

## General Terms and Conditions

### 1 Definitions

1. RÖTJES YOUNG PLANTS BV, Chamber of Commerce number: 60377763 further referred to as RÖTJES.
2. Activities: all activities in the broadest sense for the purpose of the contract. All activities that are associated with, or that ensue from the aforementioned activities will also be governed by the present contract and conditions, including the supply of the materials required to that end, both living and dead.
3. Opposing party: all natural or legal entities who can be considered to be an opposing party under this contract.
4. Materials: live materials: including biological products and live plant products. Sand, soil, earth and compost and substrates; dead materials: all other products and materials.
5. Force majeure: each circumstance that falls outside of the immediate sphere of influence of RÖTJES including cases of negligence and/or shortcoming by or at suppliers, appointed third parties and/or carriers, cases of fire, strike or lockout, hostilities, government measures such as prohibition of export, import and transit, frost, hail, sand blown by the wind and/or splashing by the rain, burning by the sun, death of plant material by disease or harmful natural organisms and/or defects in the material that is supplied and all other circumstances of such a nature that the commitment of RÖTJES can no longer be expected.

### 2 The quotation/the realisation of the contract

1. A contract with RÖTJES is only considered to be effective once written confirmation has been given by RÖTJES of the quote being approved and returned by the opposing party.
2. Promises by partners and/or representatives and/or employees of RÖTJES are only binding if these are confirmed in writing by RÖTJES.
3. Each contract becomes effective under the dissolving condition that the opposing party has sufficient creditworthiness, such that it is immediately able to fulfil its obligations ensuing from the contract.
4. It cannot be stipulated as a condition of the contract that the contract has to be fulfilled by a specific person within the RÖTJES organisation.

### 3 Scope of the order

1. RÖTJES undertakes to make every effort to perform all activities required for the reproduction of propagating material according to the type and amount agreed between parties.
2. The order can relate to the propagating material made available by the opposing party itself, or propagating material to be supplied at the instruction of the opposing party, by third parties or RÖTJES.
3. When executing this order, where necessary RÖTJES shall act as representative of the opposing party. Any obligations entered into by RÖTJES with third parties in respect of the contract legally bind the opposing party.
4. If the order relates to propagating material to be supplied by RÖTJES, in addition to a contract of engagement, the parties shall also enter into a purchase and sales contract.

### 4 Prices/costs/payment

1. Prices are given in Euros (€) and exclude turnover tax and other official charges that are imposed.
2. RÖTJES is entitled to include in the price, or to charge as additional costs, all costs including third party fees, costs fixed by third parties, including government fees, licences and provisional sums, for estimated but otherwise unknown or variable costs.
3. Provided this is not deviated from in the contract or on the invoices, the payment period always amounts to no more than 14 days of the invoice date.
4. The opposing party is not permitted to offset the amount.
5. The payment, either in full or in part, for the goods supplied by RÖTJES cannot be made subject to the outcome of the order that has been given, as this contract concerns an obligation to perform to the best of one's duty applies.
6. RÖTJES reserves the right to request full or partial advance payment and/or to demand the provision of security, or to charge prematurely and to demand payment of that from the opposing party.
7. If no payment is received within the agreed payment period, as from the due date, RÖTJES is entitled to charge 1.25% in compound interest per month on the invoice amount, or a portion thereof. Without prejudice to the statutory (commercial) interest to be charged on the relevant amount.
8. All judicial and extrajudicial costs that have to be incurred by RÖTJES in order to ensure fulfilment of the opposing party's obligations, or to recover compensation from the opposing party, shall be borne by this opposing party. The parties agree expressly that the actual costs (of the proceedings) are also owed insofar as these exceed the liquidated rate applied by the law courts.
9. Failure to pay any claim means that all other outstanding claims, irrespective of their due date or quality, are immediately due and payable.
10. Payment has to be made into the account designated by RÖTJES.
11. The payments that are made will first of all be used to pay all interest and costs that are owed, then claims that are due and payable in respect of which no valid retention of title exists, or in respect of which no security has been provided, and then due and payable invoice claims that have been outstanding for the longest period of time.

