

General terms of business and delivery for

I. + A. Hark Orchideen GmbH & Co. KG

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 us in 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 of the contracts are without commitment and, for this reason, approximate.
- 3.2 In consequence of the reason stated in para. 3.1, we are entitled to make over or short deliveries to a reasonable extent.
- 3.3 Following the signing of the contract, confirmed delivery dates do not need to be adhered to in the event of force majeure, growth disturbances affecting the clones, interruptions to operations, strikes and lockouts and other circumstances for which we are not responsible and which result in delays. The purchaser is only entitled to withdraw from the contract on the grounds of failure to meet a delivery date if he has granted us, without success, a period of time to deliver the agreed quantity of goods which is appropriate with regard to the goods to be produced.
- 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 know-how embodied 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 from the subject of an offer, sale or delivery. The purchaser is not entitled to have goods from prior 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 overlying 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 at the latest two weeks before the said date and will again grant the opportunity to take the goods.
- 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 continue the cultivation of plants in phases 1 to 4. The purchaser shall refund the costs in accordance with the current price list for goods which have already been produced in pre-phases. This shall not affect the assertion of further claims for compensation.
- 3.8 Part-deliveries are permitted to a reasonable extent for all deliveries.
- 3.9 Delivery is ex-works. 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 regarding the type, quantity and quality of the goods must be submitted to us in writing and immediately, but in all cases within a limitation period of 5 days after receipt of the goods. If at the request of the purchaser delivery is made to a third party – for example a customer of the purchaser – the purchaser is obliged to ensure that the goods are tested and examined immediately by the third party.
- 4.2 The obligation to examine the goods and give notice of defects within the meaning of para. 4.1 also includes phytosanitary characteristics, in particular pest infestation, viruses and diseases. In the event of suspicion that defects are present in the goods, the purchaser shall act in accordance with para. 7.1.
- 4.3 Concealed defects must be reported in writing and immediately, but at all events within a limitation period of 5 days, following discovery, at the latest within a year of 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 net 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, excluding the costs of freight, packing and insurance.
- 5.2 If goods are delivered by means of our vehicles, freight and packing charges are included in our prices unless anything else has been agreed.
- 5.3 We reserve the right, after we have 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 developments in prices outside our control (e.g. as caused by fluctuations in exchange rates, currency regulations, customs-related changes, a marked increase in the costs of materials and production). This para. 5.3 shall not apply if the goods are to be delivered within four months of the contract being signed.

6. Payment

- 6.1 Unless anything else is agreed, invoices must be paid within 30 days of the invoice date and without any deductions.
- 6.2 Payments by draft and check are only accepted with a view to performance until irrevocably credited to our account.
- 6.3 If the time allowed for payment is exceeded, interest on account of delay will be charged in the amount of 8 percentage points over the current basic rate of interest which is current at the time.
- 6.4 Offsetting against our claims is only permitted in respect of counterclaims which are uncontested or have been determined as being legally binding. The assertion of rights of retention which are not based on the same contractual relationship is excluded.

7. Defects and warranty

- 7.1 If the purchaser reports a defect, whether according to para. 4.1 or para. 4.3, he shall give us the opportunity to form an opinion, during normal business hours, of the extent and type of any defect about which a complaint is made and to examine the goods and/or to have them examined by third parties authorised by us.
- 7.2 Defects in one part of a consignment cannot lead to a complaint about the entire consignment.
- 7.3 From a technological point of view, diseases which naturally affect plants and infestation by viruses cannot be excluded. We undertake merely to ensure that the basic material used by us are tested under laboratory conditions within the framework of the usual technical possibilities with the verification procedures currently used (Elisa test) but without the assurance that the goods are free from plant-specific diseases or viruses. This is currently a check for infestation with ORSV and CymMV.
- 7.4 As mutations (sudden genetic changes) cannot be prevented, any liability for any mutations is excluded.
- 7.5 The purchaser acknowledges that mutations to plants which are subject to plant variety protection as so-called essentially derived varieties are included in the scope of protection of the plant variety protection to the original plant, with the result that commercial exploitation of plants resulting from the mutation requires the approval of the holder of the plant variety protection. Consequently, the purchaser shall inform us immediately of any mutations which have occurred. In the event of the sale of the purchaser's rights to a mutation, the purchaser grants the owner of the original plant an irrevocable option to purchase.
- 7.6 If the correction of defects or the delivery of replacements is delayed, or if we do not adhere to the reasonable time limits imposed by the purchaser, the purchaser is entitled, at his option, to withdraw from the contract (rescission of the sales contract) or to call for a reduction in the purchase price insofar as the time limit set was appropriate taking into consideration the periods of time necessary in respect of the use of the plant material.

