

§ 1 General Terms and Conditions - Lodder Unterlagen GmbH

1. The present General Terms and conditions form an integral part of all delivery contracts, agreements and offers. They are deemed to be acknowledged as soon as the order is placed or the delivery is accepted.
2. *Consumers*, for the purpose of the present General Terms and Conditions, shall be defined as natural persons without any commercial or independent business operations with whom business relations are established.
Businessmen, for the purpose of the present General Terms and Conditions, shall be defined as natural or legal persons or partnerships with legal capacity and engaged in commercial or independent business operations with whom business relations are established.
Customers, for the purpose of the present General Terms and Conditions shall be defined as comprising both consumers and businessmen.
3. We expressly object to terms for purchases or orders, or respectively any other diverging, contrary or complementary terms which conflict with our conditions of sale and delivery. This also applies to any other general terms and conditions that are known but which do not make part to the present agreement, unless we have expressly approved their validity in writing.

§ 2 Entering of the agreement

1. Our offers shall be made without engagement subject to availability of the goods ordered.
2. Upon ordering the goods, the customer declares its binding intention to accept the goods ordered. We may accept the offer to enter into a contract embodied in the order within two weeks of receipt. Such acceptance may be executed by written confirmation of the order or by delivering the goods ordered to the customers.
3. If the consumer orders the goods electronically, we shall confirm receipt of the order immediately, it being understood that such confirmation of receipt shall not constitute binding acceptance of the order. The confirmation of receipt may be tied to the declaration of acceptance.
4. The contract shall be entered into subject to the provision that we receive the requisite goods from our own suppliers on time. This shall apply only if failure to deliver is for reasons for which we are not responsible, particularly if we enter into a matching covering transaction with our supplier. The customer shall be immediately notified in the event that the goods in question are not available and any payment already made reimbursed.
5. If the consumer has ordered the goods electronically, the wording of the contract shall be stored by us and sent to the customer including the present General Terms by e-mail on request.

§ 3 Prices and Terms of Payment

1. All prices are quoted in Euro/€ ex sales outlet excluding packaging, transport insurance and transport plus Value Added Tax (VAT). Upon the release of our new manual (rootstock-list), the old prices shall be deemed void.
2. Foreign currencies are converted into Euro/€ at the official selling rate quoted by the German Central Bank (Deutsche Bundesbank) for the respective currency on the day of invoicing, unless the invoice has been rendered in this currency.
3. We reserve the right to execute orders cash on delivery
4. The customer shall not incur any additional costs as a result of the use of telecommunications.
5. After receiving the goods, the customer undertakes to pay the purchase price no later than 45 days after the date of invoice. If payment is not made within this period, the customer shall be deemed to be in default of payment.
During this period of default, the consumer shall be liable to pay interest on the amount due of 5 percentage points above the base interest rate. During this period of default, the businessman shall be liable to pay interest on the amount due of 8 percentage points above the base interest rate. In connection with the resp. businessman, we reserve the right to seek additional legal remedies where warranted. In case of payment within 10 days, a 3% discount is granted and within 30 days, a 1.5% discount is granted on the net invoice amount, provided there are no debts from earlier deliveries outstanding against the customer.
6. The consumer may only net any counter-claims if these have been upheld in a court of law or are acknowledged by us. A right of retention may be exercised only in connection with circumstances arising from the same delivery. In commercial business relations, customers shall have no right of refusal to perform their contractual duties upholding the goods, unless the claims are legally established or undisputed.
7. Cheques and bills shall only be accepted as due performance of the relevant contractual obligations subject to their being duly honoured upon presentation for payment. Any costs or fees arising from presentation shall be charged to the buyer.
8. We shall be entitled to make the performance of our contractual duties contingent upon reasonable payment in

advance of the due amount or provision of appropriate collateral. In the event that our customer fails to take any action to rectify such situation, we shall be entitled to terminate the contract and recover damages upon the expiry of a certain period.

§ 4 Transfer of risk, dispatch and packaging

1. If the buyer is a businessman, the risk of accidental loss of or damage to the goods shall pass to the customer upon the goods being transferred or, in the case of an order for dispatch, upon delivery of the goods to the forwarder, carrier or other person or body instructed to effect delivery of the goods.
2. If the buyer is a consumer, the risk of accidental loss of or damage to the goods sold shall not pass to him until the goods are made available to him.
3. The goods shall be deemed to have been transferred to the customer notwithstanding the fact that he is in default of acceptance.
4. If we buy any additional goods, we shall be responsible for packaging such goods and executing delivery properly. Open wagon loans shall be covered. The individual items of the delivery shall be designated clearly.
5. Transport insurance shall be taken unless the goods are collected by the buyer in person. In addition to a freight forwarding or expedited parcel service, the insurance of the goods shall be additional, for any cargo shipments or on the deliveries we shall carry out.
6. Disposable packaging shall be invoiced at cost. Recyclable packaging (e.g. crates, pallets) shall remain our property and be returned to us at the customer's expense.
7. Packaging and transport costs as well as haulage shall be invoiced to the customer on the basis of real costs and may be back-charged. Transport insurance depends on the value of the goods.
8. Delivery by truck shall be possible only subject to freely accessible roads.

