

Terms and Conditions

Article 1. Definitions and Interpretations

In these Terms and conditions unless the context otherwise requires, the stated terms will have the following meanings:

- a. Customer: the organization or person who purchases the Goods from the Supplier;
- b. Goods: means the articles (or any part of them) set out in an order;
- c. Order: the Customer's order for the goods, as set out in the Customer's written acceptance of the Supplier's quotation.
- d. Price of the goods: means the price stated in the order payable for the Goods. We reserve the right to adapt prices, for confirmed orders as well, to reflect any increase in our costs, for any reason beyond our control, like *force majeure*, strikes, official orders, transportation or similar problems, if this increase happens after confirmation of the order but before delivery of goods.
- e. Delivery Date: means the date on which the Goods are to be delivered as stipulated in the Supplier's order confirmation and accepted by the Customer, unless the parties agree otherwise
- f. Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in the Netherlands are open for business.
- g. Month: means a calendar month;
- h. Writing: and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- i. A statute or a provision of a statute: is a reference to that statute or provision as amended or re-enacted at the relevant time;
- j. These Terms and Conditions: is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time
- k. Schedule: is a schedule to these Terms and Conditions; and
- l. A Clause or paragraph: is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
- m. A "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- n. The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- o. Words imparting the singular number shall include the plural and vice versa.

- p. References to any gender shall include the other gender.

Article 2. Applicability of the Terms and Conditions

2.1 The Supplier shall supply and the customer shall purchase the goods in accordance with any quotation that is accepted by the Customer, or any order of the Customer sent to the Supplier unless the Customer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Supplier in writing.

2.2 These terms and conditions apply to the contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.3 “Supplier” or “ByBlue” means ByBlue B.V., Rhijnspoor 235, 2901 LB, Capelle aan den IJssel, The Netherlands

Article 3. Basis of Sale

3.1 The Supplier’s employees or agents are not authorized to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

3.2 No variation to these Terms and Conditions shall be binding unless agreed in writing between the authorized representatives of the Customer and the Supplier.

3.3 Sales document, price lists and other documents issued by the Supplier in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods shall be binding on the Supplier unless the Supplier has issued a quotation which is expressed to be an offer to sell the Goods or has accepted an order placed by the Customer by whichever is the earlier of:

- 3.3.1 the Supplier’s written acceptance;
- 3.3.2 delivery of the Goods;
- 3.3.3 the Supplier’s Invoice

3.4 Any typographical, clerical or other accidental errors or omissions in any sales document, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

Article 4. Orders and Specifications

4.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorized representative.

4.2 The specification for the Goods shall be that set out in the Supplier's sales documentation unless varied expressly in the Customer's order (if such variation(s) is/are accepted by the Supplier). The Goods will only be supplied in the minimum units thereof stated in the Supplier's price list or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.

4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, price lists or other documents issued by the Supplier are intended as a guide only and shall not be binding on the Supplier.

4.4 The Supplier reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

4.5 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

Article 5. Price and Payments

5.1 The price of the Goods shall be the price set out in the Supplier's order confirmation current at the date of acceptance of the Customer's order or such other price as may be agreed in writing by the Supplier and the Customer.

5.2 The Supplier reserves the right, by giving written notice to the Customer at any time before delivery or provision, to increase the price of the Goods to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labor, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions

5.3 Except as otherwise stated under the terms of any accepted order or in any price list of the Supplier, and unless otherwise agreed in writing between the Customer and the Supplier, all prices are inclusive of the Supplier's charges for packaging and transport.

5.4 The price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods and Services, which the Customer shall be additionally liable to pay to the Supplier.

5.5 Subject to any special terms agreed in writing between the Customer and the Supplier, the Supplier shall invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Supplier shall be entitled to invoice the Customer for the price

at any time after the Supplier has notified the Customer that the Goods are ready for collection or (as the case may be) the Supplier has tendered delivery of the Goods.

5.6 The Customer shall pay the price of the Goods (less any discount or credit allowed by the Supplier, but without any other deduction, credit or set off) within thirty (30) calendar days of the date of the Supplier's invoice, unless explicitly agreed otherwise. Payment shall be made on the due date notwithstanding that delivery or provision may not have taken place and/or that the property in the Goods has not passed to the Customer. The time for the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.7 All payments shall be made to the Supplier as indicated on the form of acceptance or invoice issued by the Supplier.

5.8 The Supplier is not obliged to accept orders from any customer or Customer who has not supplied the Supplier with references satisfactory to the Supplier. If at any time the Supplier is not satisfied as to the creditworthiness of the Customer it may give notice in writing to the Customer that no further credit will be allowed to the Customer in which event no further goods or services will be delivered or provided to the Customer other than against cash payment and notwithstanding sub- Clause 5.2 of these conditions, all amounts owing by the Customer to the Supplier shall be immediately payable in cash.

