

GENERAL STANDARD TERMS AND CONDITIONS



§ 1 Generalities

1. These terms and conditions are a part of all supply contracts, agreements, and offers. They are considered accepted upon order placement or the acceptance of a delivery.
2. Deviating agreements only apply if the seller confirms them in writing.
3. All offers made are subject to change without notice according to availability. All offers are binding upon confirmation or job execution.
4. The seller shall confirm orders that have been placed. Unless the buyer objects to the order in writing within 10 days of the receipt of the order confirmation, the order is considered placed under the terms and conditions of the order confirmation.
5. Any contractual terms and other general standard terms and conditions that contradict our terms and conditions of sale are expressly excluded.

§ 2 Prices and payment terms

1. All prices apply as of the point of sale without packaging and transport in euros, excluding the turnover tax / value-added tax applicable on the day of delivery. Earlier price lists are invalidated by the publication of new ones.
2. The list prices do not apply if plants are personally selected at our nurseries.
3. Foreign currency is converted into euro at the official exchange rate for the currency given by the European Central Bank on the day of the billing if the bill is not issued in the foreign currency.
4. The buyer must pay in advance for the processing of the contractual relationship. The seller reserves the right to demand cash on delivery.
5. If a credit period of 30 days from invoicing is granted, a 2 % discount on the net value is granted if payment is made within 14 days of invoicing.
6. Our claims may not be set off against counterclaims by the buyer unless the claim for setoff is undisputed or legally effective. The right of retention may only be asserted if the reasons stem from the same delivery. The customer may not assert any right to refuse performance or a right of retention in commercial legal transactions to the extent that counterclaims cannot be used to offset claims under the stipulation above.
7. Checks and bills of exchange are only accepted under the proviso of redemption. The buyer must cover any expenses and costs arising thereof.
8. If the buyer's financial circumstances worsen materially (such as in a statutory declaration, by filing for bankruptcy, etc.), the seller has the right to make the performance of contract contingent on the prepayment of the agreed compensation or the provision of security in the same amount. The seller reserves the right to terminate the contract and demand damages if the buyer does not act within a suitable grace period.
9. If the customer does not pay within 30 days of receiving the invoice – alternatively within 30 days of receiving the goods – interest is charged in the amount of 8 percent above the prime rate (Section 247 of the German Civil Code); if the customer is a consumer, 5 percent above the prime rate.

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§ 3 Shipping and packaging

1. Shipping, including transport to a train or ship, is payable by the buyer and at his risk. If shipping is delayed for any reason the buyer has caused, the risk is transferred to the buyer from the day on which shipping was possible.
2. The seller is to package the goods properly and carefully. Individual delivery items are to be clearly marked.
3. Transport insurance is only provided if the buyer expressly desires and pays for it.
4. Non-recyclable packaging is charged at cost price. Reusable packaging (grid boxes, nursery palettes) remains our property and must be returned at the buyer's expense.
5. Packaging and transport costs and cartage can be paid via COD.
6. Delivery by truck can only be made on navigable roads. Delivery does not include unloading of the goods.

§ 4 Delivery duties

1. In case of a natural disaster – such as drought, frost, hail, etc. – or other events for which we are not responsible – such as plagues, strikes, lockouts, any kind of operational failure, war, armed conflicts, currency conversion changes, intervention by public authorities, etc. – the delivery deadline is extended for the duration of the hindrance. If delivery is made impossible by these events, we are not obligated to make delivery. The buyer may not claim damages in this case.
2. Fixed delivery dates are only binding for the seller if confirmed in writing. We reserve the right to make partial deliveries.

§ 5 Measurements and samples

1. All measurements are rough estimates. Deviations of 10 % upwards or downwards are admissible for natural products and do not constitute grounds for complaints.
2. Samples merely demonstrate the average features. Not all plants have to be the same as the sample.

