

General Terms and Conditions of Sale

of

Hark Orchids, L.P.

General: The pronouns "us", "we" and "our" as used throughout these *General Terms of Business and Delivery for Hark Orchids, L.P.* shall refer to Hark Orchids, L.P., having its principal offices located at 2651 Park Circle Court, Kalamazoo, MI 49048, U.S.A.

1. Area of Validity; Acceptance, Merger and Integration

- 1.1 These general terms and conditions of sale ("General Terms") apply to all offers, sales and/or deliveries of plant material (hereinafter: "goods") from Hark Orchids, L.P. (hereinafter: "we") to any customer (hereinafter: "purchaser").
- 1.2 We will be deemed to have accepted an order for goods (the "Order") from purchaser when we return an acknowledgement copy of the Order, or, at our option, when we begin substantial performance under the Order. Purchaser accepts the Order by acknowledging a copy of the Order, by confirming the Order by its purchase order or confirmation, or by acceptance of delivery of the goods or services hereunder. Notwithstanding the manner in which purchaser accepts the Order, purchaser's acceptance is limited exclusively to the acceptance of our terms and conditions set forth in the Order only. We hereby object to and reject any proposal by purchaser for additional or different terms in connection with the goods or services provided. Purchaser may acknowledge the Order by purchase order, but any and all terms, conditions and provisions contained in said purchase order, acknowledgement form or other communication with respect to the transaction contemplated by the Order, or subsequent to the date hereof, are agreed to be superfluous and without any force or effect. The Order, which includes all of the terms and conditions of both the face and reverse side thereof, and all riders or limited warranties attached hereto, is intended to be the exclusive and final statement of the terms, conditions and understandings relative to the subject matter hereof, merging herein and superseding all negotiations and prior written or oral agreements between the parties as to the subject matter of the purchase of the goods or services hereunder. There are no promises, representations or understandings made in connection with this order or contemporaneous with the execution hereof, except as set forth in the Order.

2. Offers, price lists and differing agreements

- 2.1 Our offers and price lists are non-binding and without commitment.
- 2.2 Any modifications, deviations or ancillary agreements to these conditions shall only become effective if confirmed by us in writing.

3. Delivery; Force Majeure

- 3.1 Time is not of the essence and the delivery dates stated at the time of signing of any contracts or the issuance of the acknowledgement of the Order are mere approximations and present no legal commitment. We are entitled to reasonably adjust, make over or short, quantities of goods to be delivered on the Order.
- 3.2 In the event of disturbances affecting the clones, war, acts of terrorism, fire, flood, strike, labor disputes, breakage or failure of performance of equipment, accident, riot, act or failure to act of government or regulatory authority, acts of God or other similar events of which the occurrence is not foreseeable, not avoidable and cannot be overcome and which interferes with either party's obligations pursuant to the Order, or in the event of a plant shutdown, closing, sale, or discontinuance of our business, we shall be excused from any of its obligations under the Order, and we shall not be responsible for any delay in or failure to meet the delivery date on the Order.
- 3.3 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), each of which requires 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 a trade secret and highly proprietary information to us. Only container produced in phase 5 of the production process shall be the subject of an offer, sale or delivery. The purchaser is not entitled to receive any goods from prior production phases (phases 1 to 4).

- 3.4 The purchaser agrees to take delivery of all containers which have already been produced in phase 5. If deliveries are not taken in time, we are entitled to invoice purchaser for any additional costs as a result of purchaser's failure to take timely delivery (e.g. caused by storage) and to claim for damages.
- 3.5 The aging of goods without confirmation of acceptance involves considerable risks for our entire stock of goods. Consequently, if purchaser fails to provide confirmation of goods in a timely fashion (in any event no later than within six (6) weeks following the date of delivery to the purchaser), the purchaser grants us the right, to destroy the goods at the expense of the purchaser. We will inform the purchaser as to the anticipated date for destruction of the goods no later than two weeks before the actual destruction date and will again provide the purchaser the opportunity to confirm its acceptance of the goods.
- 3.6 In the event that the purchaser finally refuses to accept the 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 all costs in accordance with the current price list for goods which have already been produced in pre-phases. This shall not affect our ability to assert further claims for compensation against the purchaser.
- 3.7 The purchaser agrees to receive partial deliveries to the extent reasonable under the circumstances.
- 3.8 Delivery is Ex-Works at our facility and shall be in accordance with the more recent of (i) Incoterms 2010 or (ii) the current Incoterms in force at the time when the Order is accepted. At the time of handing over the goods to the carrier, or in the case of delivery with our vehicles when they leave our facility, the purchaser shall bear the risk of loss of the goods. The purchaser also agrees to bear the risk of loss in the event that the parties agree upon carriage-free delivery.

