

GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY 2004

General Terms and Conditions of Terra Nigra B.V., hereinafter referred to as 'seller' or as Terra Nigra, having its registered office in Kudelstaart, filed at the office of the District Court in Amsterdam

on 2nd of June 2004 under number 82/2004 .

Clause 1. Applicability

1. Any contracting party involved in a business relationship with Terra Nigra will be referred to hereinafter as 'buyer', also in cases where services are provided to such party.
These terms and conditions are applicable to and form part of all offers and quotations made by the seller, all orders placed with it and all contracts concluded by it, however called, as well as to the execution thereof, and will be made available to the buyer on first demand.
2. The seller exclusively conducts its business subject to the applicability of these terms and conditions. Unless otherwise agreed in writing, the seller expressly stipulates that it does not accept applicability of terms and conditions applied by the buyer, inasmuch as the buyer refers to such terms and conditions and/or forwards them.
3. Any departure from these terms and conditions will be valid only if confirmed in writing by the seller's board of directors.

Clause 2. Offers, quotations and order confirmations

1. All quotations and offers are without obligation, except those specifying a period for acceptance. Accordingly, a quotation that does not explicitly specify a period for acceptance amounts to an offer, free of obligation, to conclude a contract, which offer may be retracted by Terra Nigra at will so long as it has not been accepted by the buyer and may furthermore,

in spite of its having been accepted, be retracted by Terra Nigra within five working days of Terra Nigra's receipt of the notice of acceptance.

A quotation or offer which contains a period for acceptance cannot be retracted by Terra Nigra; however, it will automatically expire after the stated term has elapsed. The notice of acceptance needs to be received by Terra Nigra within the stated term. If Terra Nigra informs the buyer within three working days of receipt of an overdue notice of acceptance that it considers acceptance to have been notified in a timely manner, the contract will yet become effective.

2. After agreement has been reached on the sale and delivery of the seller's products and/or services to the buyer, the seller will provide the buyer with an order confirmation detailing the key elements of the contract. Unless the buyer sends notification to the contrary by return of post, the order confirmation serves as evidence for the agreement reached, or the contract concluded.
3. In the case of commissions or orders received through verbal communication, via telefax or via internet email, or placed by representatives or agents of the seller as intermediaries, no contract will have been concluded until the seller, after having received the commission or the order, as the case may be, has sent its confirmation in writing.
4. In any case, a contract is deemed to have been concluded if the seller has actually taken in hand the execution of the commission or the order, as the case may be, and the buyer does not protest against execution forthwith.
5. Commissions or orders placed by telephone, telefax or internet email will be executed in accordance with the notes taken by the seller and its interpretation thereof. The buyer is of course entitled to provide proof to the contrary.
6. All price lists, statements of cost, brochures and other data relating to the seller's products and services that are provided in connection with a quotation or offer will be binding on the seller only if the seller expressly declares them to be binding, in writing as per the order

confirmation. In all other cases, that is, if the seller provides such items to market participants or to the buyer, as the case may be, without obligation on the part of the seller, the said market participants or the buyer cannot derive any rights in respect of the seller from such price lists, statements of cost, et cetera. The statements in question are made as accurately as possible. The seller is entitled to correct obvious slips of the pen and/or other mistakes.

7. All data, information, illustrations, descriptions, dimensions and the like provided by the seller in connection with a quotation, offer or otherwise remain the intellectual property of the seller. Any party infringing the said intellectual property [copyright] commits a wrongful act in respect of Terra Nigra, which Terra Nigra will bring before the court. Terra Nigra is entitled to claim full damages from the infringing party.
8. The content of the seller's brochures cannot serve as a ground for claiming any right whatsoever in respect of the seller. None of the colour schemes, dimensions and/or descriptions contained therein are binding on the seller.

Clause 3. Prices

1. All prices are quoted and are deemed to be listed in euro [legal Dutch tender].
2. Unless otherwise agreed, prices do not include the following, which are to be added on as applicable [or the quoted prices exclude the following, as the case may be]:
 - turnover tax [VAT] and other government levies;
 - royalties;
 - licence fees;
 - packaging cost;
 - growers' and other compensations;
 - cost of transport.

