1. Area of validity

1.1 These general terms of business and delivery apply to all offers, sales and/or deliveries of plant material (hereinafter: “goods”) from I. & A. Hark Orchideen GmbH & Co. KG (hereinafter: “we”) to business people within the framework of their commercial or self-employed professional activities (hereinafter: “purchaser”).

1.2 We expressly reject the validity of terms of business to the contrary as stated by the purchaser. This exclusion also applies if we make deliveries to the purchaser without qualification and while aware of his contrary terms of business.

2. Offers, price lists and differing agreements

2.1 Our offers and price lists are without engagement and without commitment.

2.2 Any deviations or ancillary agreements to these conditions shall only become effective if confirmed by writing.

3. Delivery

3.1 As it is impossible to control entirely the provision of natural materials, the delivery dates stated at the time of signing the contracts are without commitment and, for this reason, approximate.

3.2 Should the event of the reason stated in para. 3.1, we are entitled to make over or short deliveries to a reasonable extent.

3.3 When signing the agreement, the purchaser is obliged to notify us immediately of any mutations which have occurred. This is currently a check for infestation with ORSV and CymMV.

3.4 The purchaser is aware that the production of goods requires a very long period of time and passes through different phases of production (phases 1 to 5) which each require different methods of cultivation. The knowledge-herein included in the goods in the prior stages, i.e. in containers in phases 1 to 4, is an important secret of our company. Consequently, only phase 5 containers form the subject of an offer, sale or delivery. The purchaser is not entitled to have goods from primary production phases (phases 1 to 4) handed over to him.

3.5 There is an obligation to take delivery in respect of containers which have already been produced in phase 5. If deliveries are not taken in time, we are entitled to invoice for additional costs which have arisen (e.g. caused by storage) and to claim for damages.

3.6 The wording of goods involves considerable risks for our entire stock of goods. Consequently, if goods are not taken on time, we are entitled to destroy them after a period of six weeks at the expense of the purchaser. We will inform the purchaser of the date for destruction after the said period of six weeks before the said date of destruction.

3.7 If and insofar as the purchaser finally refuses to take the ordered goods, whether entitled to do so or not, we are not obliged to test the purchased goods. We reserve the right to demand the purchaser to pay the costs in accordance with the current price list for goods which have already been produced and have to be delivered.

3.8 Part-deliveries are permitted to a reasonable extent for all deliveries.

3.9 Trivia is not possible. At the time of handing over the goods to the carrier or haulier or – in the case of delivery with our vehicles – when they leave our factory, the risk of accidental loss of the goods is transferred to the purchaser. This also applies when carriage-free delivery has been agreed.

4. Obligations to examine the goods and give notice of defects – phytosanitary characteristics

4.1 The purchaser is obliged to check each delivery immediately for obvious defects. Notification in respect of obvious defects shall be given at the time of delivery. In respect of defects which the goods must be notified to us in writing and immediately, but in all cases within a limitation period of 5 days after receipt of the goods.

4.2 If the notification is not made immediately at the time of delivery, the purchaser is entitled to demand the goods and to examine them immediately by the third party. This also applies if the goods are not desired.

4.3 Concealed defects must be reported in writing and immediately, but at all events within a limitation period of 5 days after receipt of the goods, and in the case of goods which have already been processed 30 days after receipt of the goods.

4.4 If defects are suspected, then for reasons of mitigation of damage the purchaser shall separate the goods which may be affected – both from goods supplied by us and from goods which are already present – in order to prevent the infestation from spreading.

5. Price

5.1 The agreed prices, or the prices resulting from the price lists, are not prices to which must be added the sales tax valid in the Federal Republic of Germany at that time. In all cases prices are ex works, unless this has been expressly agreed otherwise in the contract. The costs of freight, packing and insurance are for the account of the purchaser.

5.2 If the goods are delivered by means of our vehicles, freight and packing charges are included in our prices insofar as anything has been agreed.

5.3 We reserve the right, after having informed the customer in good time and before the goods have left our premises, to increase the price of goods to an extent which corresponds to the general development in prices (phases 1 to 4) related changes, commingled or mixed reserved goods and stores these for us without charge.

5.4 The goods are only delivered free of charge, if the correct address is given.

5.5 If reserved goods in an unprocessed state or following processing or commingling with other goods or products are delivered to the purchaser, the risk of accidental loss of the goods is for the account of the purchaser. The goods remain our property until settlement of all claims resulting from the business connection.

5.6 The place of performance is Münster.

5.7 Claims for correction of the defect of delivery or a fault-free product, for a reduction in price or rescission of the sales contract expire one year after the transfer of risk in accordance with para. 3.9.