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

- 4.1 The purchaser is obliged to examine each delivery immediately for obvious defects (including, without limitation, an examination for phytosanitary characteristics, in particular pest infestation, viruses and diseases). The purchaser shall promptly (but in no event later than 5 days after receipt of the goods) notify us in writing of any obvious defects regarding the type, quantity and quality of the goods. Failure to provide a timely defect notification shall be deemed acceptance by the purchaser. If, at the request of the purchaser, delivery is made to a third party – for example a customer of the purchaser- the purchaser remains obligated for its and all third party duties and responsibilities to examine and test the goods. In the event of suspicion that defects are present in the goods, the purchaser shall act in accordance with Section 7.1.
- 4.2 Latent defects shall promptly be reported in writing; provided that such reports shall be made by the purchaser no later than (i) 5 days following the discovery of such defect by the purchaser or by a third-party at purchaser's direction, or (ii) one year following the purchaser's or the purchaser's third-party's receipt of the goods. With respect to any latent defect reported thereafter the purchaser agrees that the goods shall be deemed accepted and the purchaser, and to the extent applicable a third-party customer, waive any and all claims with respect to such defects.
- 4.3 If defects are suspected, the purchaser shall mitigate any damage (e.g., infestation of other goods), including, without limitation, by separating the affected goods from non-affected goods supplied by us and from other goods in its possession.

5. Price

- 5.1 The agreed prices, or the prices resulting from the price lists, shall be net prices and the purchaser agrees to pay any sales tax valid levied by the state of Michigan. Prices shall at all times be Ex Works our facility, excluding the costs of freight, packing and insurance.
- 5.2 If we deliver the goods with our vehicles, freight and packing charges shall be added to our prices, unless anything else has been agreed to in writing.
- 5.3 The purchaser understands and agrees that we expressly reserve the right, after providing reasonable notice to the purchaser prior to shipment of any goods, to increase the price of goods to account for escalations in, among other things, raw materials, energy costs, processing charges, shipment fees, exchange rates, or custom and duties expenses.

6. Payment

- 6.1 Unless expressly agreed by us in writing, all invoices shall be paid in full within 30 days of the invoice date.
- 6.2 Payments by draft or check are only accepted with a view to performance until irrevocably credited to our account.

6.3 Interest shall accrue on all unpaid balances at the annual rate of eighteen percent (18%) or the highest rate permitted by law.

6.4 The purchaser shall not be entitled to setoff and deduct any amounts from or against an amount due under an Order.

7. Defects and warranty

7.1 If the purchaser reports a defect, whether according to Section 4.1 or Section 4.3, the purchaser shall provide us, or a third party designated by us, with a reasonable opportunity, during normal business hours, to examine the extent and type of any reported defect.

7.2 The purchaser agrees that partial defects in a shipment do not constitute a defect in the entire shipment.

7.3 The purchaser agrees that diseases which naturally affect plants and infestation by viruses may occur and shall not be our responsibility. We represent that the basic materials used by us are tested under laboratory conditions, applying the verification procedures currently used (Elisa test), checking solely for infestation with ORSV and CymMV. We do not represent or warrant that such material goods are free from plant-specific diseases or viruses.

7.4 The purchaser agrees that mutations may occur during the propagation of plant varieties and that we cannot prevent, and shall not be liable for, such mutations. Any liability, direct or indirect, for such mutations are expressly excluded. If we become aware of circumstances which indicate the occurrence of any mutations, we will notify the purchaser of such mutations and provide the purchaser, at purchaser's request and expense, contract plants of the affected contract varieties. We are hereby authorized to cease propagation of the Order for contract varieties affected by such mutations until the purchaser provides written confirmation as to its willingness to accept the delivery of the affected goods.

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. The purchaser agrees to 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. Any and all demands for a correction of the defective goods or for delivery of defect-free goods shall expire one year after the transfer of risk in accordance with Section 3.9 and the purchaser hereby forever waives any and all expired demands.

