

TERMS AND CONDITIONS VERPAALLEN SOFT FRUIT PLANTS B.V. & VERPAALLEN PLANTVERKOOP B.V. 2024

This translation is provided as a service to Verpaalen's customers. It is not a legally binding document. The Dutch-language terms and conditions of Verpaalen are authoritative and apply in the relationship with Verpaalen. These can be found here: <https://verpaalen.eu/algemene-voorwaarden/>

Verpaalen uses an amended version of the “Algemene verkoop- en leveringsvoorwaarden van Plantum van uitgangsmateriaal en planten van sierteelt en tuinbouw alsmede tuinbouwmaterialen, versie 2012.”

Article 1 Definitions

1. The “seller” and “service provider” refer to the natural or legal person who engages in the business of supplying products as referred to in Article 1, paragraphs 3 and 4, and entering into transactions related to these products or services in the broadest sense of the word, including the purchase and sale of products, the leasing and/or selling of products grown in their own enterprise, and the propagation of flowers or plants.
2. The “buyer” or “client” refers to the natural or legal person with whom the seller enters into any agreement regarding the products mentioned in Article 1, paragraph 3, or the services mentioned in paragraph 4.
3. “Product” or “products” refer to propagating material and/or plants of ornamental horticulture and horticulture as well as horticultural materials, such as fertilizers and crop protection products.
4. “Services” refer to all services provided by the service provider to the client, such as agricultural and horticultural work, transport services, and advisory services. This also includes licenses for plant varieties obtained or provided by the service provider and related activities in the broadest sense.
5. Depending on the nature and content of an agreement, Verpaalen Soft Fruit Plants B.V. and/or Verpaalen Plantverkoop B.V. can be both the seller and the service provider. This means that the use of terms within these conditions is not exclusively intended.

Article 2 Applicability

1. These general terms and conditions apply to all offers, sales, deliveries, and agreements made by the seller regarding products as described in Article 1, paragraph 3, and services as described in Article 1, paragraph 4 of these general terms and conditions.
2. Any general terms and conditions of the buyer or client, of any kind and however named, do not apply unless expressly agreed upon in writing.
3. Deviating provisions must be expressly agreed upon in writing. They are deemed to supplement these general terms and conditions unless they replace the provisions of these general terms and conditions.
4. A copy of these general terms and conditions is made available by Verpaalen.

Article 3 Offers and Prices

1. All offers are non-binding unless otherwise agreed upon in writing. An offer or quotation is valid for a maximum of 30 days.
2. The agreement is deemed to have been concluded with the written confirmation of the offer or quotation by the buyer or service provider, unless the seller objects in writing within five days of the confirmation being sent by the buyer or service provider.
3. If an agreement is concluded through agents, travelers, and/or other intermediaries and/or resellers, it binds the seller only after it has been accepted in writing by the seller.

4. Prices are exclusive of VAT and additional costs, including transport costs, travel costs, packaging costs, quality control and/or phytosanitary inspection costs, import duties, government and other public charges, as well as breeders' rights and any other fees, unless otherwise agreed upon in writing. If no price has been agreed upon, the price applicable at the time of delivery by the seller or service provider will be decisive.
5. The seller or service provider has the right to adjust the price to a reasonable and fair level if their costs have increased significantly since the price was set.
6. Prices are in Euros (€) unless otherwise indicated.
7. In the event of cancellation of the agreement by the buyer or client, they are immediately liable for 25% of the gross sales value of the products or services to be delivered as a cancellation fee.
8. If the products in question become unsellable or only sellable at a lower price due to the aforementioned cancellation, the buyer is liable for any price differences and further damages suffered by the seller. This also applies to damages resulting from the cancellation of agreements regarding services.
9. Both parties are obliged to minimize any damage resulting from the cancellation as much as possible.

Article 4 Reservation

1. Orders for products for which material must be purchased from the buyer that has not yet matured at the time of purchase are accepted by the seller subject to the normal cultivation average of good plant material of good appearance.
2. Total or partial failure of the cultivation or harvest of products or partial spoilage during storage for any reason releases the seller from their obligation to deliver and from their further obligations unless this is due to intent or gross negligence on the part of the seller. This also applies to situations where such obligations arise from an agreement for the provision of services, such as a license agreement.
3. If the delivery of an ordered variety is not possible for any reason, the seller has the right to deliver another variety or to cancel the order. The seller will make efforts to deliver a variety as equivalent as possible in consultation with the buyer. This substitute delivery will be made under the same conditions as originally agreed. If the buyer does not accept another variety, they have the right to cancel the order for that particular variety. If the order for the non-deliverable variety is part of a broader agreement, the cancellation only applies to that non-deliverable variety, and the agreement remains in effect for the rest. If the delivery of another variety has been agreed upon, the buyer has no right to compensation or termination of the agreement.