Article 6. Delivery

6.1 Delivery of the goods takes place at the warehouse specified in the acceptance order, by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection, unless parties agree otherwise.

6.2 The Customer is obligated to take the goods at the time that the seller delivers them or has them delivered to the customer, or at the time when they are available to be collected by the customer.

6.3 The delivery date is stated in the Supplier's order confirmation and time for delivery shall not be of the essence unless previously agreed by the Supplier in writing. The Goods may be delivered by the Supplier in advance of the Delivery Date upon giving reasonable notice to the Customer.

6.4 If the Customer fails to take delivery of the Goods or any part of them on the Delivery Date and/or fails to provide any instructions, documents, licenses, consents or authorizations required to enable the Goods to be delivered on that date, the Supplier shall be entitled upon giving written notice to the Customer to store or arrange for the storage of the Goods and then notwithstanding the provisions, risk in the Goods shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.

6.5 With effect from the Commencement Date the Supplier shall, in consideration of the price being paid in accordance with these Terms and Conditions and the accepted order provide the Services expressly identified in the accepted order.

Article 7. Inspection and Complains.

7.1 The Customer will immediately after delivery - and thus prior to transport - inspect the Products or have them inspected, in the sense that the Customer will thoroughly and accurately determine whether the Products comply in full with the Agreement, more in particular:

- a) whether the correct Products have been delivered;
- b) whether the delivered Products comply both internally and externally with the quality requirements that may be imposed for normal use and/or commercial purposes; and
- c) whether the delivered Products comply in terms of quantity (number, amount, weight) with what the Parties have agreed.

With a view to the inspection of the internal quality of the Products, the Customer will conduct random cuts of the Products and random checks for the presence of foreign bodies and other defects, or have such cuts and checks carried out. If the delivery falls short by less than 10% of the total quantity; the Customer is obliged to accept the delivered quantity subject to a proportionate reduction of the price.

7.2 Complains about the delivered quantity and visible defects, including internal defects that were or should reasonably have been discovered during the inspection referred to in paragraph 1 of this article will, on pain of lapse of all rights, be reported to ByBlue immediately after the inspection- and thus prior to transport - and subsequently be confirmed in writing within 24 hours, accompanied by (a) a precise and detailed description of the nature of the shortcoming, (b) clear and representative pictures showing the shortcoming, the pallet identification labels, the boxes in question and the grower codes on the said boxes and (c) a quantitative estimation (%) of the shortcoming.

7.3 Complaints about hidden defects will, on pain of lapse of all rights, be reported to ByBlue in writing, accompanied by the description, the pictures and the estimation referred to in paragraph 2 of this article, immediately after these defects have or should reasonably have been discovered, yet no later than within eight hours after delivery and in any event prior to (re)sale and delivery by the Customer and/or further transport by or on the instructions of the Customer

7.4 Complaints about minor and/or customary and/or technically unavoidable deviations in quality, size, weight, color, quantity and suchlike and complaints about processed products are inadmissible.

7.5 If ByBlue does not accept a complaint by the Customer within 4 hours, the Customer will, on pain of lapse of all rights, have an independent survey performed by a certified expert within 12 hours. Both time periods referred to in this paragraph commence at 07:00 hours (local time at ByBlue) on the first working day following the day on which the Customer reported the complaint. The Customer will allow ByBlue to be present or represented at the aforementioned survey. ByBlue is entitled to have a counter survey carried out.

7.6 The Customer will lend all cooperation required for investigation of the complaint. The complaint will be deemed inadmissible if the Customer does not lend its cooperation or if an investigation is not or no longer possible.

7.7 If the complaint by the Customer, taking into account the provisions of this article, is deemed well founded, ByBlue will, after consultation with the Customer, deliver the shortfall in Products, repair or replace the delivered Products or adjust the price. No other obligation or liability will rest upon ByBlue.

Full or partial termination of the Agreement, including reduction of the price, requires the written approval of ByBlue.

7.8 The Customer will at all times treat the Products as befits a good custodian.

7.9 The Customer is not permitted to return the Products before receiving written approval from ByBlue. If ByBlue stores or otherwise takes receipt of the returned Products, such will be for the risk and account of the Customer. These measures can at no time be interpreted as the approval or acceptance of the return.

7.10 Violation of the Customer's duty of inspection and complaint will at all times lead to the lapse of all rights, irrespective of whether as a result any concrete interests of ByBlue have been harmed.

7.11 If the Customer violates its duty of inspection and complaint and ByBlue nevertheless accepts a complaint for handling, such will be subject to the reservation of all rights and the actions of ByBlue will be regarded as goodwill without acceptance of any liability or obligation.

7.12 If it appears that a complaint is unfounded, all internal and external costs made by ByBlue within the context of the handling of the complaint will be for the account of the Customer.