- 7.6 Claims for correction of the defect of for delivery of a fault-free product, for a reduction in price and rescission of the sales contract expire one year after the transfer of risk in accordance with para. 3.9.
- 7.7 The legal right of withdrawal on the part of the purchaser, who is an entrepreneur within the meaning of para. 478 BGB, is not affected.

8. Liability

- 8.1 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 negligent infringement of important contractual obligations. Such important contractual obligations are those whose fulfilment makes possible the correct execution of the contract in the first place and on the adherence to which the contractual partner can place his trust on a regular basis. We accept liability only for damage to the delivered object and not to consequential harm caused by a defect; in the event of culpable infringement of important contractual obligations, liability is limited to damage which is typical for the contract and which could reasonably have been foreseen.
- 8.2 The above-mentioned limitation of liability does not apply in the event of harm to life, body or health and if assured characteristics are missing if and to the extent that the purpose of the assurance was to safeguard the purchaser against damage which did not occur to the goods supplied.
- 8.3 Legal provisions relating to the allocation of the burden of proof are not affected.
- 8.4 Information on culture, planting instructions, recommendations relating 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 release the purchaser from his obligations in respect of the professional and expert processing of the goods supplied and from the necessary care in particular with regard to the use of plant protection products and fertilisers as well as products to promote or inhibit 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 until ownership has been fully transferred to him. In particular he is obliged to insure 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 us 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 obliged 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 which are the sole property of the purchaser are sold, then 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 – following processing/commingling – together with goods which are not the property of the purchaser, then as of now the purchaser assigns to us all claims resulting from the onward sale in the amount of the value of the reserved goods with all ancillary rights and precedence before the remainder. We accept the assignment.
- 9.5 If there exists between the purchaser and the third parties a genuine or non-genuine current account relationship, or if such an account is subsequently set up, the purchaser herewith assigns to us the claims resulting from balances drawn or balances to be drawn in future, the right to determine the current balance, and the right to terminate a current account.
- 9.6 Until revocation by us, we also authorise the purchaser to collect these claims, including after assignment. This shall not affect our right to collect the claims ourselves; however, we undertake not to collect these claims provided the purchaser duly meets his payment and other obligations. We may call on the purchaser to inform us of the assigned claims and their debtor, to provide all information necessary for collection, and to inform the debtors of the assignment.
- 9.7 Any processing of the goods carried out for us by the purchaser is done without any obligations being incurred for us. In the event of any processing, connecting, commingling or mixing of the reserved goods with other goods which do not belong to the purchaser, we are entitled to the co-ownership share of the new product in the ratio of the value of the reserved goods to the rest of the processed goods at the time of the processing, connecting, commingling or mixing. If the purchaser acquires sole ownership of the new product, the parties to the contract are in agreement that the purchaser grants us co-ownership of the new product in the ratio of the value of the processed and/or 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 refund to us the costs which arise from our 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 authorised to take back the reserved goods; the purchaser hereby irrevocably and unconditionally consents to such handing over of the goods. The same shall apply in the event of foreclosure and protests against drafts and cheques in respect of the purchaser.

10. Industrial property rights

- 10.1 Without the consent of the owner of the type of plant, goods subject to plant variety protection rights must not be used for further propagation or prepared for this purpose, passed on to third parties for this purpose, put into circulation and/or imported or exported.
- 10.2 The purchaser is not authorised to deliver viable goods of a protected type to a country which does not grant plant variety rights protection or protection similar to this right unless this has been separately agreed in writing with the holder of the plant variety protection rights.

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 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 invoice the third party named in para. 11.1, the purchaser is obliged together 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. Düsseldorf 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 is excluded.

13. Validity

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

I. + A. Hark Orchideen GmbH & Co. KG, 59557 Lippstadt, Germany
As of: January 1, 2010

These general terms of business and delivery can also be downloaded as a pdf file from <http://www.hark-orchideen.de/AGB/agb.php>