Article 5 Delivery and Transport

1. Delivery takes place ex works unless otherwise agreed. Upon delivery, the risk of the products in question, with everything connected to them, transfers to the buyer.
2. The seller determines the delivery date or period in consultation with the buyer. Stated delivery times are not considered fatal terms. If a delivery date has been agreed upon, the seller will strive to adhere to this date as much as possible. If the seller cannot deliver on the agreed date or within the agreed period, they will inform the buyer as soon as possible. The parties will then set a new delivery date in consultation. This new delivery date will immediately be considered the agreed delivery date.
3. If the buyer takes delivery of the ordered products before the agreed delivery date or period as specified in paragraph 2, the resulting risk is entirely borne by the buyer.
4. If the buyer takes delivery of the ordered products after the agreed delivery date, the risk of any quality loss due to longer storage is entirely borne by the buyer.
5. Any additional costs resulting from early or late acceptance of the products as specified in paragraphs 3 or 4 of this article are borne by the buyer.

6. If, after the expiration of a reasonable storage period, which can be considered reasonable given the type of product, no acceptance by the buyer has taken place and the risk of quality loss and/or spoilage of the products leaves no other choice, the order is deemed to have been canceled by the buyer. In that case, the buyer is obliged to pay the damages suffered by the seller as a result.
7. The provisions of this article apply, where applicable, also to agreements for the provision of services.

Article 6 Packaging/Packaging/Containers/Pallets

1. One-time packaging may be charged and will not be taken back.
2. All packaging and containers, except for one-time packaging, remain the property of the seller.
3. The seller is entitled to charge the buyer an agreed usage fee for reusable packaging and other durable materials, which fee is separately stated on the invoice.
4. The buyer is obliged to return packaging and containers at their own expense and in good condition and under the correct hygienic conditions to the seller within 30 days after delivery or immediately after planting. If it has been agreed that the seller will collect the packaging and containers themselves, the buyer must ensure that the packaging and containers remain in good condition and under the correct hygienic conditions and that they are stored in such a way that the seller can collect them in a normal manner.
5. The buyer may not keep packaging and containers in use or allow third parties to use them.
6. If trolleys, roll containers, or reusable pallets are delivered, the buyer must return identical trolleys, roll containers, or reusable pallets with the same registration method (such as chip or label) within one week, unless otherwise agreed. The buyer is prohibited from using these for their own use or allowing third parties to use them.
7. In the event of damage or loss of reusable packaging, trolleys, roll containers, pallets, etc., the buyer is obliged to reimburse the seller for the repair or replacement costs as well as any additional rental costs due to late return.

Article 7 Payment

1. The seller or service provider has the right to demand an advance payment of 50% of the invoice amount from the buyer.
2. Payment must be made within thirty days of the invoice date unless otherwise agreed.
3. The buyer or client is not authorized to deduct any amount from the purchase price due to a counterclaim they have made.
4. The buyer or client is not authorized to suspend their payment obligation in the event of a complaint submitted to the seller or service provider about the delivered products or services unless the seller or service provider expressly agrees to the suspension in exchange for security.
5. All payments are made at the office of the seller or service provider or by deposit or transfer to a bank account designated by the seller or service provider.
6. Payment must be made in Euros (€) unless otherwise indicated on the invoice. The seller or service provider has the right to pass on exchange rate differences to the buyer in the latter case.
7. If the buyer or client does not fulfill their payment obligation under paragraph 2 of this article on time, they are deemed to be in default by operation of law. In that case, the seller or service provider is entitled to charge interest of 1% per month from the day the buyer or client remains in default of fulfilling the payment obligation mentioned in paragraph 2, with part of a month being counted as a whole month. The seller or service provider is also entitled to charge the exchange rate loss incurred due to the buyer or client's default.