7.6 EXCEPT FOR THE EXPRESS LIMITED WARRANTY, IF ANY, WHICH IS ATTACHED AS A RIDER TO THE ORDER, WE MAKE NO EXPRESS OR IMPLIED WARRANTIES IN THE ORDER OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. WE EXPRESSLY DISCLAIM ANY AND ALL LIABILITY TO THE PURCHASER FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, LOSS OF PROFITS, INCOME, OR REVENUE, LOSS OF TIME OR INCONVENIENCE, LOSS OR DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTED OR REPLACEMENT GOODS, LOSS TO FACILITIES, LOSS OF CAPITAL, LOSS OF SERVICES, OR ANY OTHER INCIDENTAL CONSEQUENTIAL OR SPECIAL DAMAGES ARISING OUT OF THE ORDER OR THE OPERATION, FUNCTION OR CHARACTERISTICS OF THE GOODS OR SERVICES PURCHASED HEREUNDER OR OTHERWISE PROVIDED BY US. IN THE EVENT A LIMITED WARRANTY IS GIVEN BY US, IT IS EXPRESSLY UNDERSTOOD THAT SAID LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER. OUR SOLE OBLIGATION TO THE PURCHASER PURSUANT TO THIS LIMITED WARRANTY SHALL BE (i) TO REFUND TO THE PURCHASER THE PURCHASE PRICE OF THE GOODS PURSUANT TO THE ORDER, OR (ii) TO DELIVER LIKE GOODS TO THE PURCHASER, SIMILAR IN ALL MATERIAL RESPECTS TO THE GOODS IDENTIFIED ON THE ORDER.

8. Liability

8.1 OUR MAXIMUM LIABILITY WITH RESPECT TO EACH ORDER SHALL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS. WE SHALL NOT BE LIABLE FOR ANY DAMAGE AGAINST WHICH WE ARE NOT INSURED NOR SHALL WE BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES, WHICH INCLUDE, BUT SHALL NOT BE LIMITED TO, LOST PROFITS AND DAMAGE TO GOODWILL. ANY AND ALL CLAIMS AGAINST US SHALL LAPSE ON THE EXPIRATION OF A PERIOD OF ONE (1) YEAR FROM THE DATE ON WHICH THE PURCHASER SHOULD BE REASONABLY AWARE OF THE GROUNDS FOR ITS CLAIM. THE PURCHASER SHALL INDEMNIFY AND HOLD US AND OUR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND REPRESENTATIVES HARMLESS

FROM AND AGAINST ANY AND ALL CLAIMS FROM THIRD PARTIES FOR LIABILITY DUE TO A DEFECT IN A GOOD DELIVERED BY THE PURCHASER TO A THIRD-PARTY WHICH INCLUDED GOODS SUPPLIED BY US.

8.2 Information on culture, planting instructions, recommendations relating to plant protection or other advice shall not be the subject of our services and we shall not be liable therefore. **WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR ADEQUACY OF INFORMATION FURNISHED TO THE PURCHASER CONCERNING THE PHYSICAL CHARACTERISTICS, PROPERTIES OR CONDITIONS OF THE GOODS. WE SHALL NOT BE LIABLE FOR ANY ERROR OR OMISSION IN THE PREPARATION OF SUCH INFORMATION. WE SHALL NOT BE LIABLE TO THE PURCHASER, THE PURCHASER'S EMPLOYEES OR ANYONE IN CONNECTION WITH THE ACCURACY, ADEQUACY OR FURNISHING OF SUCH INFORMATION.** Any information provided by us does not release the purchaser from its obligation of professional and expert processing of the goods supplied and from the exercise of the necessary care, including with regard to the use of plant protection products and fertilisers as well as products to promote or inhibit growth.

9. Retention of title; Insurance

9.1 The goods shall remain our property until final settlement of all amounts due to us with respect to the goods delivered. The purchaser shall treat the goods with a level of care that is customary in the industry until ownership has been fully transferred to it.

9.2 Notwithstanding and in addition to any and all other obligations and liabilities imposed on the purchaser by this Agreement, the purchaser shall, at its sole cost and expense, procure and maintain at all times, insurance which specifically schedules and covers, on a per order basis, the goods against all risks of loss, including, but not limited to loss from fire, flood, water damage from all causes, and theft, for full replacement cost of the goods, without deduction for depreciation.

The insurance required by this Section 9.2 shall cover all goods starting from the time of loading for shipment and through the time full payment is received from purchaser and title is transferred to purchaser, including, but not limited to, all times when the goods have been loaded for shipment, are in transit, have been delivered to purchaser and/or purchaser's agent, and are in the purchaser's care, custody or control.

