

## GENERAL CONDITIONS

of

J.W. van Senten Aalsmeer B.V., having its registered office in Aalsmeer, the Netherlands, and maintaining business premises at Legmeerdijk 129 in (NL-1432 KA) Aalsmeer, listed in the Commercial Register of the Chamber of Commerce under number: 34063400,

and

J.W. van Senten Vinkeveen B.V., having its registered office in Vinkeveen, the Netherlands, and maintaining business premises at Julianalaan 12B in (NL-3645 DA) Vinkeveen, listed in the Commercial Register of the Chamber of Commerce under number: 30086800.

### GENERAL

#### Article 1: definitions

In these conditions, the following terms will be understood to have the meanings assigned to them below:

- a. J.W. Van Senten: J.W. van Senten Aalsmeer B.V., referred to above, or J.W. van Senten Vinkeveen B.V., referred to above, and/or one of its affiliated businesses (legal entity or partnership), which has declared these general conditions applicable;
- b. other party: the party with which J.W. van Senten enters into an agreement, in whatever form, or the party to which J.W. van Senten makes an offer;
- c. agreement: the agreement for the cultivation, sale and/or supply of plants or aquarium plants and/or other moveable items, or for others forms of service provision.

#### Article 2: applicability of the general conditions

1. These conditions will apply to all legal relationships between J.W. van Senten and the other party, to which J.W. van Senten has declared these general conditions applicable, including agreements as referred to in Article 1 and offers made by J.W. van Senten.
2. Verbal arrangements, deviations or supplements relating to the provisions in the agreement and these applicable general conditions will be valid only in so far as these have been expressly laid down from case to case in writing.
3. These general conditions will also apply to all agreements with J.W. van Senten for the performance of which third parties have to be engaged.
4. The applicability of any general conditions of the other party is expressly excluded, unless J.W. van Senten has expressly accepted such in writing.
5. If one or more provisions of these general conditions are void or nullified, the remaining provisions will continue to apply in full.

#### Article 3: conclusion of the agreement and prices

1. Any quotations/offers issued by J.W. van Senten will be free of obligation.
2. An agreement will be concluded if and as soon as the other party issues a communication stating that it wishes to enter into an agreement on the basis of the offer, or in accordance with the rates and conditions applicable at that time at J.W. van Senten, and if J.W. van Senten has not notified the other party within five working days of the receipt of this communication that no agreement will be concluded, and, moreover, if and as soon as J.W. van Senten starts performing the agreement.
3. Agreements with subordinates of J.W. van Senten will not bind J.W. van Senten until and in so far as they have been confirmed in writing by J.W. van Senten.
4. The prices in the offers and quotations referred to will be exclusive of Dutch VAT and other government levies, as well as any packing, dispatch and administration costs to be incurred within the context of the agreement, unless stated otherwise.
5. A composite offer or quotation will not oblige J.W. van Senten to perform part of the agreement for a corresponding part of the stated price.
6. All offers will be based on data provided by the other party. J.W. van Senten will never be liable for inaccuracies in the data supplied by the other party or for the consequences thereof.
7. J.W. van Senten will retain the right to change its prices. Every new price list will render the previous price list ineffective with regard to orders placed or assignments granted after the new price has come into force.

