

## **GENERAL CONDITIONS OF SALE AND TERMS OF DELIVERY**

Valid from 01.04.2011

### **1. Application**

- 1.1. These General Conditions of Sale and Terms of Delivery shall apply to all agreements concluded for the supply from ZENFLORA A/S (hereinafter called ZenFlora), unless otherwise stipulated in mandatory legislative provisions or explicitly agreed between the parties.
- 1.2. These General Conditions of Sale and Terms of Delivery shall take precedence over any provisions in the Buyer's order/acceptance, including the Buyer's general conditions.

### **2. Offer and Acceptance**

- 2.1. Information and material forwarded to the Buyer prior to ZENFLORA's order confirmation shall not be deemed to constitute a binding offer to the Buyer, but shall only be considered an invitation to the Buyer to place an order. Consequently, an agreement about the supply, prices and other terms shall not be deemed to have been concluded until the Buyer receives ZENFLORA's acceptance of the order.

ZENFLORA shall be entitled to change agreed prices according to changes in the exchange rates, sub-supplier prices, imposed duties and taxes, freight, insurance charges and other conditions beyond the control of the ZENFLORA.

- 2.2. Information in ZENFLORA's product information, price list or similar shall only be binding to the extent this is stated explicitly in the agreement concluded regarding the order. Subject to unsold.

### **3. Pallets and Transport Containers**

- 3.1. ZENFLORA shall supply the plants in trolleys and on shelves approved by Container Centralen A/S ("CC containers" and "CC shelves") and/or on Euro pallets and/or other material (collectively referred to as "Equipment"). The Buyer shall be obliged to have enough Equipment at his disposal to allow a 1:1 exchange in connection with deliveries.

The Equipment, which the Buyer hands over to ZENFLORA, must be marked or labelled clearly as being intended for ZENFLORA.

- 3.2. If there is no exchange of CC containers or CC shelves in connection with a delivery, ZENFLORA shall charge the Buyer a daily rent corresponding to the rent fixed by Container Centralen A/S at the given time for the items concerned, unless otherwise specified.

If there is no other exchange of Equipment, ZENFLORA shall be entitled to invoice the Buyer for the missing Equipment at the replacement cost.

- 3.3. Unless otherwise proven, the Equipment receipts issued by ZENFLORA or the carrier used by ZENFLORA shall be considered to constitute adequate and final documentation for the Equipment balance in connection with the delivery. The Buyer may request a statement of account anytime, showing the total Equipment outstanding with ZENFLORA.

If, upon delivery, the Buyer discovers a discrepancy between the Equipment prepared by the Buyer for exchange and the information written by ZENFLORA or its carrier on the Equipment receipts, the Buyer shall lodge a complaint with ZENFLORA immediately - or in case of delivery outside the Buyer's normal opening hours - within 24 hours after the delivery has taken place.

### **4. Delivery**

- 4.1. If a delivery clause has been agreed, such clause shall be interpreted in accordance with the Incoterms in force when the agreement was concluded.
- 4.2. If no delivery clause has been agreed, delivery shall be made "EXW", Ex Works.

### **5. Payment**

- 5.1. Unless otherwise agreed, the agreed purchase sum plus any VAT or other taxes due are payable COD (cash on delivery).
- 5.2. If the Buyer does not pay at the agreed time, ZENFLORA shall have the right to charge default interest at 1.5 % per month or any part thereof from the due date and to collect a reminder charge in accordance with applicable legislation.

## 6. Delays

- 6.1. If ZENFLORA is unable to deliver on time or if a delay on the part of ZENFLORA is considered likely, ZENFLORA shall inform the Buyer accordingly without undue delay, while at the same time stating the cause of the delay and, if possible, the date when delivery is expected to be made.
- 6.2. If the delayed delivery is caused by any circumstances which in accordance with item 10.1. (force majeure) relieves ZENFLORA of liability or if the delayed delivery is caused by the Buyer's acts or omissions, the delivery time shall be extended to the extent deemed reasonable under the circumstances. The time of delivery shall be extended even if the cause of the delay arises after the expiry of the originally agreed delivery time.
- 6.3. If ZENFLORA does not make the delivery on time or before the expiry of an extended delivery time in accordance with item 6.2, the Buyer may insist on delivery by a final, reasonable deadline, by notifying ZENFLORA of this in writing.