### 5 Cancellation, retention and dissolution

1. If the opposing party is in default on account of late payment or has otherwise not fulfilled its obligations under the present contract, without prejudice to its legal rights, and barring the obligations in the other articles of this contract, RÖTJES is authorised to suspend the fulfilment of orders, or to dissolve the contract either in part or in full.
2. In circumstances similar to those outlined in paragraph 1, RÖTJES can exercise a right of retention on all property that it holds within the scope of the execution of the contract.
3. In the event of suspending its performance, exercising a right of retention or dissolution of the present contract pursuant to this article, RÖTJES can never in any way be held liable for any form of damage.
4. Should the opposing party become bankrupt, be in a state of moratorium on payment or be placed under custodianship, or if the company is wound up or liquidated, by operation of law, the opposing party shall be deemed to be in default and without any obligation to pay compensation and without prejudice to the further rights accruing to it, without notice of default or legal intervention being required to that end, RÖTJES is entitled to dissolve the contract in full or in part, or to declare the contract to be dissolved, or to suspend the (further) execution of the contract. Where appropriate, RÖTJES is entitled to claim immediate settlement of anything accruing to it.

### 6 Obligations of RÖTJES

1. The present contract is an obligation to perform to the best of one's ability, such that no rights can be attached to the outcome, the goal to be accomplished and the performance of RÖTJES.

### 7 Supply and risk, obligation to purchase

1. Delivery shall be effectuated from the warehouse/site of RÖTJES.
2. The delivery dates that are provided for materials/goods shall not be seen as final deadlines and cannot lead to failure to perform until written notice of default has been issued.
3. The delivery date becomes effective once the contract has been entered into and all obligations have been fulfilled by the opposing party.
4. The goods shall be deemed to have been delivered and the risk with regard to these goods transfers to the opposing party as soon as the relevant goods are actually in the transport vehicle, including when the opposing party is not responsible for (provision of) the transport.
5. If the materials to be delivered cannot be delivered due to external causes on the part of the opposing party, or if the opposing party refuses to take receipt of these, RÖTJES shall store and look after the materials for a maximum of two months and will ensure these are available until delivery. The costs associated with that shall be borne by the opposing party. After that time, RÖTJES is entitled, without being obliged to pay any damages or compensation, to destroy or to sell the materials, at its own discretion, at the expense and risk of the opposing party. The opposing party continues to be obliged to continue to fulfil the contract (payment).

### 8 Complaint and guarantee

1. The opposing party is obliged to immediately check the quality and quantity of the goods or the items that are delivered. If a complaint is not submitted by the opposing party within one working day after receipt of the delivered goods, then the quality and quantity indicated on the consignment notes, delivery notes, invoices, the transfer deed, or similar documents, are deemed to be correct.
2. Hidden defects have to be reported in writing within seven days after discovery, but expressly within two months after delivery or within a term of guarantee to potentially be agreed.

3. The buyer is not entitled to complain if the defect is totally or partially the result of unconventional, improper, injudicious or careless use, if the product has been changed, adapted, used or converted, or if the product has been transferred to third parties.
4. Complaints shall not be honoured if RÖTJES does not have the opportunity or is not given the opportunity to investigate the relevant defect.
5. If it acknowledges the defects, RÖTJES shall replace the defective product, or shall credit the opposing party, pro rata, for the price of the relevant product or resolve the problem in a different manner, without the opposing party being entitled to claim for compensation.
6. Complaints do not release the opposing party from any obligation towards RÖTJES.

#### **9 Retention of title**

1. All goods supplied by RÖTJES remain the property of RÖTJES until the time of full payment of all claims that RÖTJES has against the opposing party under the present contract with its conditions, appurtenant activities, as well as by virtue of claims on account of failure to comply with such contracts, including interest and costs.
2. The opposing party is obliged to adequately insure the goods; in any case against the risks of theft, damage and loss. All claims against insurers relating to these products have to be pledged to RÖTJES at its first request.
3. The opposing party is obliged to immediately inform each third party that wishes to seize the relevant goods, or that third party's administrator or official receiver in writing, with a copy of that to RÖTJES that RÖTJES is the owner of the relevant goods.

#### **10 (Temporary) impediment in compliance**

1. If, in the opinion of RÖTJES, as a result of weather conditions or conditions of the ground or slowing of growth, the delivery cannot be made at the time, or in the agreed period originally given in the quotation, RÖTJES is entitled to deliver this later on, or to suspend delivery for the period of time that the relevant circumstances continue. If the relevant circumstances have ended, but RÖTJES is then unable to guarantee, or unable to sufficiently guarantee the quality of its performance/the cultivation and the growth or regrowth of that, further postponement can follow. The postponement of the activities can last for no more than 3 months, after which both parties are entitled to dissolve the contract, without claiming any costs and/or compensation.
2. If on account of force majeure at RÖTJES the agreed activities temporarily (not exceeding 3 months) cannot or can only partly be performed, RÖTJES shall immediately contact the client, the goal being to effect an arrangement. The arrangement consists of alternative execution or partial delivery without it being possible to demand any punitive damages.
3. If on account of force majeure at RÖTJES the agreed activities cannot be performed at all, or if the obligations cannot be fulfilled, RÖTJES is entitled to dissolve the contract instead of fulfilling it without it being possible to demand any costs and/or compensation.