#### **Article 4: order and delivery**

1. If a delivery time is included in the agreement, it will never be a deadline unless expressly agreed otherwise in writing. If the delivery time is exceeded, the other party must provide J.W. van Senten with a notice of default, with J.W. van Senten being given a reasonable period in which to deliver as yet.
2. If the agreement states that deliveries will be made on a call-off basis, then:
  - a. the call-off period will be included in the agreement itself. In the case of call-off, the other party will observe this period. If the call-off period is not included in the agreement itself, this period will be at least five working days after the day on which the other party's call-off message has reached J.W. van Senten. If the call-off message reaches J.W. van Senten after 12 noon, the delivery period will be extended by a day. For the calculation of the delivery period, call-off messages received by J.W. van Senten on a Saturday, Sunday or a generally recognised public holiday will be considered to have been received on the next working day;
  - b. call-off messages must preferably be sent by e-mail (or in writing). If a call-off is made by phone, the other party will be obliged, if J.W. van Senten so desires, to confirm the call-off by e-mail or in writing as soon as possible in accordance with the above provisions;
  - c. a final purchase date will be laid down in the agreement. If the other party does not call off on time, J.W. van Senten will issue the other party with a written notice of default. If the other party fails to purchase as yet within two days of the notice of default, J.W. van Senten will be entitled (without prejudice to its rights to payment and/or damages or supplementary damages) to deliver immediately;
  - d. J.W. van Senten will not be in default until a written notice of default has been received, in which context J.W. van Senten must be given a reasonable period in which to deliver as yet.
3. Without prejudice to the provisions elsewhere in these general conditions, the delivery time will be extended in any event by the duration of a delay that has occurred on the part of J.W. van Senten due to the other party's failure to meet any of its obligations under the agreement or to lend its cooperation to the performance of the agreement.
4. Delivery will be made ex storage of J.W. van Senten, unless expressly agreed otherwise by the parties. 'Storage' will be understood to mean: the business site of J.W. van Senten in Aalsmeer, or (at the discretion of J.W. van Senten) the business site of J.W. van Senten in Vinkeveen. If, at the request of the other party, J.W. van Senten nevertheless handles the transport of the items intended for the other party, such will be at the expense and risk of the other party, unless the parties have expressly agreed otherwise in writing.
5. If it has been expressly agreed that J.W. van Senten will deliver at a location other than ex storage of J.W. van Senten, the delivery can be made at any desired time, seven days a week. The other party will then ensure that the purchased items can be unloaded in an efficient manner. In the case of delivery ex storage of J.W. van Senten, delivery will be made on working days between 6 a.m. and 6 p.m., unless expressly agreed otherwise.
6. When placing an order, the other party must issue written information regarding the applicable legislation of the country of destination.

#### **Article 5: natural product/permitted deviations/quality mark**

1. Orders will be accepted by J.W. van Senten subject to normal cultivation averages.
2. The full or partial failure of the cultivation or crop of products or partial deterioration during storage, for whatever reason, will release J.W. van Senten from its delivery obligation and further obligations, unless such is attributable to an intentional act or omission or gross negligence on the part of J.W. van Senten.

3. If the delivery of a variety ordered is not possible, for whatever reason, J.W. van Senten will be entitled to deliver another variety, or to cancel the order. J.W. van Senten will make every effort, in consultation with the other party, to deliver a variety that is as similar as possible. The replacement delivery will be made under the same conditions as originally agreed. If the other party does not accept another variety, it will be entitled to cancel the order of the variety in question. If the order of a non-deliverable variety is part of a more extensive agreement, the cancellation will relate only to the non-deliverable variety and the agreement will continue to exist in other respects. If delivery of another variety has been agreed, the other party will never be entitled to compensation or dissolution of the agreement (for this reason).
4. Deviations from the agreed sizes up to 10% (ten percent) will be considered to be in accordance with the agreement.

#### **Article 6: retention of title**

1. J.W. van Senten will retain the title to all delivered items until the purchase price has been paid in full, as well as all addition costs, as well as all outstanding claims relating to previous deliveries, as well as all that which the other party may owe in connection with a failure to fulfil its obligations.
2. Items delivered by J.W. van Senten that are subject to retention of title by virtue of paragraph 1 of this article, may be resold or used only in the context of normal business operations. In the event of resale, the other party will be obliged to stipulate a retention of title from its purchasers. The other party will not be permitted to pledge the items or to create any other right on them.
3. J.W. van Senten will be irrevocably authorised by the other party to recover or have others recover the items delivered under retention of title, without any judicial intervention, demand or notice of default.
4. If and in so far as it is not possible for J.W. van Senten to recover the items delivered, as a result of, for instance, an investigation or confusion, the other party will be obliged, at the first request of J.W. van Senten, to provide J.W. van Senten (in advance) with a pledge or mortgage right of the highest possible rank on the formed item as security for payment of all that the other party owes to J.W. van Senten.
5. In the event of attachment, suspension of payments, provisional or otherwise, debt restructuring in accordance with law or bankruptcy, the other party will draw the attention of the bailiff levying the attachment, the administrator or the receiver to the ownership and other rights of J.W. van Senten.

