

THE STANDARD TERMS OF SALE AND DELIVERY OF SELECTA TRADING S.R.L.

I. Area of application of the Standard Terms of Sale and Delivery

- (1) Only these Standard Terms of Sale and Delivery of Selecta Trading s.r.l., to the exclusion of all others, shall apply to all sales (hereinafter referred to as "the sales contracts") effected by Selecta Trading s.r.l. (hereinafter referred to as "the Seller") for the delivery of plants (hereinafter referred to as "the goods") to entrepreneurs (hereinafter referred to as "the Buyer") within the scope of their commercial or independent professional activities. These Standard Terms of Sale and Delivery of Selecta Trading s.r.l. shall also apply to all future sales contracts and deliveries effected by the Seller to the Buyer even though they are not separately included.
- (2) The Seller does not accept any contradictory or different business terms of the Buyer even if the Seller has not expressly objected thereto in each individual case. This exclusion of the Buyer's business terms shall even apply if the Seller executes deliveries to the Buyer without reservation in the knowledge of these contradictory business terms.

II. Offers, prices, terms of payment and scope of services

- (1) The Seller's offers are always subject to change.
- (2) All prices indicated in the Seller's offers are net prices ex works excluding value added tax but including packaging and loading.
- (3) In case the Seller ships the goods to the Buyer or to a place specified by the Buyer, the Buyer shall bear all shipment costs, especially all costs related to freight, insurance and customs duty. These costs shall be charged separately by the Seller. That also applies to deliveries executed from a place that is different to the Seller's works.
- (4) If the agreed delivery date will be more than 4 months after the conclusion of the contract and there have been increases in the costs of materials, raw materials, wages and salaries, transport or energy, the Seller shall be entitled to demand a higher price to take account of and to compensate for these higher costs.
- (5) All payments by the Buyer shall be regularly executed to a bank account to be indicated by the Seller. Payments in cash to the Seller's staff shall only be accepted if an authorized representative of the Seller has confirmed in advance in writing that the Seller's employee is authorized to accept such cash payments.
- (6) The Buyer shall be entitled to setoff right or to the assertion of a right to retention against claims of the Seller resulting from the sale contract with the Buyer only if the counterclaims are legally established, undisputed or accepted by the Seller.
- (7) Any consulting services provided by the Seller to the Buyer, including particularly consultancy referring to a careful treatment and processing of the goods, to their keeping and cultivation or to the use of growth retardants, fertilizers and pesticides, are not subject-matter of the sales contracts. Insofar as the Seller gives information regarding the handling of the goods, particularly regarding their keeping, cultivation, treatment and processing, this information shall be considered as non-binding and does not exempt the Buyer from his duty to accomplish independently the keeping, cultivation, treatment and processing of the goods. The Buyer is obliged to independently take care of the keeping, cultivation, treatment and processing of the purchased goods and to ensure independently the compliance with any legal provisions, particularly regarding the use of growth retardants, fertilizers and pesticides.
- (8) The Seller makes the Buyer aware of the instructions regarding the keeping, cultivation treatment and processing of the delivered plants which are attached to all deliveries. The Buyer can also download the instructions regarding the keeping, cultivation treatment and processing of the delivered plants from the Seller's website www.selecta-one.com or request them directly from the Seller.