#### **11 Intellectual property**

1. The opposing party indemnifies RÖTJES and exempts RÖTJES with regard to all third-party claims based on an (alleged) breach of any right of industrial and intellectual property as a result of producing, reproducing, importing and exporting, selling and storage of the material made available by the opposing party, or as a result of material that is taken delivery of, purchased or received from third parties at the instruction of the opposing party.
2. RÖTJES continues to own the intellectual property rights of material that is developed at or under RÖTJES, including alterations, and on which there may be a new plant variety right.
3. In relation to the relevant materials/goods, RÖTJES does not transfer the industrial and/or intellectual property right associated with the relevant material as under paragraph 2, neither are licences granted in this way. The industrial and/or intellectual property rights relating to and associated with the material are not lost and/or are not exhausted by the material being delivered.

#### **12 Liability**

1. RÖTJES is only liable with respect to the opposing party and only obliged to compensate for loss insofar as this ensues from this article.
2. RÖTJES is under no circumstance liable for indirect losses, including but not limited to, loss of information, lost profits, consequential damage, lost savings or damage on account of business standstill.
3. RÖTJES limits its liability for the loss suffered by the opposing party resulting from its attributable shortcoming in complying with the contract, if and insofar as the liability is covered by insurance, up to a maximum of the amount of the payment made by the insurance company, except for in the event of deliberate intent and/or gross negligence.
4. Cases falling outside of the provisions in the previous paragraph will only be able to lead to liability of RÖTJES limited to one times the invoice amount of the relevant delivery.
5. RÖTJES accepts no liability for damage: A as a result of defective materials and/or incorrect or incomplete information provided by the opposing party, official registers and other external sources. B that is in any way related to the choices of the opposing party in respect of the variety, the propagating material, the rootstocks and the method of cultivation. C as a result of incompetent or incorrect use of the delivered items. D as a result of a negative assessment by a third party/third party expert insofar as this is not underpinned by a (biological or chemical) scientifically recognised principle. E that arise on account of the lawful discharge of rights of retention, rights to suspend performance and rights of dissolution, that it has by law or by means of this contract. F after reselling by the opposing party.
6. In respect of deliveries of plant materials, and associated deliveries of sand, soil, leaf mould, compost and other substrates, RÖTJES cannot, or can no longer, be held liable if, within the scope of normal handling thereof confusion occurred at the client.
7. If and insofar as a third party can be held liable, if necessary in legal proceedings, the opposing party should sue this third party first of all, in the absence of which the opposing party relinquishes its right in this respect on RÖTJES.

#### **13 Guarantees**

1. RÖTJES guarantees the growth during the first growth cycle after delivery of the living materials that are supplied, provided that adequate care can be proven, unless there are exceptional weather conditions and/or conditions of the ground which may or may not be in conjunction with the time and/or term of the contract, or if there is force majeure. Small deviations in the growth or regrowth are not covered by this guarantee. Understand by small deviations is a loss of up to no more than 10%.
2. The guarantee becomes null and void after cultivation and/or processing and/or reselling of the plant material by the opposing party.
3. RÖTJES does not guarantee the pure breed of the living materials, in accordance with the description in the quotation, if the plant material is delivered by the opposing party and/or third parties. All materials, both dead and living, will be delivered subject to the legal conditions that are laid down in relation to that and that are tailored to the use, or the intended purpose.
4. RÖTJES cannot guarantee the completeness or the accuracy of the external, public or other official registers that it has consulted for the benefit of the services.
5. RÖTJES cannot guarantee the completeness and accuracy of public investigations that are compulsory by law or performed lawfully by or at the instruction of third parties, including competent authorities.

#### **14 Disputes**

1. All contracts entered into with RÖTJES and corresponding conditions and the ensuing performance are governed by Dutch law.
2. All disputes ensuing from the quotations and/or contracts shall be settled by the law court of the place of residence and/or the place of business of RÖTJES.
3. Applicability of the United Nations Convention on contracts for the international sales of goods (CISG Vienna 11 April 1980), as well as the applicability of the Vienna Sales Convention (Trv. 1981, 184, 1986, 61) are excluded.
4. All contracts and/or actions and characteristic performances are deemed to have been entered into or performed in the Netherlands, including if these are partly performed elsewhere (agreed fiction).
5. These general terms and conditions are written in Dutch, German and English. In the event of a dispute or inconsistency between the Dutch text and the German or English text, or a difference in the interpretation thereof, the general terms and conditions written in Dutch shall prevail.