§ 5 Delivery Commitments

1. In case of weather catastrophes as, e.g. drought, frost or hail or other unforeseen circumstances not caused by our fault, such as epidemics, strike, lock-out, operational breakdowns of any kind, war, war-like events, monetary changes or government interference, the term of delivery is prolonged by the period of disturbances. If a delivery is rendered impossible owing to the aforesaid circumstances, we are released from our delivery commitments. Any claims for damages cannot be asserted by the buyer. Any claims for damages cannot be asserted by the customer.
2. Fixed terms of delivery are only binding if they are confirmed in writing.
3. Part deliveries shall be permissible, except where otherwise expressly agreed upon.

§ 6 Sizes and Samples

1. Upward or downward variations by 10% are possible. Upward or downward variations by 10% are possible.
2. The samples merely show the average qualities, but not all plants must be the equivalent of such sample.

§ 7. Retained ownership rights

1. In the case of contracts with consumers, we shall retain ownership rights to the goods delivered until full payment of the purchase price.
For agreements concluded with businessmen, the seller retains title to the delivered goods until all claims arising from the business relation have been fully settled including ancillary claims (conditional goods). The reservation of title continues even if several of the seller's claims are included in a current invoice and the balance has been drawn and confirmed. The customer is not entitled to any other disposition of the reserved goods, which in particular, applies to pledging or the transfer of ownership by way of security.
2. The seller retains title to the reserved goods even if the customer heels in or plants the delivered plants on his or other people's premises until they are resold. The reserved goods shall be stored separately, away from other plants, heeled in or planted, and duly marked with our label. The customer is obliged to care for the reserved goods by appropriate storage, planting, fertilising and watering.
3. The customer undertakes to inform us without delay of any third-party access to the goods, e.g. seizure, as well as any damage to or destruction of the goods, stating the name and address of the seizing party. The customer shall notify us immediately of any change of ownership in the goods as well as any change of address.
4. In the case of any breach of contract on the part of the customer, including but not limited to payment default, or failure to comply with the obligations set out in Sections 2 and 3 of these provisions, we shall be entitled to terminate the contract and demand release of the goods.

5. The businessman may sell the goods as part of its normal business operations. In case of resale, in any condition, and in order to meet any request by LODDER UNTERLAGEN GmbH, the businessman shall hereby assign all receivables payable to the customers as a result of such resale including all ancillary claims and receivable under existing balances. After assigning the receivables, the businessman shall be entitled to collect such receivables (reserve of extended ownership). The customer undertakes to communicate us the name and address of the seized party and the amount of the receivables. We reserve the right to collect the receivables ourselves as soon as the businessman fails to comply with its payment obligations and is in default of payment. If the prior reserve does not comply with the law of the country of destination, the businessman is obliged to collaborate with LODDER UNTERLAGEN GmbH in order to get relevant security rights.

6. The businessman shall always process the goods on our behalf and for our account. If the goods are combined with other goods not belonging to us, we shall receive ownership rights in the resultant goods in the ratio of the value of the goods which we have supplied to the value of the other goods.

§ 8 Guarantee

1. A guarantee that the plants will take root is not given. In case the customer expressly wishes to be granted such guarantee, this may be invoiced separately. This guarantee extends over the period of one year from the date of delivery and takes for granted that the customer has cultivated the plants as required for their species. This in particular includes correct depth of planting, fertilisation and irrigation. Cases of force majeure, especially drought, frost, pest infestation, etc., are not included in such guarantee. The guarantee that the plants will take root and grow shall not be deemed to be a guarantee in the legal sense.
2. A guarantee to the effect that the plants delivered comprise only the grade ordered shall be granted only at the customer's express wish. In the case of fruit trees, the guarantee granted with respect to the right grade and base requested shall expire at the end of the fifth year after delivery. The guarantee for berries, roses and other trees shall expire at the end of the second year after delivery. No guarantee shall be assumed for the purity of the grade in further breeds. In the case of inoculation bases and young plants, we shall guarantee the genuineness of the grade supplied only for a period ending one year after the date of delivery.
3. If the buyer is a business, we guarantee that the goods shall be replaced or repaired, at our own discretion.
4. If the buyer is a consumer, he/she may choose whether to proceed with the repair or replacement as remedy. However, we may reject such choice if it is possible only at unreasonable expense and the other method of remedying the non-compliance does not give rise to any substantial disadvantages for the consumer.
5. If the attempt to remedy non-compliance fails, the customer may at his discretion either reduce the purchase price or rescind the contract. However, the customer shall have no right of rescission in the case of minor breaches of contractual duties, particularly minor faults.
6. In the event the purchase is a commercial transaction for both parties, and in the extent the normal course of business is possible, the businessman shall immediately check the goods in order to find any non-compliance, and must report any evident non-compliance in the goods directly to LODDER UNTERLAGEN GmbH.