III. Delivery and delivery time

- (1) The Seller shall have the right to execute partial deliveries to a reasonable extent.
- (2) If the agreed goods are not available (particularly the agreed variety) according to III.6 the Seller shall have the right to deliver comparable goods to the Buyer. If the Buyer is not interested in the comparable goods for objectively justified reasons, the Buyer may rescind the contract.
- (3) When the goods are shipped, the risk of their accidental deterioration and their accidental loss shall pass to the Buyer when they are handed over to the carrier or forwarding agent. This shall also apply if delivery has been agreed at no charge to the Buyer.
- (4) The Buyer shall be aware that the delivery date agreed in the sales contract can be postponed given the fact that the subject-matter of the delivery is a natural product and that its (timely) production cannot be totally controlled. Therefore, the Seller has the right to deliver the goods already up to two weeks before the delivery date agreed upon in the sales contract and up to four weeks after the delivery date agreed upon in the sales contract. Prior to the expiration of four weeks after the delivery date agreed upon in the sales contract the Seller shall not be in default even if the Buyer sends a reminder to the Seller. The above-mentioned provisions shall not apply in as far as the Seller has promised or guaranteed a fixed delivery date.
- (5) The Seller shall inform the Buyer about the estimated delivery week by no later than the last working day of the week preceding the delivery week.
- (6) If, given the fact that the Seller's suppliers have not supplied the Seller without the Seller's fault and notwithstanding the supplier's contractual obligations, the goods cannot be delivered within the delivery schedule mentioned in III.4, the Seller shall be entitled to withdraw from the sales contract in as far as no replacement delivery can be made or if this replacement delivery would not be reasonable to the Buyer (see III.2). In this case the Seller shall immediately inform the Buyer that the ordered goods are not available anymore and shall immediately refund any payments already effected by the Buyer.
- (7) If a case of Force Majeure makes it temporarily impossible for the Seller, for its suppliers or for its subcontractors or that unreasonably impede to comply with their contractual provisions, the Seller shall be exempted from its service obligations for the period of such hindrance. The Seller shall immediately notify such a hindrance and its estimated duration to the Buyer. In case the event of Force Majeure lasts more than three months both contractual parties have the right to terminate the contract. Force Majeure shall mean any events or circumstances unpredictable for the Seller when the contract is concluded and whose consequences on the fulfillment of the contractual obligations could not be prevented by reasonable efforts of the Seller. Such events or circumstances include, inter alia, wars or warlike conditions, riots, revolution, embargo, administrative orders, industrial actions, epidemics, fire, natural disasters as well as lack of energy, water or raw materials.
- (8) The delivery is subject to timely, correct and appropriate self-delivery. Insofar as the Seller is not responsible for the non-supply, the Seller shall be exempted from its duties. The Seller will inform the Buyer promptly about the non-availability and shall refund any services rendered in return.

IV. Reservation of title and return of mutants/sports

- (1) The sold goods shall remain the property of the Seller (goods under reservation of title) until the full payment of all liabilities under the business relationship between the Seller and the Buyer.
- (2) The Buyer must treat the goods under reservation of title which are the property of the Seller with good care.
- (3) If the goods under reservation of title are seized by third parties the Buyer must notify the Seller immediately.
- (4) If due to a process of combining, mixing, processing or restructuring the goods under reservation of title the Buyer acquires ownership of the goods under reservation of title, the parties agree upon already now that, at the time of transfer of ownership, the Buyer shall transfer to the Seller a co-ownership of the goods under reservation of title to the share of the value which corresponds to the amounts charged by the Seller to the Buyer (including VAT if applicable) for the delivered goods (reserved property). The Seller shall accept the Buyer's offer already now. The (newly) transferred reserved property supersedes the previous goods under reservation of title and the Buyer shall keep the reserved property on behalf of the Seller free of charge. The transfer of reserved property is subject to a resolving condition by the complete settlement of all outstanding claims resulting from the business relationship between the Seller and the Buyer.
- (5) The Buyer shall have the right to process and sell the goods under reservation of title within the framework of proper business dealings provided the Buyer is not in delay with the payment of his obligations against the Seller.

- (6) By selling the goods under reservation of title or the reserved property the Buyer assigns to the Seller all claims resulting from the resale against its purchasers or third parties in the amount of the invoice (including VAT if applicable) that the Seller has charged to the Buyer for the delivered goods under reservation of title.
- (7) The Buyer shall remain authorised to collect the transferred claim, according to IV.6.; the Seller's authorization to collect the claims itself remains unaffected. The Seller shall not collect the claims, as long as the Buyer comply with its payment obligations, does not get into default of payment and no request for opening insolvency procedure has been filed or payments are suspended. If so, the Seller is entitled to request that the Buyer discloses the claims assigned to the Seller as a security and gives all information necessary for their collection.
- (8) Upon request of the Buyer, the Seller must release the claims assigned as a security if the realised value of the claims exceeds the sum of the Seller's secured claims by more than 10 %.