All such policies required by this Section 9.2 shall: (a) name supplier as loss payee; (b) provide that they are primary and non-contributory to any policies or self insured retentions held by or providing coverage to us; (c) contain a specific provision that the coverages afforded thereunder shall not be modified, cancelled, non-renewed or substituted until at least thirty (30) days written notice to us; (d) contain a specific provision waiving any and all rights of recovery, contribution and/or subrogation against us and our insurers; (e) be placed with insurers reasonably acceptable to us, such acceptance not to be unreasonably withheld, with a minimum rating of A-VII by the A.M. Best Company or its equivalent.

None of the policies required by this Section 9.2 shall contain any deductible or self insured retention.

None of the policies required by this Section 9.2 shall contain any exclusion of coverage for loss from an unattended vehicle or from a trailer detached from the power unit, theft or other criminal acts of the purchaser's agents and/or employees.

Within fifteen (15) days after request by us, the purchaser shall furnish us with copies of any and all insurance policies that it is required to procure and maintain pursuant to this Section 9.2. Acceptance by us of an incomplete policy or our failure to identify a deficiency in coverage from the policy or policies submitted shall not be construed as a waiver of the purchaser's obligations to maintain in effect the coverages required by this Section 9.2. Failure of the purchaser to provide the policies as required by this Section 9.2 shall entitle, but not obligate, us to terminate this Agreement effective immediately.

The fact that insurance is obtained by the purchaser shall not be deemed to release or diminish the liability of the purchaser under any Order or otherwise. Damages recoverable by us shall not be limited by the amount of the required insurance coverage.

The purchaser represents that each Order has been thoroughly reviewed by the purchaser's insurance agent(s)/broker(s), who have been instructed by the purchaser to procure the insurance coverage required by this Order.

9.3 The purchaser may deliver the goods supplied to it by us to a third party, provided that the purchaser may not, and shall cause any such third party not to, impair our rights and interests in the goods. The purchaser hereby assigns to us any and all rights and interests relative to any sales to its customers. We accept all assignments under this provision.

- 9.4 If the purchaser delivers goods title to which remains with us and such goods at the time of the sale are in an unprocessed state or have been processed or commingled with other goods which are the sole property of the purchaser, then the purchaser hereby assigns to us its right to seek payment for the full amount from the third party purchaser. If the purchaser delivers goods title to which remains with us and which have been processed or commingled with goods which are not the property of the purchaser, the purchaser hereby assigns to us all its right to seek payment from the third party purchaser in an amount equal to the value of the goods to which we hold title. We accept all assignments under this provision.
- 9.5 Notwithstanding the assignments in Sections 9.3 and 9.4 above, we authorise the purchaser to collect on any claims against third party purchasers; provided that we reserve the right to revoke this authorization at any time and in our sole discretion. The authorization provided above shall however not preclude us from collecting on any claims directly. We agree not to make any direct collection efforts as long as the purchaser duly meets its payment obligations as well as its other obligations. The purchaser agrees to provide, upon our request, to us all pertinent information, including the assigned claims and their name of any debtors, as well as all other information reasonably necessary to achieve collection on any outstanding amounts.
- 9.6 To the extent that the purchaser performs any processing of the goods for us, such actions shall not create any liability or obligation for us. In the event that the purchaser performs any processing, commingling or mixing of the goods to which we hold title with any other goods which do not belong to the purchaser, the purchaser agrees that we shall retain a pro rate ownership interest in the processed good which shall be equal to the value of the goods owned by us to the rest of the processed goods at the time of the processing, commingling or mixing. If as a result of applicable law the purchaser acquires sole ownership of the new product, the purchaser hereby agrees to promptly cause us to obtain a pro rata ownership interest in the new product equal to the value of the processed and/or connected, commingled or mixed goods we owned. The purchaser agrees to store these new goods for us without charge.
- 9.7 The purchaser may not, without our prior written consent, pledge, encumber, charge, mortgage, collateralize or create a security interest in any goods to which we hold title. In the event that our rights and interests in the goods are prejudiced or impaired by third party interests, including without limitation in the event of confiscation, the purchaser shall (i) immediately inform us thereof and provide all pertinent information and documentation to us which is available to him (e.g. reports etc.) and (ii) inform third parties of our ownership interests. The purchaser agrees to reimburse us for any and all costs which we may incur in our efforts to protect our ownership interest in the goods.
- 9.8 In the event that we determine, in our reasonable discretion, that the purchaser's financial condition imperils its ability to make timely payments or otherwise satisfy its obligations under an Order, we will notify the purchaser thereof and the purchaser hereby authorizes us to retrieve, at the purchaser's cost and expense, any and all goods owned by us from the purchaser's premises.