If ZENFLORA does not deliver by said deadline either, and this is not caused by circumstances for which the Buyer is responsible, the Buyer may cancel the agreement in writing to ZENFLORA, with respect to the part of the order that has not been delivered.

- 6.4. If the Buyer cancels the agreement and is justified in so doing, the Buyer shall be entitled to receive compensation for documented costs paid to make a replacement purchase from another source to replace the cancelled part of the order. However, said compensation may never exceed the net purchase sum agreed between the Buyer and ZENFLORA for the cancelled part of the order.

If the Buyer maintains the agreement as regards the delayed part of the order, the Buyer shall not be entitled to any compensation or any other reimbursement on account of the delay.

- 6.5. With the exception of cancellation with limited compensation in accordance with item 6.4, all other claims - including claims for consequential loss, loss of profit or other losses with financial consequences - from the Buyer against ZENFLORA shall be excluded.

## 7. Liability for Defects

- 7.1. ZENFLORA shall be obliged and entitled to remedy defects in the quality of the goods compared with what was agreed by taking remedial action or making a replacement delivery of the incomplete part of the order in accordance with the rules in this provision. The Buyer is responsible for proving that the order was incomplete at the time of delivery.
- 7.2. ZENFLORA's liability shall only extend to deficiencies that appear within twelve months from the delivery date.
- 7.3. Immediately upon receipt of the delivery, the Buyer shall examine the goods received and, in case of deficiencies, the Buyer shall make the required complaint to the carrier. Furthermore, within 24 hours the Buyer shall inform ZENFLORA in writing of any deficiencies ascertained upon receipt. Complaints about deficiencies shall be made immediately when the deficiency has been ascertained. The deficiency complaint shall include a description of how the deficiency presents itself.

As for 'young plants with roots' a complaint deadline of 72 hours from delivery to the Buyer shall apply. However, the complaint deadline shall be 14 days in cases, where the cause of the complaint is a pest attack caused by pests contained in the goods at the time of delivery.

As for 'unrooted cuttings' the same 72 hour complaint deadline shall apply after rooting has ended; public holidays shall be included when calculating the deadline. However, the complaint deadline shall continue

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until after rooting has been completed in cases where the cause of the complaint is pest attack caused by pests contained in the goods at the time of delivery.

The Buyer shall be obliged to store defective parts of the supply securely, so as to enable inspection by a representative from ZENFLORA and/or an independent, recognised claims adjuster.

- 7.4. Having received written communication from the Buyer in accordance with item 7.3, ZENFLORA shall remedy the deficiency, cf. item 7.1, without undue delay.
- 7.5. If ZENFLORA does not comply with its obligations under item 7.1. within a reasonable time, the Buyer may give ZENFLORA a final, written deadline for compliance of not less than eight days. If ZENFLORA has not complied by this deadline, the Buyer may invoke a normal claim based on a defect against ZENFLORA; however, the financial claim against ZENFLORA in the form of compensation, a proportional reduction or on any other basis may never exceed the net purchase sum agreed between the Buyer and ZENFLORA for the deficient part of the supply.
- 7.6. ZENFLORA has no liability for defects over and above the liability described in items 7.1 - 7.5. This applies to all losses caused by the defect, including consequential loss, loss of profit and other losses with financial consequences.