V. Guarantee

- (1) The Buyer's rights under guarantee due to a defect in the delivered goods shall be based on the statutory provisions in as far as nothing to the contrary results from the following provisions in clause VI.
- (2) If nothing to the contrary has been agreed upon the Seller does not guarantee any specific characteristic of the goods; the Seller does particularly not guarantee that the delivered goods correspond to a specific variety; V. 1 shall remain unaffected.

VI. Seller's liability

- (1) According to the statutory provisions the Seller shall be liable for damages from bodily injury.
- (2) If the Buyer asserts claims for damages or claims to compensation for expenses due to slight negligence on the part of the Seller, the Seller shall only be liable for a damage which can reasonably be expected. The Seller draws the Buyer's attention to the fact that insurance must be taken out individually by the Buyer, e.g. if there is any possibility of substantial damage occurring.
- (3) If the Buyer asserts claims for damages or claims for compensation due to an intentional or grossly negligent breach of duty on the part of the Seller, the Seller shall be liable according to the statutory provisions.
- (4) Contrary to VI. 2. sentence 1, the Seller shall only be liable for damages due to default caused by slight negligence on the part of the Seller, to the sum of 5 % of the agreed purchase price (including VAT).
- (5) In all other cases the Seller's liability shall be excluded [Section 478 of the German Civil Code (BGB) shall remain unaffected.] This shall also apply in as far as the Seller is not obliged to effect delivery in accordance with III. 6. The exclusion and limitation of liability shall also apply to non-contractual liability.
- (6) The above-mentioned provisions limiting and excluding liability also apply in favour of the Seller's employees, legal representatives, institutions and subcontractors.
- (7) The above-mentioned provisions limiting and excluding liability shall not apply to damages caused by the failure to comply with a delivery date or a defect in the goods in as far as the Seller has given assurance or guarantee regarding the delivery date (III.4. sentence 4) or the quality of the goods.
- (8) The Seller shall not be liable for damages that the Buyer could have avoided, but culpably omitted, by applying usual sanitary standards and duty of care regarding keeping, cultivation, treatment and processing of the delivered goods. This applies, in particular, for damages caused by infection or infestation of healthy goods or other plants by delivered goods, that already had been infected or infested at the time the risks have passed to the Buyer.