#### **Article 7: payment and security**

1. The claims of J.W. van Senten must be paid without deduction, discount or settlement within 30 days of the invoice date, unless expressly agreed otherwise in writing. Payment must be made in Dutch currency by transfer to a bank account designated by J.W. van Senten. Objections to the level of the invoices or complaints within the meaning of this agreement will not suspend the other party's payment obligation.
2. The other party will be in default pursuant to the lapse of the agreed payment term, without any separate notice of default being required. The other party will then owe interest of 1% per month, unless the statutory interest for commercial agreements is higher, in which case the statutory interest will apply. The interest on the exigible amount will be calculated from the day that the other party is in default up until the day of settlement in full.
3. J.W. van Senten will be entitled at all times to request an advance for the payment of its work, disbursements or costs.
4. If, in the opinion of J.W. van Senten, the financial position or the payment behaviour of the other party gives reason to do so, J.W. van Senten will be entitled to request the other party to provide security or supplementary security forthwith in a form to be stipulated by J.W. van Senten. If the other party fails to provide the desired security, J.W. van Senten will be entitled – without prejudice to its other rights – to suspend the further performance of the agreement or to dissolve it forthwith and everything owed by the other party to J.W. van Senten will be immediately due and payable. In the event of the liquidation, bankruptcy or attachment of the other party or if it has been granted a suspension of payment or if it is subject to a debt restructuring arrangement, everything owed by the other party to J.W. van Senten will likewise be immediately due and payable.
5. Payments made by the other party after it owes interest and costs in accordance with these general conditions, will first be used to reduce the extrajudicial costs, then the interest and then the principal amount.

6. Without prejudice to the provisions elsewhere in these general conditions, J.W. van Senten retains the right to suspend the performance of all or part of the orders/assignments in accordance with the provisions of sections 6:52, *et seq.*, 6:262 and 6:264 of the Dutch Civil Code (*BW*).

#### **Article 8: collection costs**

If the other party is in omission or default in fulfilling one or more of its obligations, the costs for obtaining settlement – both judicially and extrajudicially – will be at the expense of the other party. This means that the defaulting other party – without prejudice to the costs of any legal proceedings – will owe, in connection with the costs arising from its being in default, an immediately due and payable sum equal to 15% of the invoice amount with a minimum of EUR 70, or, if this amount is higher, the actual collection costs.

#### **Article 9: guarantee**

1. J.W. van Senten declares that the item delivered will comply with the corresponding specifications as far as possible. However, the specifications may not be considered a guarantee. J.W. van Senten does not guarantee that the product delivered will serve the purpose given to it by the other party.
2. Any guarantee given by J.W. van Senten will be cancelled if the other party processes the items (possibly: on which the work is performed), or has them processed or uses or maintains them in an improper, incorrect or some other erroneous manner.
3. Following the expiry of any guarantee period, all costs for repair or replacement, including administration, dispatch and call-out charges will be charged to the other party.

#### **Article 10: complaints**

1. The other party must inspect the items purchased upon – or as soon as possible following – delivery or handover. In so doing, the other party must check whether the items delivered correspond to the agreement.
2. If visible defects or shortfalls are discovered, the other party must report such in writing to J.W. van Senten within 48 hours of delivery, stating any delivery note and/or invoice details.
3. Non-visible defects must be reported in writing to J.W. van Senten by the other party within 48 hours of discovery, but no later than within ten days of delivery, stating delivery note and/or invoice details, so that J.W. van Senten will be able to assess or have others assess the correctness of the complaint (possibly on site).
4. The complaint must specify the defect in as much detail as possible, so that J.W. van Senten will be able to respond satisfactorily.
5. Products (plants, trees, etc.) about which a complaint has been made must remain available at the other party's business premises for inspection by J.W. van Senten for five working days after the submission of the complaint by the other party.
6. If the other party fails to report within the periods referred to or if J.W. van Senten is not given the opportunity to inspect in accordance with the provisions of paragraph 5, the complaint will not be dealt with and the other party's rights will lapse.
7. Every right of complaint will lapse if the other party has not treated the delivered item with care during the period that it was present at the other party's premises.
8. A complaint will not suspend the other party's payment obligation, unless J.W. van Senten has informed the other party that it considers the complaint to be well founded.
9. In the case of well-founded – and correctly submitted – complaints, J.W. van Senten will be liable only within the limits of Article 12.