7.13 Legal claims will, on pain of lapse of all rights, be submitted within one year after timely report of the complaint.

Article 8. Non-delivery of Goods

8.1 If the supplier fails to deliver the Goods on the Delivery Date (or Commencement Date, as appropriate) other than for reasons outside the Supplier's reasonable control or the Customer's or its carrier's fault:

8.1.1 if the Supplier delivers the Goods at any time thereafter OR the Supplier shall have no liability in respect of such late delivery; or

8.1.2 If the customer gives written notice to the Supplier within 48 hours after the Delivery Date (or Commencement Date, as appropriate) and the Supplier fails to deliver the Goods within 48 hours after receiving such notice the Customer may cancel the order and the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods or services to those not delivered or provided over the price of the Goods or Services not delivered or provided.

Article 9. Risk and retention title

9.1 Risk of damage to or loss of the goods shall pass to the Customer at:

9.1.1 in the case of Goods to be delivered at the Supplier's premises, the time when the Supplier notifies the Customer that the goods are available for collection;

9.1.2 in case of goods to be delivered otherwise than at the at the Supplier's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title to the Goods shall not pass to the Customer until the Customer has fulfilled all obligations from all agreements concluded with the Supplier;

9.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

9.4 If third parties seize the products supplied under retention of title or wish to establish or assert rights thereon, the Customer is obliged to notify the seller as soon as possible;

9.5 Products delivered by the seller, which are covered by the retention of title pursuant to the third paragraph of this article, may only be sold on within the framework of normal business operations and may never be used as a means of payment;

9.6 In the event that the seller wishes to exercise his property rights as referred to in this article, the Customer now gives unconditional and non-revocable permission to the seller or third parties to be designated to enter all those places where the properties of the seller are located and those products to take back.

Article 10. Intellectual and Industrial Property

10.1 All rights of intellectual and industrial property with respect to the Products and the related packaging and packing materials, all in the broadest sense of the word, will be held solely by ByBlue and its licensors.

10.2 The Customer will for each infringement of a right as referred to in paragraph 1 of this article forfeit an immediately payable penalty of €5,000, increased by an immediately payable penalty of €1,000 for each day, including a part day that the infringement continues. This penalty clause is without prejudice to the other rights of ByBlue, including but not limited to its right to damages by law.

Article 11. Suspension, termination.

11.1 Without prejudice to its other rights by law and/or the Agreement and/or these Conditions, ByBlue is entitled to suspend its obligations or, without requiring any notice of default or a legal intervention, to terminate the Agreement in full or in part by means of a written notice to the Customer if:

a) The Customer fails to properly and promptly fulfil of its obligations;

- b) ByBlue has good grounds to fear that the Customer will default in the fulfilment of one or more of its obligations;
- c) The Customer is declared bankrupt or its bankruptcy has been applied for;
- d) The Customer has been granted a, whether or not provisional, suspension of payments or an application thereto has been filed;
- e) The Customer is declared subject to a statutory debt rescheduling scheme or an application thereto has been filed;
- f) the business of the Customer is liquidated; or
- g) the assets of the Customer are subject to executory attachment or subject to prejudgment attachment which is not lifted within one month of the date of attachment.

11.2 If the default of the Customer under law, the Agreement and these Conditions takes effect only after notice of default, ByBlue will, in the case referred to in paragraph 1(a) of this article, not proceed with full or partial termination of the Agreement until it has provided the Customer with a written reminder stating a reasonable term for fulfilment, which term was not complied with.

11.3 If ByBlue terminates the Agreement in part or in full, it is not obliged to pay any compensation and all its claims against the Customer will immediately become payable in full.

Article 12. Force Majeure

12.1 Force majeure ("non-attributable failure") within the context of these Conditions is defined as: every circumstance for which ByBlue bears no subjective blame and which makes it impossible or practically too onerous for ByBlue to fulfil its obligations or a part thereof, including – but explicitly not limited to - full or partial crop failure, crop diseases, pest plagues, default ("attributable failure") and/or unlawful actions on the part of suppliers or transporters of ByBlue on the part of other third parties engaged in the performance of the Agreement, abnormal weather circumstances, frost, storm damage and other damage caused by natural disasters, strikes, transport problems, epidemics, fire, theft, war and threat of war, terror attacks and the threat of terrorism, as well as government measures, such as the prohibition of import, export and transit, levies, import duties and quotas.

12.2 ByBlue is entitled in the event of force majeure to suspend the performance of its obligations in full or part, whereby the Customer is not entitled to require fulfilment or compensation for damages. If the period of force majeure lasts longer than two months, either Party is entitled to terminate the Agreement in full or part without being held to pay compensation, on the understanding that ByBlue retains its right to a proportionate part of the price if it has partly fulfilled its obligation before or after the occurrence of force majeure. ByBlue is also entitled to invoke force majeure if such arises after the date on which it should have fulfilled its obligation.