Prices are based on delivery ex seller's warehouse.

3. A buyer having its registered office in an EC member state other than the Netherlands is to inform the seller in writing of its correct VAT registration number. In addition, the said buyer shall provide the seller with all data and documents that the seller may need in order to prove that the goods were delivered in an EC member state other than the Netherlands. The said buyer indemnifies the seller against all claims ensuing from and all harmful consequences of any failure, whether in part or in full, of the buyer to comply with the above stipulations. The seller reserves the right to augment the price to be paid by the buyer by adding on the amount of VAT that would apply to the consignment in question if delivered within the Netherlands.

If and when it is established that the consignment in question falls under the 0% tariff, the seller is obliged to repay to the buyer without delay the amount of VAT paid by the buyer in connection with the consignment in question.

4. One-way packaging is charged at cost. Reusable packaging, containers, stacking trolleys and the like that remain the property of the seller and/or have been procured from third parties for packaging purposes, are also charged at cost and any items employed must be returned to the seller carriage paid. If such items are returned within 30 days of the invoice date, the amount charged will be refunded, where applicable less an agreed percentage as payment for their use.

Clause 4. Delivery, risk and cancellation

1. Delivery time as per the order confirmation is stated only by way of indication of the lead time, as anticipated at the time of concluding the contract, required to effect delivery of the goods sold and/or to perform the service agreed. The buyer is fully aware that this is a consequence of the nature of the product bought, being a product subject to a natural growth process, or of the nature of the service connected with that product. Accordingly, stated delivery times are in no case to be regarded as firm dates, unless otherwise agreed, explicitly and in writing.

2. Accordingly, the seller is entitled to announce, in the course of the lead time as per the order confirmation, such changes in the indicated time of delivery of the goods sold, or of the services connected with these, as may be caused by the growth process of the goods sold. The seller and the buyer will then enter into consultation to discuss the consequences of such an occurrence.
3. The buyer is entitled to inspect the consignment to be delivered not more than 4 weeks prior to the definitive date set for delivery, but only by appointment and under supervision of the seller.
4. In the case of failure to deliver on time the seller must be given notice of default in writing. The seller should be allowed a reasonable period to achieve compliance. This period will be four weeks at minimum.

In view of the above, therefore, the seller can only be in default after having been given proper notice of default and allowed a reasonable period for compliance. The reasonable period may differ from case to case, depending on circumstances.

5. Orders may only be changed until 15 weeks before delivery at the latest.
6. Unless otherwise agreed, deliveries are made ex seller's warehouse, that is to say, if the goods are sitting in the seller's forwarding department ready to be loaded into or onto the transport vehicle used by or on behalf of the buyer. After delivery the goods are at the buyer's risk.
7. Regardless of the agreed delivery arrangements, the goods while in transit are at the buyer's expense and risk. Under no circumstances will the seller arrange for transport insurance of the goods.
8. If it has been agreed that the seller will look after transport, the cost of transport, delivery or forwarding is added onto the price as mentioned in clause 3. In that case the order

confirmation will also specify the way of transport. Under any circumstances the seller will have complied with its obligation to deliver, within the meaning of the present paragraph, by once presenting the goods, or having them presented once, to the buyer. In that case the forwarder's records, to the effect that the goods were refused or that it was not possible to deliver the goods at the delivery address supplied by the buyer, will serve as complete evidence of presentation for delivery. If the goods are transported as described in the present paragraph and the buyer refuses to accept them for unsound reasons, the buyer is liable to pay the return charges in addition to any other charges mentioned in the present paragraph that it owes to the seller, and the buyer will not be entitled to reimbursement of the purchase price, or it will continue to owe the purchase price to the seller, as the case may be.