VII. Intellectual property rights

- (1) The Seller shall charge a separate fee for using its intellectual property rights including particularly industrial property rights like plant breeders' rights and trademarks, copyrights and image rights. This fee shall be displayed separately on the invoice (including VAT if applicable).
- (2) Provisions regarding Plant Breeders' Rights
 - (a) The goods protected by plant breeders' rights may only be cultivated and processed as potted plants or cut flowers and/or sold as such. The Buyer may particularly not use or process the goods for propagation purposes (produce propagating material), circulate them for the said purposes nor import or export them or give them to third parties for the above-mentioned purposes. If the Buyer infringes the above-mentioned duties to refrain the third shall be obliged to pay compensation to the Seller. The compensation to be paid by the Buyer amounts to EUR 0.25 per each plant produced, processed, circulated, imported or exported, given to third parties or stored contrary to above-mentioned duties to refrain. The Buyer shall reserve the right to provide evidence that a damage or a loss of value has not occurred at all or that it is significantly lower than the mentioned lump sum. Further rights of the Seller shall remain unaffected. In case of infringement of rights, especially of intellectual property rights, the Seller shall particularly be entitled to enforce further claims regarding the access to information, rendering of accounts as well as recall, destruction, and compensation. These claims shall be unaffected by the above-mentioned provisions.
 - (b) The Buyer is obliged to indicate the correct variety denomination on all invoices and other business papers.
 - (c) Any mutants found in the goods are essentially derived varieties and thus are generally subject the plant breeder's right of the owner of the initial variety to (according to §10 Art. 3 Plant Varieties Protection Law [SortG and Art. 13(6) of the Council Regulation on community plant variety rights]) and may in this case not be commercially exploited.
 - (d) Immediately after having discovered a mutant in the goods the Buyer will inform the Seller about this discovery and confer the Seller the right to examine the mutant during normal business hours and to take samples of the mutant if necessary.
 - (e) The Buyer of goods protected by plant breeders' rights shall be obliged to allow persons authorised by the Seller to control the protected varieties at any time and without prior announcement during the normal business hours and to particularly allow these persons to enter the Buyer's premises and to inspect the production and development facilities. Furthermore, the Buyer of goods protected by plant breeders' rights shall be obliged to provide the information necessary to assert the right to control the goods. At the Buyer's request the persons engaged by the Seller shall prove their authorisation to the Buyer by showing a written authorisation from the Seller. The Seller undertakes to ensure that the controlling persons maintain confidentiality regarding other company secrets which they may get knowledge of within the framework of their inspection visits.
- (3) Provisions regarding trademark rights
 - (a) The Seller has assigned to each of its varieties a certain trademark. By paying the goods and the fee mentioned on the invoice the Buyer shall become entitled and obliged to use, in addition to the variety denomination, the trademark corresponding to the variety when selling the respective variety.
 - (b) When using the Seller's trademark the Buyer has to ensure the proper identification of the trademark as such and that it is clearly distinguishable from the variety denomination. This can be done by adding ® or at least TM to the trademark and by avoiding that the trademark is used in direct connection with the variety denomination. The Buyer shall only use labels delivered by the Seller to ensure a uniform appearance of variety and the trademark.

VIII. Applicable law, place of jurisdiction and language

- (1) Oral and collateral agreements have not been made. Any amendments and supplements to an existing sales contract as well as of these Standard Terms of Sale and Delivery must be agreed upon in writing to become legally valid.
- (2) All sales contracts including these Standard Terms of Sale and Delivery as well as all dispute arising from or in connection with such sales contracts (including the Standard Terms of Sale and Delivery) shall be governed by the law of Italy to the exclusion of any conflict of laws. The CISG (UN sales law) shall not apply. This also applies to the conclusion, the termination and the continuation after the termination of the sales contracts. However, in case the Buyer has its place of business outside of Italy the Seller is entitled to assert its rights towards this Buyer at a court located in Stuttgart, Germany.
- (3) The place of performance for all obligations under all sales contracts and under these Standard Terms of Sale and Delivery shall be Latina, Italy.
- (4) Insofar as no other place of jurisdiction is mandatory according to legal provisions, Rome (Italy) is agreed upon as place of jurisdiction for all disputes arising from or in connection with any sales contract including these Standard Terms of Sale and Delivery. This also applies to the conclusion, the termination and the continuation after the termination of the sales contracts.
- (5) Even if a sales contract and/or these Terms of Sale and Delivery are translated into another language, the English version of these Standard Terms of Sale and Delivery shall solely be binding.

The following provisions only apply in case the Buyer has its place of business in Italy:

- (6) Buyer and Seller shall give each other the necessary approval to process their personal data insofar as this is needed for processing orders of goods. In the frame of this purpose the Buyer shall also agree with the Seller to process its data by third parties entitled by the Seller to control the Seller's property rights.

- (7) Communication between the parties has to be done as follows: (a) whichever way as long as the other party acknowledges receipt in writing or by e-mail; (b) in a way of transmission that ensures the proof of receipt. This can be done by sending a certified e-mail (PEC) to the recipient's PEC address registered in the commercial register or National Register of PEC Addresses (www.inipec.gov.it). The communication can also be sent via the PEC address of a third party (providing that it comes from the INIPEC). Sending a communication from the PEC address of a third party automatically includes the approval to receive messages under the same PEC address. In case the communication isn't included in the PEC message itself but in annex of a PEC this annex shall not require an electronic signature or any other proof of origin.

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