Article 13. Liability and indemnification

13.1 Without prejudice to the provisions in the articles above, the scheme below applies with respect to the liability of ByBlue for losses incurred by the Customer and/or third parties and indemnification of ByBlue by the Customer.

13.2 The total liability of ByBlue under any heading whatsoever is limited to the amount paid out in the relevant case by its liability insurance, increased by the amount of the excess, which is not for the account of the insurers according to the policy conditions. If, for any reason whatsoever, no insurance payment takes place, the total liability of ByBlue under any heading whatsoever is limited to the amount of the net invoice value for the relevant Products, being the price excluding turnover tax and other taxes and levies and excluding transport costs, subject to a maximum of €5,000.

13.3 ByBlue is not liable for - and the Customer is required to take out insurance against - indirect loss, consequential loss, trading loss, stagnation loss, loss of profit, missed savings, loss resulting from claims by customers of the Customer, loss of customers, loss of goodwill and reputational damage.

13.4 Without prejudice to the provisions of the previous paragraphs of this article, the liability of ByBlue for Products that it has acquired from third parties will not exceed the liability of those third parties to ByBlue.

13.5 ByBlue accepts no liability for failure by third parties that it has engaged in the performance of an Agreement.

13.6 Insofar as fulfilment by ByBlue is not permanently impossible, ByBlue is only liable on grounds of attributable failure in the fulfilment of an obligation if the Customer has promptly provided ByBlue with a written notice of default, precisely describing the nature of the default and giving a reasonable term for fulfilment, which term was not complied with.

13.7 The right to compensation is subject to the condition that Customer promptly reports the loss to ByBlue, yet no later than 14 days after the loss has, or should reasonably have, become known to the Customer.

13.8 Legal claims will, on pain of lapse of all rights, be submitted within one year after timely report of the loss.

13.9 The Customer will indemnify ByBlue against all third-party claims that could be brought against ByBlue with respect to Products delivered or to be delivered by ByBlue. The Customer will compensate ByBlue for any reasonable costs of defense against third-party claims.

13.10 ByBlue will not invoke a limitation of its liability, and the Customer will not be obliged to indemnify ByBlue, insofar as the loss results directly from intent or deliberate recklessness on the part of ByBlue or of its management.

13.11 The above scheme does not apply insofar as provisions of mandatory law oppose this.

Article 14. Confidentiality

14.1 Each party undertakes that, except as provided by sub-Clause 14.2 or as authorized in writing by the other Party, it shall, at all times during the continuance of the Contract and for 12 months after its termination:

14.1.1 Keep confidential all Confidential Information;

14.1.2 not disclose any Confidential Information to any other person;

14.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Terms and Conditions and the Contract;

14.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

14.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-clauses 14.1.1 to 14.1.4 above.

14.2 Either Party may:

14.2.1 Disclose any Confidential Information to:

14.2.1.1 Any sub-contractor or supplier of that Party;

14.2.1.2 Any governmental or other authority or regulatory body; or

14.2.1.3 Any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by these Terms and Conditions and the Contract, or as required by law, and in each case subject to that Party first informing the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in sub-Clause 14.2.1.2 above or any employee or officer of any such body) obtaining and submitting to the other Party a written undertaking from the person in question, as nearly as practicable in the terms of this Clause 14, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and

14.2.2 Use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes, public knowledge through no fault of that Party, provided that in doing so that Party does not disclose any part of that Confidential Information which is not public knowledge.

14.3 The provisions of this Clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.

Article 15. Applicable law

15.1 Without prejudice to the provisions of article 9, clause 9.6 of these Conditions, the legal relationship between the Parties is governed by Dutch law, including the Vienna Sales Convention.

15.2 Subject to provisions of mandatory law, all disputes between the Parties relating to an Agreement and/or these Conditions will in the first instance be submitted exclusively to the Court of Rotterdam (proceedings on the merits) or the interim injunction judge of the Court of Rotterdam (interim injunctions and other provisional measures), without prejudice to the right of ByBlue to submit a dispute to any other competent court.

15.3 Without prejudice to the provisions of paragraph 2 of this article, ByBlue is at all times entitled to have a dispute resolved in accordance with the Regulations of the Netherlands Arbitration Institute. The arbitral tribunal will consist of three arbitrators. The place of arbitration and oral hearing(s) is Rotterdam. The proceedings will be conducted in English. The tribunal will decide according to the rules of law.

15.4 The costs related to judicial and arbitration proceedings, including but not limited to the actual costs of attorneys, bailiffs, experts and translators incurred by ByBlue will be for the account of the Customer if it is held to be entirely or predominantly in the wrong.

December, 2020.