9. The seller is entitled to deliver by parts (installments), for which the seller may send separate invoices. The seller produces separate confirmation of any such installment, including a reference to the original order confirmation. The seller will contact the buyer at the earliest occasion concerning the delivery in installments. With respect to the application of the present terms and conditions each installment is considered to represent a separate transaction. Accordingly, the buyer is obliged to pay for each installment in accordance with the provisions concerning "Payment" as detailed hereinafter.
Not under any circumstances will the seller be liable for costs incurred and losses suffered, however called, ensuing from the delivery in installments or from any concomitant delays.
10. Not under any circumstances will the seller be bound by any term specified in or flowing from the present clause, nor by any other term additionally agreed, in case the buyer wishes to change the specifications of the order [for example, the type of product, the number of items, or the colour schemes, et cetera], unless the change or the delay is of so little import that it is reasonably possible to perform within the term.
11. In the case of integral or partial cancellation by the buyer, which for the purpose of the present terms and conditions shall mean the latter's wish to revoke, without sound reason, a contract that it has entered into, the buyer immediately becomes liable to pay 100 per cent of the gross sales value of the goods by way of indemnification on account of cancellation, without prejudice to the seller's right to claim compensation for other losses.

The buyer is entitled to present proof that the relevant cancellation loss is less than 100 per cent.

12. If, in the case of delivery ex warehouse, the buyer fails to collect the goods - or have them collected on its behalf - on the agreed date, or if another way of delivery to the buyer has been agreed: the goods are not accepted by the buyer upon the said delivery, or if the buyer indicates that it does not wish to take delivery of the plant and/or propagation material until after the agreed date, the seller will – the nature of the goods permitting – put the material into storage at the buyer's expense and risk, to remain at the latter's disposal.
When more than 4 days have elapsed since the agreed date of delivery, or the date of taking delivery, without the goods having been accepted, the order is deemed to have been cancelled by the buyer in the sense of paragraph 11 and the buyer will then be liable to pay damages on account of the loss suffered by the seller, as provided in that clause-paragraph.
13. Where deliveries of goods of an inherently perishable nature are concerned, the buyer is not entitled to appeal to the goods having perished, whether partly or completely and by whatever cause, if a prior circumstance attributable to the buyer prevented the delivery, or if the buyer refused to take delivery of the goods. In that case the seller does not accept liability for any losses as described in clause 9.
14. The buyer is deemed to be aware of the perishable nature of the goods. At all times, the buyer bears the risk of demise or partial loss of the purchased goods, whether before or after delivery.

The seller cannot guarantee that the products sold will exhibit proper growth in the buyer's greenhouses.

Terra Nigra does not advise the buyer regarding cultivation, except for the case where a pertinent explicit contract in writing is concluded.

Clause 5. Complaints

1. The buyer is obliged to perform a thorough inspection of the goods immediately after delivery, checking them for shortcomings, and immediately to report in writing if any are discovered, accurately describing the shortcomings found. For the purpose of dealing with any complaints, the seller may, depending on the type of product, require the buyer to complete and return a questionnaire, accurately and in a detailed manner, failing which the complaint may be considered unfounded.
2. After a period of 7 days following delivery the buyer is deemed to have accepted the consignment, except for the case where shortcomings can reasonably be detected only after 7 days. As in the preceding case, the buyer must report in writing without delay, accurately describing the shortcomings, completing and returning the relevant questionnaire if asked to do so.
3. The buyer is deemed to be aware of the perishable nature of the goods, which implies that complaints cannot be taken up if the buyer fails to provide the seller with all information the latter may request and which is needed to enable the complaint to be expeditiously and thoroughly dealt with.
4. The seller will be deemed to have properly performed whenever the goods delivered have been put into use by the buyer, or whenever the latter has converted or processed them, supplied them to third parties or caused them to be put into use, without regard to any complaint that the buyer may have filed in compliance with the provisions of paragraph 1 of the present clause.
5. The buyer is obliged to allow the seller an opportunity to check the shortcomings reported by the buyer, or to have them checked. If the buyer denies the seller such opportunity, the complaint will be deemed unfounded.
6. Any complaints can only be validated with respect to goods whose condition has remained unaltered after delivery. Anomalies inherent in the grower's produce, in respect of quality,

width, diameter, size, colours, et cetera, whether slight or not, cannot constitute a ground for complaints. Likewise, complaints concerning slight anomalies not inherent in the grower's produce cannot be accepted if such anomalies are considered acceptable by the standards of the trade.