8. If the buyer or client is in default or otherwise fails to fulfill any of their obligations, all reasonable costs incurred to obtain satisfaction, both judicial and extrajudicial, are borne by them.
9. The seller or service provider reserves the right not to execute or to cease executing orders or agreements if previous deliveries or services have not been paid for by the buyer or client, or if the buyer has otherwise failed to fulfill their obligations towards the seller or if non-fulfillment is imminent. The buyer or client is liable for the damages suffered by the seller or service provider as a result. The seller or service provider is not liable for any damages to the buyer resulting from the non-execution of orders or services.
10. The buyer or client established in an EU member state other than the Netherlands must notify the seller or service provider in writing of their correct VAT identification number. The buyer or client must also provide the seller or service provider with all data and documents required to prove that the products or services have been delivered in an EU member state other than the Netherlands. The buyer or client indemnifies the seller or service provider against all claims and adverse consequences resulting from the buyer or client's failure to fully comply with the provisions of this paragraph. The seller or service provider reserves the right to increase the price owed by the buyer or client by the VAT rate applicable to the delivery within the Netherlands.

Article 8 Force Majeure

1. Force majeure is understood to mean any circumstance beyond the direct control of the seller or service provider, which makes it unreasonable to expect the agreement to be fulfilled. This includes, among other things, strikes, fire, extreme weather conditions, government measures, diseases and pests on the one hand, and defects in materials supplied to the seller or service provider on the other.
2. If the agreement cannot be fulfilled by the seller or service provider due to force majeure, the seller or service provider must inform the buyer or client of the circumstances in writing as soon as possible.
3. In the event of force majeure, the parties will consult on a modification of the agreement or the complete or partial dissolution of the agreement.
4. If the parties cannot agree on a modification or dissolution within 10 days after the written notification of the circumstances, either party may refer the matter to the competent court as specified in Article 16.

Article 9 Unforeseen Circumstances

1. In the event of unforeseen circumstances affecting one of the parties, which are so serious that the other party, considering the requirements of reasonableness and fairness, cannot be expected to maintain the agreement unchanged, the affected party will inform the other party in writing about the unforeseen circumstances, and the parties will consult on a modification of the agreement or the complete or partial dissolution of the agreement.
2. If the parties cannot agree on a modification or dissolution within 10 days after the written notification of the circumstances, either party may refer the matter to the competent court as specified in Article 16.

Article 10 Warranties and Complaints

1. The seller guarantees that the products to be delivered under the agreement comply with the requirements set by the applicable regulations of Dutch inspection authorities in force at the time of the conclusion of the agreement. The service provider will act as a reasonably acting and competent contractor when providing services. Additional quality agreements, specifications, requirements, and wishes of the buyer or client must be recorded in writing at the time of the agreement, and in the absence thereof, these additions do not apply.

2. The seller does not guarantee the varietal authenticity of those products that are generally known to revert.
3. The seller does not guarantee the growth and flowering of the delivered products.
4. The buyer will always be provided with all requested cultural information to the best of the seller's knowledge and ability, either by or on behalf of the seller, but without any liability on the part of the seller.
5. The seller registers the crop protection products used by him in his own administration. Copies of this registration are available to the buyer upon request.
6. Complaints regarding visible defects, including those about the number, size, or weight of the delivered goods, must be made known to the seller no later than two days after delivery and must be communicated in writing to the seller within eight days.
7. Complaints regarding non-visible defects must be made known to the seller immediately (and in any case within two days) after discovery and must be communicated in writing to the seller within eight days.
8. Complaints must always be communicated to the seller at such a time that the seller can inspect the product.
9. A complaint must contain at least: a. A detailed and precise description of the defect; b. The storage location of the product to which the complaint relates; c. A statement of facts on the basis of which it can be established that the products delivered by the seller and rejected by the buyer are the same.
10. When delivered products are rejected by the buyer under the provisions of this article and the buyer and the seller do not immediately agree on an amicable settlement, the buyer must call upon an independent officially recognized expert to draw up an expert report. The costs of the expert report are borne by the seller if the rejection is justified and by the buyer if it is unjustified. The relevant costs must in any case be advanced by the buyer.
11. Complaints regarding part of the delivered goods cannot lead to the rejection by the buyer of the entire delivery.
12. The buyer is obliged to (have) check the delivered quantity of the delivered batch upon receipt and to report any discrepancy in quantity to the seller in accordance with paragraph 6 of this article.
13. The filing of a complaint does not suspend the buyer's payment obligation, regardless of the possible validity of a complaint.
14. The provisions of this article apply, where applicable, also to agreements for the provision of services.