6. Liability

6.1 We are only liable for compensation on the grounds of intent or of gross negligence on the part of our legal representatives or executives or in the event of the negligent infringement of important contractual obligations. Such important contractual obligations are those whose fulfilment makes the conclusion of the contract possible for the customer and without whose scratch the customer is deprived of the essential purpose of the contract and which could reasonably have been foreseen.

6.2 We expressly reject the validity of liability as stated by the purchases. This exclusion also applies if we make deliveries to the purchaser without qualification and while aware of his contrary terms of business.

6.3 Legal provisions relating to the allocation of the burden of proof are not affected.

6.4 Information on cultures, plants and species-related changes to plant protection or other advice are not the subject of our services. Insofar as they are not made the subject of the contract by means of an additional written agreement, they only represent non-binding information. They do not oblige the purchaser to observe the advice of the expert. If the expert releases the purchaser from his obligations in respect of the professional and expert processing of the goods supplied and from the requirements in particular with regard to the use of plant protection products and fertilizers as well as products to promote insect growth.

9. Retention of title

9.1 The goods remain our property until settlement of all claims resulting from the business connection.

9.2 The purchaser is obliged to treat the goods with care and during ownership has been fully transferred to him. In particular he is obliged to ensure the goods for the new price and at his own expense against theft, fire and water damage.

9.3 The purchaser is authorised to sell on the goods supplied while observing our valid interests and in the normal course of business. As of now the purchaser assigns to all claims resulting from such sales in respect of his customers. If the value of the securities given to us exceeds our claims by more than 20%, then at the request of the purchaser or of a third party affected by this excessive security we are entitled to return or release such securities according to our choice.

9.4 If reserved goods in an unprocessed state or following processing or commingling with other goods or products are delivered to the purchaser, the risk of accidental loss of the goods is for the account of the purchaser. This also applies as of now the purchaser assigns to us the full amount of the claims resulting from the onward sale. If the purchaser sells reserved goods – formerly processing/commingled or mixed with goods – of our company, 4. The purchaser is entitled to demand the goods in accordance with the current price list for goods which have already been produced and have to be delivered.

9.5 The overlaying of goods involves considerable risks for our entire stock of goods. Consequently, if reserved goods in an unprocessed state or following processing or commingling with other goods or products are delivered to the purchaser, the risk of accidental loss of the goods is for the account of the purchaser.

9.6 In the event of threatened stoppage of payments, inability to pay or unfavourable information which indicate a considerable worsening of the purchaser’s financial situation, we are entitled to take back the goods delivered, when the purchaser is in default of any payment or has been declared bankrupt or is subject to other insolvency proceedings, or in the event of other insolvency proceedings.

9.7 The goods may only be used by us for further processing or preparation with the consent of the owner, if the goods are not intended for the production of a new product, if the goods are not intended for any other use which is connected, commingled or mixed reserved goods and stores these for us without charge.

9.8 The purchaser is only permitted to pledge or to transfer ownership by way of security of the delivery of reserved goods with our express consent. If our security interests are prejudiced by third parties, in particular in the case of the confiscation or attachment of deliveries and/or claims, the purchaser shall immediately inform us by sending us the documentation which is available to him (e.g. attachment reports etc.) and shall inform third parties of our security interests. The purchaser undertakes to return to us the costs which arise from taking defensive measures as a result of the prejudice to our security interests.

9.9 In the event of threatened stoppage of payments, inability to pay or unfavourable information which indicate a considerable worsening of the purchaser’s financial situation, we are entitled to take back the goods delivered, when the purchaser is in default of any payment or has been declared bankrupt or is subject to other insolvency proceedings, or in the event of other insolvency proceedings.

10. Property rights

10.1 Without the consent of the owner of the type of plant, goods subject to plant variety protection rights may not be used for further propagation or prepar

10.2 In the event that individual provisions of the above conditions are invalid, this shall not affect the remaining validity of the respective contract.

11. Delivery and/or invoicing to a third party on the instructions of the purchaser

11.1 Before a purchaser instructs us to deliver goods to a third party named by him, he undertakes to inform us in the third party beforehand of the application and contents of these general terms of business and delivery.

11.2 In the event that, on the instructions of the purchaser, we invoiced the third party named in para. 11.1, the purchaser is obliged to conclude with the third party as joint and several debtor to completely perform the contract until all our claims in respect of the delivery have been met in full and unconditionally.

12. Place of performance, jurisdiction and applicable law

The place of performance is Lippstadt. Disputes is the exclusive place of jurisdiction for all legal disputes resulting from and in connection with the contractual relationship. The substantive law of the Federal Republic of Germany applies. The validity of the UN Convention on Contracts for the International Sale of goods (CISG) is excluded.

13. Validity

13.1 In the event that individual provisions of the above conditions are invalid, this shall not affect the remaining validity.