7. If the seller considers the complaint about the shortcomings to be sound, the seller is obliged to remedy the shortcomings, either by replacing the defective goods without cost, or, if the complaint involves the quantity of the goods, by making up the shortage or by paying compensation, at the seller's discretion, in each case within a reasonable period of at least 14 days. This period may be extended if justified by the nature of the goods (in the case of import, among other things).
8. Any goods supplied may only be returned after the seller has given its consent in writing, subject to such terms and conditions as set by the seller.
9. Complaints concerning incorrect invoices sent by the seller should be made within 7 days of the date of the invoice, whereafter the buyer is considered to agree with the amount invoiced.

Clause 6. Payment

1. Except for the case where another term for payment is specified in the invoice or the order confirmation, payment should be made within 30 days of the date of the invoice, either at the office of the seller or by depositing or transferring the amount into a bank account to be specified by the seller.
2. Payment is due without any rights to deduction and/or suspension other than the buyer's relevant statutory rights.
3. If payment has not been effected within the term specified in paragraph 1, the buyer will be in default without need of notification. Accordingly, a term of payment specified in the seller's invoices or correspondence is absolutely firm.

4. Starting from the first day that the buyer is in default, the seller is entitled to claim interest on the total amount of the invoice including VAT at a rate of 1 per cent per month, a part of a month being counted as a full month.
5. Additionally, the seller is entitled to charge to the buyer any extrajudicial costs arising from the buyer's failure to pay or to pay in time, these costs being fixed for the purpose of the present terms and conditions at 10 per cent of the capital sum, or at least calculated on the basis of the rate considered acceptable by the Netherlands Association for the Administration of Justice, unless the actual costs lead to a higher amount, in which case the said higher amount may be charged, the minimum amount in any case being 250 euro. The above provisions are without prejudice to the seller's right to compensation of all other costs, losses and amounts of interest.
6. All payments made by the buyer are used first of all to settle any amounts due on account of interest and costs incurred, and in only in the second instance to settle the capital sums due, even if it is specified by the buyer that the payment concerns the capital sum, or the amount invoiced, as the case may be.
7. In case it has been agreed that payment will be made in installments, for example in the case of delivery in parts, settlement will take also place subject to the above.
8. The seller is entitled to suspension of its obligation to deliver and to demand that the buyer provide security for the payment if it is established that the buyer will be unable to comply, or if the seller must necessarily conclude from a statement by the buyer that the latter will default on its obligation to comply, or if the seller has sound reason to believe that the buyer will default on its obligation to comply and the buyer in that case, after having received a written demand - which demand should include a statement of the said sound reason - to declare its readiness to fulfil its obligations within a specified reasonable period, fails to declare accordingly.

The seller reserves the right not to carry out any orders if the buyer has not

fulfilled its obligations to pay for earlier deliveries and the relevant term of payment has expired. The seller is not liable for any loss suffered by the buyer as a result of such refusal to supply.

Clause 7. Security and retention of title

1. Should the seller see fit – for which the following circumstances may be advanced as examples: failure to pay outstanding invoices, discontinuation of payment, serious doubt about the due fulfilment by the buyer of its obligations pursuant to the contract - the seller is entitled to demand that the buyer:
 - * settle all its obligations, due and still to become due, without delay;
 - * provide security, or has security provided, for the seller in respect of all obligations, due and still to become due.
2. If the buyer fails to provide security, the seller is entitled to suspend its execution of the contract with immediate effect.
3. If the buyer does not fulfil its obligation to provide security within a reasonable period following suspension, the seller is entitled to dissolve the contract between the parties and to claim full compensation for the loss it has suffered owing to the attributable shortcoming of the buyer to fulfil its obligations.
4. The seller retains title to all goods it has supplied to the buyer until the purchase price for all goods has been paid in full. If the seller carries out any work for the benefit of the buyer that is to be charged to the buyer under these contracts of sale, the said retention of title remains in effect until the buyer has fully paid the pertinent debts to the seller as well. In addition, the retention of title applies to any claims that the seller might obtain towards the buyer on account of the buyer's failure to fulfil of one or more of its obligations towards the seller.