## 8. Retention of Title

- 8.1. The ordered goods shall remain the property of ZENFLORA until payment has been made in full, to the extent such conditional sale is valid.
- 8.2. Items 8.3 - 8.7 apply to all sale in the United Kingdom:
- 8.3. Title to the Product shall remain the property of ZENFLORA until:
- 8.3.1. the price for the Product is paid for in full; and
- 8.3.2. all other sums then due from the Buyer are paid for in full.
- 8.4. Until such time as the title in the Products has passed to the Buyer under clause 8.3 the Buyer shall:
- 8.4.1. hold such Product on a fiduciary basis as ZENFLORA's bailee and shall insure them as ZENFLORA's property and shall store and mark them in such a way that they are readily identifiable as ZENFLORA's property, and shall hold the proceeds of such insurance on trust for ZENFLORA;
- 8.4.2. not pledge or allow any encumbrance, lien, charge or other interest to arise or be created over the Product; and
- 8.4.3. not dispose of or deal with the Product or any documents of title relating to them or any interest in them;
- except that the Buyer may on its own account use and sell the Product to its usual type of customers in the ordinary course of its trade, provided that the Buyer's right to use or sell the Product shall automatically cease upon the occurrence of an Insolvency Event.
- 8.5. If payment becomes overdue, the Buyer is in breach of any of its other obligations to ZENFLORA or an Insolvency Event occurs or ZENFLORA reasonably expects that an Insolvency Event is about to occur:
- 8.5.1. ZENFLORA may by written notice terminate the Buyer's right (if still subsisting) to use or sell the Product; and/or
- 8.5.2. ZENFLORA shall be entitled upon demand to the immediate return of all the Product which remain in the ownership of ZENFLORA, and the Buyer irrevocably authorises ZENFLORA to recover such Product and any documentation relating to them and for that purpose, to enter any place. The Buyer shall take all reasonable steps to help ZENFLORA recover them. Recovery by ZENFLORA of, the Product shall not of itself cancel the Buyer's liability to pay the whole or balance of the price for the Product or any other rights of ZENFLORA.
- 8.6. "Insolvency Event" means the Buyer has any order, proceeding, appointment or other step taken or made by or in respect of it for any composition or arrangement with creditors generally, winding-up, dissolution, administration, receivership or bankruptcy, or any similar event occurs in any jurisdiction in which the Buyer is incorporated, resident or carries on business.

## 9. Product Liability

- 9.1. In case of product liability damage, ZENFLORA shall only be liable if the damage or loss can be proven to be the result of error or negligence on the part of ZENFLORA.
- 9.2. ZENFLORA shall not be liable for damage caused by the goods ordered to real property or chattels, where such damage occurs while the goods ordered are in the Buyer's possession.
- 9.3. ZENFLORA shall not be liable for damage caused to products manufactured by the Buyer or products of which these form part, or for damage to real property or chattels caused by these products as a result of the delivery.
- 9.4. ZENFLORA shall not be liable for damage to/loss on chattels as a result of the transmission of plant diseases and/or pests coming from the supply.
- 9.5. ZENFLORA shall not be liable for indirect loss, including consequential loss, loss of profit or other loss with financial consequences.
- 9.6. The total size of the compensation may not exceed DKK 1.000,000.00.
- 9.7. To the extent ZENFLORA is held liable to pay product liability compensation to a third party, the Buyer shall indemnify ZENFLORA to the extent ZENFLORA is held liable to pay such compensation to a third party as regards such damage and such losses for which ZENFLORA is not liable towards the Buyer in accordance with item 9.1 - 9.6.
- 9.8. If a third party advances a claim against either party for liability in tort in accordance with this item, said party shall immediately inform the other party accordingly.

## **10. Force Majeure**

- 10.1. The following circumstances shall result in exemption from liability if they prevent compliance with the agreement or make such compliance unreasonably onerous:

Industrial dispute and any other circumstance beyond the parties' control, such as fire, war, mobilisation or conscription for military service of a corresponding scope, requisition, seizure, currency restrictions, riots and civil commotion, lack of means of transport, general shortage of goods, restrictions on propellants, queuing or other external obstacles for unhindered transport, as well as defects or delays in supplies from external suppliers caused by any of the circumstances mentioned in this item.

- 10.2. The party wishing to invoke a reason for exemption from liability as mentioned in item 10.1. shall immediately inform the other party in writing about its occurrence and end.
- 10.3. Regardless of what may otherwise be specified in these General Conditions of Sale and Terms of Delivery, either party may cancel the agreement by written notice to the other party, provided compliance with the agreement is hindered for more than six months by an event listed in item 10.1.

## **11. Intellectual Property Rights**

- 11.1. The Buyer is hereby informed that the order may be fully or partially covered and protected by national and international regulations regarding plant novelty protection, such as the Danish Plant Novelty Act and the Council Regulation on EC protection of varieties, trade mark rights or other rules concerning the protection of intellectual property rights in different ways restricting the Buyer's right of use and disposal of the products covered by the order. The Buyer shall be obliged to ensure compliance with such rules.

## **12. Applicable Law, Venue**

- 12.1. The parties agree that the agreement, the supply and everything connected therewith shall be governed by Danish law, which means that the agreement shall be interpreted and implemented in accordance with the rules of Danish law, and that any disputes shall be settled in accordance with the rules of Danish law.
- 12.2. Disputes arising from the agreement and everything connected therewith shall be decided at ZENFLORA's venue. Furthermore, ZENFLORA shall be entitled to file a law suit OR legal action at the Buyer's venue.