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 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. Intellectual Property Rights

- 11.1 All intellectual property rights, including, without limitation, any and all copyrights, trademarks, and patents, to all analyses, formulas, processes, drawings, models, documents, products and goods, as well as all preparatory material thereto, developed or made available (the "Intellectual Property") shall remain exclusively vested in us.
- 11.2 The Customer shall acquire only the rights and powers of use that are explicitly granted to it under this contract by us.
- 11.3 The Customer is not allowed to make the Intellectual Property available to third-parties to reproduce it or to make copies thereof.
- 11.4 The Customer shall observe the confidentiality and secrecy with respect to all Intellectual Property placed at the Customer's disposal by us.

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

- 12.1 Before the purchaser instructs us to deliver any goods to a third party named by him, the purchaser shall inform such third party that the delivery will be subject to these General Terms. The purchaser agrees that it shall remain responsible for all obligations under the applicable Order and these General Terms.
- 12.2 In the event that, as instructed by the purchaser, we invoice the third party named in Section 12.1, the purchaser and the third party shall be jointly and severally liable to us to perform all obligations and responsibilities under the applicable Order and these General Terms until all of our rights, claims and demands under the applicable Order have been fully and unconditionally satisfied.

13. Governing Law; Arbitration

The Order and these General Terms are made under and shall be governed by, construed in conformance with, and all disputes shall be governed by the internal laws of the State of Michigan, exclusive of its conflicts of law principles. In the event there is any controversy, claim, cause of action, dispute, or other matter (hereinafter "Controversy") arising out of or relating in any way to these General Terms, or the performance, breach, termination or invalidity thereof, the parties shall initially cooperate in good faith to resolve the Controversy by entering into negotiations by executives of the parties who do not have direct responsibility for administration of the Order, and, with respect to such negotiations, the parties will explore whether techniques such as mediation, mini-trials, mock trials, or other techniques of alternative dispute resolution might be useful in resolving the Controversy. If the parties cannot agree mutually within thirty (30) days on a method of resolving the Controversy, the Controversy shall be submitted by one of the parties to non-binding mediation. If the mediation is not successful in resolving the Controversy, then each and every Controversy shall be resolved by binding arbitration in strict accordance with the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration of Business Disputes, by a sole arbitrator. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. §§ 1-16 and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The official language of the arbitration shall be English and any arbitration shall be held in Chicago, Illinois. The selection of the independent arbitrator shall be made by agreement of the parties. In the event that the parties cannot agree upon the selection of an independent arbitrator, the arbitrator shall be appointed pursuant to Rule 6 of the CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration of Business Disputes. The arbitrator shall determine the rights and obligations of the parties according to applicable substantive laws and strictly in accordance with the express terms and limitations of these General Terms. The arbitrator shall not be empowered to grant any damages in excess of those damages permitted or limited under the express terms of these General Terms. The party prevailing on substantially all of its claims in arbitration shall be entitled to recover its costs, including attorneys' fees, for the arbitration proceedings, as well as any ancillary proceedings, including a proceeding to compel or enjoin arbitration, to request interim measures and to confirm or set aside an award.

14. Validity

If any provision of these General Terms shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the General Terms. The General Terms shall be construed as if not containing the particular invalid or unenforceable provision and the rights and obligations of each party shall be construed and enforced accordingly.

15. Waiver

Our waiver of any breach or failure to enforce any of the terms or conditions of an Order or these General Terms at any time shall not in any way affect, limit or waive its right thereafter to enforce strict compliance with every term and condition thereof or hereof.

16. Assignment

These General Terms and any Order subject hereto, and the rights and obligations of the purchaser hereunder or under any Order shall not, except as expressly provided, be assignable by the purchaser, either by act of the purchaser or by operation of law without our prior written consent, and shall not be deemed an asset of the purchaser, and at our option shall terminate in the event of, the commencement of any case or proceeding in respect of the purchaser under any bankruptcy, insolvency or similar law or any assignment for the benefit of creditors. Any purported assignment of this Contract without the prior consent of Seller shall be null and void.

Hark Orchids, L.P.

As of: September, 2013

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