5. The buyer is not entitled to pledge the goods supplied until title to the goods has been transferred to the buyer, nor grant any other rights to the said goods to any third party, except for the provisions in paragraph 8 of the present clause.
6. The buyer is obliged to keep any goods supplied subject to retention of title with all due care and as the seller's recognisable property, in a way appropriate to the purpose. The buyer is obliged to insure the goods for as long as title is retained, against loss or damage caused by fire, explosion and water, as well as theft, and to hand the relevant insurance policies over to the seller on first demand.

As additional security for the seller's claims against the buyer, the buyer will, upon the seller's demand, immediately pledge to the seller any claims the buyer may have against the insurers of the goods on account of the said insurances, in conformity with Article 3:239 Dutch Civil Code.

7. If the buyer fails to meet its obligations to the seller with respect to payment, or if the seller has good reason to believe that the buyer will fail to meet those obligations, the seller is entitled to take back all goods supplied subject to retention of title. Following retrieval the buyer will be credited for the market value, which can in no case exceed the original purchase price, less any expenses incurred in connection with the retrieval, these provisions not being applicable if the goods are no longer fit for sale or resale, or if the goods are perishable.
8. The buyer is permitted, within the normal operation of its business, to sell and transfer to third parties any goods supplied subject to retention of title. In the case of credit sale the buyer is obliged to stipulate retention of title vis-à-vis its customers, on the basis of the provisions of the present clause.

Clause 8. Dissolution

1. A contract can only be terminated by either a court decision or a written statement to the

other party sent by registered letter, return receipt requested, on the exclusive ground of the other party's attributable failure to fulfil its obligation to comply with essential obligations pursuant to the contract, without prejudice to its other statutory rights. The failure should justify dissolution.

2. If the buyer has taken delivery of any goods prior to the time of dissolution, it can dissolve the contract only to a certain extent, that is, only with respect to the part not yet delivered by the seller at that time. Any sums the seller may have invoiced in connection with deliveries made by the seller prior to dissolution remain fully due and, to the extent that these were not payable already, become immediately payable at the time of dissolution.
3. Notwithstanding the provisions of paragraph 1 the seller may dissolve the contract, fully or partly, with immediate effect and without court intervention by means of a written notification to the buyer, in the cases referred to in clause 7 and additionally if the buyer is declared bankrupt, or if the buyer is granted a suspension of payments, whether preliminary or not, or if the buyer is otherwise unable to meet its obligations to pay or if its business is wound up or closed down.

Under no circumstances will the seller be obliged to pay damages in connection with this dissolution.

Clause 9. Liability and warranties

1. Regardless of the seller's liability being covered by insurance or not, the seller accepts no liability except such as might arise if it fails to fulfil its obligations for reasons attributable to the seller, its liability being limited to the amount invoiced for the goods complained about, with a maximum of 30,000 per transaction.
2. If a third party sues the seller for any loss for which the seller is not liable, the buyer shall hold the seller harmless by indemnifying that third party for the said loss, or at least contributing towards indemnification as required by law.

3. The seller will not be liable for commercial losses in the widest sense of the word, consequential losses, loss of profit, damage sustained by persons and/or goods, whether direct or indirect and however called, as a result of the purchase, use or possession of the goods supplied by the seller, nor will the seller be liable for such losses in respect of services performed in connection with such goods, or of general services provided by the seller.

The exemption from liability provided in this paragraph also applies in the case where the term of delivery within the meaning of clause 4 is exceeded.

4. The seller does not give any guarantees, unless expressly confirmed in writing.
5. The seller cannot be held liable for anomalies of the goods sold, in connection with the goods for which it has obtained protection under the plant breeder's rights being true to name, inasmuch as the goods sold exhibit only natural deviations from the plant protection obtained for the product.

Clause 5, paragraph 6 applies by analogy.

If the buyer is of the opinion that the anomaly is attributable to the seller, the judgment of the Board for the Breeder's Rights will be binding on the parties in the matter, to the exclusion of the civil court.