Article 11 Liability

1. The seller or service provider accepts no liability except in one of the cases mentioned in this article. In such a case, the seller's liability will be limited to a maximum of the invoice value. The invoice value is the sum of the invoice(s) sent by one party to the other party in that year relating to the agreement in dispute. In no event shall the seller or service provider be liable for any form of consequential damage, business damage, lost turnover, or lost profit, nor for claims for damages from third parties that have reached the buyer or client.
2. The seller or service provider is not liable for damage caused by force majeure as referred to in Article 8, paragraph 1.
3. All liability regarding late delivery by the seller or service provider is hereby excluded unless the agreed delivery date as in Article 5, paragraph 2 is exceeded by more than seven days. In the event of exceeding the delivery date by more than seven days, the seller or service provider must be given written notice of default, whereby the buyer or client must set a reasonable period to still fulfill their obligations.
4. Compensation for damages in the event of a complaint can only take place if the complaint is submitted in accordance with Article 10, is found to be justified, and there is culpability or deliberate negligence on the part of the seller or service provider. Moreover, the compensation will be limited to the part of the delivery to which the complaint relates.

5. When part of the crop at the buyer's premises fails as a result of the delivered products, then, if the seller is liable for compensation under paragraph 4 of this article, the compensation owed by the seller will not exceed the percentage of the invoice value equal to the part of the crop that failed at the buyer's premises. If, in the event of a damage report, the percentage of defective, diseased, or weak plants is determined by the seller and the buyer jointly or by a third party, this percentage will determine the seller's maximum liability.
6. Compensation for damages may not be offset by the buyer or client and does not entitle them to withhold or delay payment of the invoice amount.
7. Both parties are obliged to minimize any damage as much as possible.
8. Any possible claim for compensation or other contractual remedy under these general terms and conditions expires if and as soon as one year has passed since the delivery of the relevant products or services without the claim being submitted in writing to the seller or service provider.

Article 12 Transfer of Ownership, Retention of Title, and Security

1. Subject to the provisions of paragraph 2 of this article, ownership of the products transfers to the buyer at the time of delivery according to Article 5 of these general terms and conditions.
2. All delivered and yet-to-be-delivered products and products derived therefrom, regardless of the stage of the cultivation process, remain the exclusive property of the seller until all claims that the seller has or will have against the buyer, including but not limited to the claims referred to in Article 3:92 paragraph 2 of the Dutch Civil Code, have been fully paid.
3. As long as ownership of the products has not transferred to the buyer, the buyer may not pledge the products or grant any other right to them to third parties, except in the normal course of business. The buyer undertakes to cooperate with the establishment of a pledge on the claims that the buyer obtains or will obtain from onward delivery to their customers at the first request of the seller.
4. The buyer is obliged to store the products delivered under retention of title with due care and as recognizable property of the seller.
5. The seller is entitled to take back the products delivered under retention of title and still present at the buyer's premises if the buyer is in default of fulfilling their payment obligations or is in financial difficulties or is likely to be. The buyer will always grant the seller free access to their premises and/or buildings for the inspection of the products and/or the exercise of the seller's rights.
6. If the seller has reasonable doubt about the buyer's ability to pay, the seller is entitled to suspend their performance until the buyer has provided security for the payment. If the buyer does not provide security for payment within fourteen days after a demand, the seller is entitled to dissolve the agreement. In this case, the buyer is liable for the costs incurred by the seller.
7. The provisions of the second sentence of paragraph 3 and paragraph 6 also apply to agreements for the provision of services by the service provider.

Article 13 Breeders' Rights or Contractual Protection of Varieties

1. The delivered products may only be used by the buyer for the cultivation of the end product on the buyer's premises. The end product may only be sold by the buyer under the relevant variety name and any brand name.
2. Propagating material and plant material of varieties protected by a plant breeder's right applied for or granted in the Netherlands and/or any other country, or protected by a contractual chain clause, may not be used for further propagation of the variety. Moreover, illegally propagated propagating material and plant material may not be: a. Treated for the purpose of propagation, b. Marketed, c. Further traded, d. Exported, e. Imported, or kept in stock for any of these actions.