Failure to do so shall cause them to forfeit all claims under the guarantee. Unless the non-compliance is non visible during the check, in which case Article 377 of the Commercial Code shall apply. Consumers shall report any evident non-compliance in the goods in writing within two months of discovering such non-compliance. The receipt of the notification in our services is essential for maintaining this period. If the consumer fails to report such non-compliance to us, all claims under the guarantee shall be forfeited two months after the non-compliance is discovered. The consumer shall have the onus of proof for the date on which non-compliance was discovered. The consumer shall also have the onus of proof with respect to any contention claiming that he was encouraged to buy the goods on account of misrepresentations contained in the brochure. If a living plant is the subject of a sales transaction, the onus of proof in the event of such plant dying or being inflicted by pests or any other disease shall be on the consumer to demonstrate that such circumstances were not due to improper handling of the plants after receipt.

7. If the customer opts to rescind the contract as a result of a failed attempt to remedy any legal or non-legal non-compliance, he shall not be entitled to recover damages on account of such non-compliance. If the customer opts to recover damages as a result of a failed attempt to remedy non-compliance, the goods shall remain with the customer provided that this is reasonable. The damages recoverable shall be confined to the difference between the purchase price and the value of the non-compliant products. This shall not apply if such contractual non-compliance is due to willful fraud.
8. The guarantee shall expire one year after delivery of the goods for businessmen. In the case of consumers, claims shall be barred two years after delivery of the goods. This shall not apply if the customer has not reported the non-compliance to us within the requisite period of time (Section 6 of this provision).
9. Businessmen buying types of roses subject to patent and grade protection as well as those with registered names shall only resell such products with the original labels supplied with the plants and not use the roses received or any parts thereof for breeding purposes or sell any such roses outside Germany. If the customer is a

businessman, it undertakes to impose such duties on the customers to whom it resells such goods.

§ 9 Liability limitations

1. In the event of simple negligence, our liability shall be confined to direct average loss or damage which is foreseeable and typical given the nature of the goods in question. This shall also apply to simple negligence on the part of our statutory representatives and services. We shall not be liable to businessmen in the event of simple negligence caused by failure to comply with non-material provisions of the contract.
2. The aforementioned restrictions to our liability shall not apply to any claims held by customers under product liability legislation. In addition, the limitation of liability shall not apply to injury, impaired health or loss of life for reasons for which we are responsible.
3. The customer's claims to damages shall be barred one year after delivery of the goods except in the event of gross negligence on our part as well as injury or loss of life on the part of the customer for reasons for which we are responsible.

§ 10 Right of annulment or termination

1. Electronic sales contract with right of annulment Termination notice must be sent to LODDER UNTERLAGEN GmbH, Elvert 5 in 48249 Dülmen
E-mail: contact@lodder.de Fax +49 (0) 2590 9456-21.
2. The consumer may cancel his declaration to enter into a contract within two weeks of receipt of the goods except where the goods comprise living plants. The declaration of annulment shall mention the reason and must be sent on due time by writing or when returning the goods to the seller, in order to benefit from the deadline accepted.
3. If the consumer exercises his right of annulment, he must return the goods sent, if possible by post. If the right of annulment is exercised, the consumer shall bear the cost of returning the goods for any order up to Euro 250, unless the goods delivered do not meet the ordered ones.
4. The consumer has to pay compensation for an intended taking the goods into use and a possible impairment resulting from this. The customer should inspect the goods carefully. Concerning the loss in value which – by means of the use exceeding the mere examination - leads to the inability that the goods can no longer be sold as "new", the consumer has to bear the cost.

§ 11 Final Provisions

1. The law of the Federal Republic of Germany shall apply. The Vienna Convention on Contracts for the International Sale of Goods shall be excluded.
2. If the customer is a businessman, a public-law body or a special public-law asset, all disputes arising from this contract shall be referred solely to the courts of law responsible for the town or city in which we are domiciled. This shall also apply if the customer does not have any legal venue in Germany or his place of abode is unknown on the date on which court proceedings are commenced.
3. If any of the provisions contained in the contract with the customer or in the present General Terms and Conditions are void in full or in part, this shall not prejudice the validity of the other provisions. Such void provision shall be replaced by a valid one coming as close as possible to the commercial effect of the ineffective one.
4. Confidentiality clause: The buyer is herein informed that in compliance with Article 28 par. 1 of the Federal Law on data protection, we record his/her complete address, and any relevant data useful for invoicing purposes, in a readable way for any machine process. Data will be kept confidential and not shared with third parties without the specific consent of the customer.

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