The seller does not guarantee any such goods as are generally known to be reverting back, to be true to name.

The seller does not guarantee the growth and flowering of the goods supplied. If the consignment supplied consists of goods or parts thereof bought from third parties, the goods are only covered by such guarantees as the seller may have obtained from the relevant third party supplier.

6. In each case, the buyer is provided by the seller, or on its behalf, and to the best of the seller's knowledge and ability, with all required information about cultivation, without any liability on the part of the seller.

Clause 10. Force Majeure

1. The seller is not liable in cases of default due to force majeure. Any obligations on the part of the seller in respect of delivery or otherwise will be suspended for the duration of the force majeure circumstances. If the period in which the seller is unable to meet its obligations as a result of force majeure exceeds 21 days, both parties are entitled to dissolve the contract without judicial intervention, in which case no obligation whatsoever will exist to pay damages.
2. If, at the time force majeure sets in, the seller has partly fulfilled its obligations or can fulfil its obligations only in part, the seller is entitled to separately invoice the goods already supplied, or that part of the order that it can supply, as the case may be, and the buyer is obliged to pay the invoice as in the case of a separate contract.
3. For the purpose of the present clause, force majeure is taken to refer to circumstances preventing fulfilment of the obligation and not attributable to the seller. These include, among other things: war or danger of war, propagation failures and extreme weather conditions, transport problems, damage caused by fire, water, frost and storm, theft, whether or not involving forcible entry, strikes, both domestic and abroad, government measures, including any import and export bans, quota restrictions, crop failures, growth failures, interruption of operations and energy supply, breakdown of machinery, diseases that cannot or could not be recognised or against which no adequate countermeasures were available, unforeseen circumstances in connection with the propagation factor of the goods sold or the consignment to which the said goods belonged, inadequate production capacity, also including all of the above circumstances regarding the seller's suppliers, or any breach of contract by the seller's suppliers preventing the seller from meeting its (further) obligations towards the buyer.

Clause 11. Breeder's rights or contractual protection of original cultivars

1. Plant and/or propagation material of cultivars that belong to the ornamental plants segment and that enjoy protection, either under a breeder's right granted in the Netherlands or under a contractually stipulated perpetual clause, may not be used for propagation or trading purposes, whether in the Netherlands or abroad.
2. The protected cultivars referred to in paragraph 1 are indicated by the seller by means of the symbols "R∞" or "P∞".
3. The plant and/or propagation material supplied may only be used for growing flowers and/or other ornamental end products on the buyer's premises.
4. The buyer may sell the end product obtained from the plant and/or propagation material supplied to it only under the appropriate (cultivar) name, and brand name if any.
5. If the buyer discovers a mutant in a protected cultivar, it is obliged immediately to inform the seller accordingly. In accordance with the law, the mutant is the natural property of the seller and the buyer is not allowed to sell the said mutant for its own profit or that of any third party, or to use it for the buyer's own cultivation purposes.
6. During a period of two years following the discovery, the buyer shall, of its own accord and without undue delay, provide the seller with mutant material for testing purposes.
7. If the seller decides not on its own account to exploit the mutant as a separate cultivar, the buyer that discovered the mutant will have the first right of licence, on customary terms and conditions and with royalties of 25 per cent due on each sale, to take exploitation (that is, the commercial propagation and the trading of propagation material) of the mutant in hand.

Clause 12. Applicable law and choice of forum

1. All contracts concluded by the seller are governed by Dutch law.

2. All disputes except those referred to in clause 9 paragraph 5, but including all cases where only one of the parties asserts that a dispute has arisen, are to be settled by the competent court in Amsterdam, with due observance of the statutory provisions regarding competency.

3. If any provision or part thereof, in the contract and/or in these general terms and conditions, should be void or voidable pursuant to the law, the seller and the buyer will enter into negotiation with the aim of achieving further agreement on a legally permissible understanding to replace the void or voidable provision and in keeping with the intentions of the parties.

If a provision is only partly void or voidable without altering the other parts as regards their nature and effect, the parties continue to be bound by the remainder and shall make supplementary changes to their contract in the sense of the above.