### **Article 11: *force majeure***

1. In the event of *force majeure*, the parties will not be obliged to fulfil any obligation.
2. In these general conditions, *force majeure* will be understood to mean every circumstance beyond the direct influence of the parties, as a result of which fulfilment of the agreement can no longer be reasonably required, such as, but not exclusively, war, risk of war, mobilisation, riots, state of siege, government measures, diseases and pests in the plants, strikes or lockouts, fire, accidents or illness affecting a person engaged by one of the parties for the performance of the agreement or a third party or parties engaged by one of the parties, operational failures and production contractions, growth damage or deterioration of plants due to extreme weather, lack of raw materials, stagnation in transport or government measures, all irrespective of whether this circumstance occurs in the business of one of the parties or any other business that is engaged directly or indirectly by the parties for the performance of the agreement.
3. J.W. van Senten will also be entitled to invoke *force majeure* if the circumstance preventing performance or further performance arises after J.W. van Senten should have performed its obligations.
4. In so far as J.W. van Senten has performed part of its obligations arising from the agreement or is able to perform part of them at the time when the *force majeure* occurs, and that part performed or to be performed has independent value, J.W. van Senten will be entitled to invoice the part performed or to be performed separately. The other party will be obliged to pay that invoice as if it were a separate agreement.
5. J.W. van Senten will inform the other party as soon as possible if it is unable to deliver, unable to deliver on time or perform as a result of *force majeure*.
6. If the *force majeure* continues for longer than thirty days, both parties will be entitled to dissolve the agreement in writing (for the part to which the *force majeure* relates).

### **Article 12: liability**

1. J.W. van Senten will not be liable for damage, either directly or indirectly, resulting from a defect in the item delivered, unless the other party demonstrates that it has suffered damage as a result of actions or omissions of J.W. van Senten that it would have avoided in the case of careful and expert handling.
2. If *force majeure* is involved as described in Article 11, J.W. van Senten will not be obliged to pay any compensation.
3. The other party will be obliged to limit as far as possible the damage relating to items delivered or work performed about which it is submitting a complaint to J.W. van Senten.
4. If J.W. van Senten is liable, this liability will always be limited to the invoice value of the items, or – if this limitation does not hold in law – to the actual amount to be paid out by the insurer in the case in question pursuant to the liability insurance taken out by J.W. van Senten.
5. 'Damage' as referred to above will be exclusively understood to mean damage to persons, damage to items and direct financial loss.
6. J.W. van Senten will never be liable for indirect damage, including consequential damage, loss of profit, loss of turnover, loss of savings and any damage due to an interruption in business operations.
7. The limitations of liability laid down in these provisions are stipulated also in the interests of third parties engaged by J.W. van Senten, which means that these parties are therefore able to invoke these limitations of liability directly.

### **Article 13: confidentiality**

1. Both parties will be obliged to observe confidentiality regarding all confidential information that they have acquired from one another or from another source in the context of their agreement, unless one of the parties is subject to a statutory or professional obligation to disclose or if one party has released the other party in writing from the confidentiality obligation.
2. In contrast to the first paragraph, J.W. van Senten will be entitled, if it takes action on its own behalf in judicial or administrative proceedings, to use the data and information supplied by or on behalf of the other party, as well as other data and information of which it has become aware during the performance of the agreement, in so far as it believes that these data and information may be of importance in the proceedings.

**Article 14: intellectual property**

1. J.W. van Senten exclusively and permanently reserves (if necessary for its suppliers) all intellectual property rights (which are used for or relate to the products, expressly including cultivator rights).
2. The other party is expressly prohibited from reproducing, disclosing or exploiting the intellectual products referred to above, including models, designs and figures, whether or not involving the engagement of third parties (other than by the sale of the products purchased from J.W. van Senten in the original packing).

**Article 15: disputes**

In the event of a dispute, the parties will first attempt to find a solution in consultation, or otherwise by means of mediation – in accordance with the Dutch Mediator Federation (*MfN*) Mediation Regulations, or some other replacement regulations – before the parties submit this dispute to the competent Dutch court.

**Article 16: applicable law**

These general conditions and all agreements that J.W. van Senten concludes with the other party and any disputes arising from such will be subject to Dutch law. The applicability of the Vienna Sales Convention is expressly excluded, as is any other international arrangement of which exclusion is permitted.