3. The seller is entitled to enter the buyer's premises or the plots under their management where the propagating or plant material delivered by the seller is located to inspect or assess that material. The seller will inform the buyer of their visit in a timely manner.
4. The buyer is obliged to grant immediate access to their premises and crops to inspection authorities acting on behalf of the owner of a variety delivered to them. The buyer must also provide immediate access to their administration, such as invoices, relevant to this inspection upon request.
5. If the buyer finds a mutant in the protected variety, they must immediately notify the breeder and/or their representative by registered mail.
6. At the written request of the breeder and/or their representative, the buyer will provide trial material of the mutant free of charge to the breeder and/or their representative within two months of receiving the request.
7. The buyer is aware that the finder of a mutant, being an essentially derived variety, in the protected variety requires the permission of the breeder(s) of the "parent variety" to exploit the mutant.
8. The buyer is particularly aware that the finder of a mutant requires the permission of the breeder(s) of the "parent variety" to perform the actions mentioned in paragraph 2 with respect to all material of the mutant, including harvested material (therefore also flowers, plants, and/or plant parts).
9. The buyer is obliged to provide all cooperation desired by the seller, including cooperation in collecting evidence, in the event the seller becomes involved in a procedure concerning breeders' rights or other intellectual property rights.
10. The buyer grants permission to wholesalers, auctions, importers, and/or exporters to provide information to the breeder and/or their representative regarding the quantity of harvested product traded by the buyer from the breeder's varieties. Additionally, the buyer specifically grants permission to the auctions to provide information to the breeder and/or their representative regarding the quantity of product traded by them at the auction under the code 'other'.

Article 14 Indemnification and Compensation

1. The buyer shall indemnify the seller against claims and demands from third parties, including government authorities and regulators, caused by plant material, other living material, or other movable property supplied by the buyer.
2. The client shall indemnify the service provider against claims and demands from third parties, including government authorities and regulators, caused by the execution of services for the client on their instructions.
3. The provision in paragraph 2 and 3 also applies to infringements of breeders' rights, trademark rights, trade names, and other intellectual property rights of third parties through the use of a license obtained from the buyer or client by the service provider or seller.
4. If the agreement ends due to a circumstance attributable to the buyer or client, and as a result, the seller or service provider can no longer fully or partially perform the agreement, for example, a cultivation cycle cannot be completed or a license stops, the buyer or client shall fully compensate the seller or service provider for the damages suffered, with the aim of placing the seller or service provider in the position as if the agreement had been fully completed.

Article 15 Information and Inspections

1. The seller or service provider does not permit unexpected visits and inspections of their location. Visits are only made by appointment.
2. The seller or service provider is willing to comply with reasonable written requests for information within reasonable timeframes. A reasonable timeframe is at least five working

days. A reasonable request pertains to information directly relevant to the execution of an agreement, such as information about inventories.

3. The seller regularly maintains overviews of the number of plants and related information. Quality reports are also made for incoming and outgoing products where necessary. These documents can be shared with the buyer upon request.
4. The seller or service provider does not comply with general requests for information nor with providing information not relevant to an agreement. They also do not cooperate with inspections or investigations by third parties engaged by the buyer or client, such as accountants. The seller or service provider never bears the costs thereof.
5. Additional requests for information/reports by the buyer or client will only be granted if they were recorded in writing at the time of the agreement. In the absence thereof, the seller or service provider is not obliged to comply.
6. If information requests from buyers and clients place a disproportionate burden on the seller or service provider, such requests may be refused, and the parties will consult to find a solution.

Article 16 Dispute Resolution

1. All agreements to which these general terms and conditions wholly or partially apply are governed by Dutch law. The Vienna Sales Convention is excluded from application.
2. All disputes (including those designated as such by only one party) relating to or arising from agreements between the seller or service provider and the buyer or client, to which these general terms and conditions apply, can be decided by the Dutch court competent in the area where the seller or service provider is established.
3. If Dutch law does not apply and/or the Dutch court is not competent in a dispute, disputes will be settled by binding advice. Each party chooses its own advisor. The two advisors jointly appoint a third advisor. The three advisors will issue a written binding advice as soon as possible to finally settle the dispute. The advisors decide as good men and on the basis of reasonableness. The costs of binding advice are borne by the party least in the right, as determined by the advisors.

Article 17 Final Provision

If and to the extent that any part or provision of these general terms and conditions is found to be in conflict with any mandatory provision of national or international law, it will be deemed not to have been agreed upon, and these general terms and conditions will otherwise remain binding on the parties. The parties will then consult to come to a new provision that as closely as possible reflects the intent of the parties.

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