivered by the buyer, at the buyer's expense and responsibility.

10.3 The buyer is obliged to provide any cooperation desired by the Supplier, including cooperation in collecting evidence, in the event that the Supplier becomes involved in an infringement discussion about plant variety rights or other intellectual property rights. Thus, the buyer undertakes to inform the Supplier immediately in writing if he becomes aware of any potential or actual infringement of the Supplier's intellectual property rights and know-how.

10.4 An order, sale, delivery or service to the buyer and a payment of an invoice by the buyer cannot be interpreted as a transfer, (tacit) licence or other right of use granted by the Supplier or a person affiliated with the Supplier of any intellectual property right with respect to the delivered product.

Article 11: General

11.1 These general terms and conditions and the order confirmation contain all obligations between the parties with regard to the subject thereof and replace all prior oral and written notifications or agreements. The buyer's possible general terms and conditions are hereby excluded, unless explicitly accepted by the Supplier in advance and in writing.

11.2 These general terms and conditions can only be amended by a written document signed by both parties.

11.3 The validity of these general terms and conditions shall not be affected by the invalidity of one of its clauses; insofar as possible and subject to mutual agreement, a clause which is declared void shall be replaced by a clause which comes as close as possible to the economic intent of the nullified clause.

11.4 The non-exercise or partial exercise of a right or the non-application or partial application of a sanction by the Supplier does not in any way constitute a waiver of a right.

11.5 With a view to the Supplier's monitoring of the buyer's compliance with his obligations under these conditions and in particular but by no means limited to the obligations set out in Articles 3, 5 and 10, the Supplier is entitled to access the buyer's company or the locations or plots under his management. In exercising this right, the Supplier shall inform the buyer in good time of his arrival and must subsequently, during normal working hours, be allowed access on first request to the buildings, plots, computers, administration and other places and/or documents of the buyer that are relevant to this inspection, and the buyer shall render its full cooperation in carrying out such an inspection. This inspection authority, without prejudice to judicial enforcement, shall remain applicable up to 5 years after delivery, regardless of any termination for whatever reason in the meantime.

11.6 The text of these general terms and conditions was drawn up in Dutch. In the event of any contradiction between the Dutch text of these general terms and conditions and any translated text of these general terms and conditions, the Dutch text shall prevail over any translated text.

Article 12: Data protection

12.1 The Supplier processes the personal data that the Supplier receives from the buyer within the framework of the implementation of these general terms and conditions for the following purposes:

1. **Customer management.** This is based on the performance of the agreement reached between the buyer and the Supplier.
2. **Direct marketing.** This is based on the Supplier's legitimate interest in informing the buyer about new varieties which the Supplier offers or events organised by the Supplier.
3. **Complaint handling and dispute management.** This is based on our legitimate interest in exercising our rights and safeguarding our interests, including bringing, exercising or substantiating a legal claim.

The Supplier provides such data, insofar as necessary,

1. to the processors who provide supporting services such as IT suppliers.
2. to public bodies when such is required by law.

In accordance with the legal conditions and provisions, the buyer has the right to access, correct, erase, transfer and restrict the personal data. You are also entitled to object against the processing for direct marketing purposes.

The Supplier stores the personal data for a maximum period of 10 years following the termination of the customer relationship. The Supplier may transfer data outside the EEA if this is necessary for the performance of an agreement between the buyer and the Supplier. You can exercise your rights via 09/357.74.47 or privacy@deroose-ep.com. You can always file a complaint with the Data Protection Authority, Drukpersstraat 35, 1000 Brussels, contact@apd-gba.be, www.dataprotectionauthority.be.

12.2 The buyer notifies the relevant people within his organisation about the Supplier's data policy.

Article 13: Applicable law and rules on the settlement of disputes

13.1 The Parties agree that these general terms and conditions are governed solely by Belgian law.

13.2 The Commercial Court of Ghent (Belgium) shall have exclusive jurisdiction over all disputes arising from or relating to these general terms and conditions.