§ 6 Reservation of ownership

1. The delivered goods remain the property of the seller until the buyer has completely fulfilled all current and future claims and subsidiary claims of ours.
2. The buyer has the right to resell the goods in normal business; the current reservation of ownership must be made known in this case. The buyer is not authorized to otherwise dispose of the conditional commodity, such as in pledges or security transfers.
3. The buyer immediately transfers any claims from the resale of the goods to us in the amount of the conditional commodity. The seller shall accept this assignment. The conditional buyer is authorized to collect the claim as long as he makes payment to the seller.
4. If the value of the securities exceeds the claims by more than 20 %, the seller is obligated to choose to return or accept it.
5. The seller retains ownership of the plants even when the buyer plants the delivered plants on his property or the property of a third party until it can be resold.

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6. The conditional commodity must be kept or planted separate from other plants and clearly marked as the property of the seller. If the delivered plants are mixed with other plants nonetheless, the seller has co-ownership of a share of the mixed plants amounting to the value of the delivered goods. The purchase of co-ownership is subject to a condition subsequent of the fulfillment of all claims and subsidiary claims the seller makes towards the buyer.
7. The conditional buyer is obligated to treat the conditional commodity with care. This includes, in particular, proper storage, planting, fertilization, and watering.

§ 7 Warranty and consumers' rights

1. No warranty for the growth of the plants is granted. If the buyer expressly demands a growth warranty, a special amount can be agreed and billed. The growth warranty is valid for one year after delivery and requires the proper treatment of the plants by the buyer. This includes, in particular, planting depth, soil type, soil preparation, fertilization, and watering. The warranty does not cover acts of God, in particular droughts, frost, parasites, etc. This growth warranty is not a legal guarantee.
2. A guarantee of the genuineness of the variety is only granted if expressly demanded. For fruit plants, the guarantee of the genuineness of the varieties and the demanded rootstock extends to the end of the fifth year from delivery. The guarantee for berries, roses, and other plants only extends to the end of the second year after delivery. No warranty is granted for the genuineness of second generations. For grafting rootstock and young plants, the supplier grants a guarantee for the genuineness of the delivered varieties only for the first year after the day of delivery.
3. Companies must inspect the goods immediately upon delivery and report and apparent defects immediately, no later than eight days after receipt of the goods, to us; otherwise, the warranty cannot be asserted. This deadline is considered met if notification is sent by the deadline. The company must demonstrate that all of the requirements for the claims are fulfilled, especially the defect itself, the time at which the defect was detected, and the proper lodging of the complaint by the deadline.

Consumers must report apparent defects in writing within two months of detection of the status of the goods that violates the contract. Here, the deadline is considered met if we have received notification in time. If the consumer does not report in time, warranty claims expire two months after the defect has been detected. The consumer is obligated to demonstrate when the defect was detected. If the consumer made the purchase based on inaccurate statements in ad material, he must prove that the ad was misleading.

If a living plant is sold and perishes due to pests or diseases, the consumer must demonstrate that the cause is not due to improper handling after delivery.

For companies, the warranty period is one year after delivery of the goods. For consumers, the warranty period is two years after delivery of the goods. This does not apply if the customer does not report the defect in due time.

4. If the buyer is a consumer, he only initially has the right to demand subsequent performance in case of a defect. He may choose between reworking and substitute delivery for subsequent performance. However, we reserve the right to refuse the choice of subsequent performance if the costs thus incurred would be unreasonably high and the other type of subsequent performance would not detrimentally affect the consumer.

If the buyer is a company, we initially choose whether to rework or provide substitute delivery for the defective goods.

If subsequent performance does not provide a remedy, the customer can then demand a reduction of purchase

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price or withdraw from the contract. If the breach of contract is not material, especially if the defects are only minor, the customer does not, however, have the right to rescind.

If the customer chooses to rescind from the contract due to a defect and after subsequent performance has failed, he has no right to claim for damages due to the defect.

If the customer claims for damages after subsequent performance has failed, the customer retains the goods if this is deemed reasonable. In this case, the claim for damages due to consequential harm caused by a defect is limited to the difference between the purchase price and the value of the defective item; otherwise, to the value of the defective item. This does not apply if the damage was caused maliciously.

5. All claims for damages not covered in Section 7 para 4, last sentence of these General Standard Terms and Conditions are limited to the simple net invoice amount. Other demands – no matter the reason or the basis – are excluded unless the seller, his representatives or vicarious agents have intentionally caused damage or committed gross negligence.

This limitation of liability for intentional deeds or gross negligence does not apply in case of damage to life and limb.

(No restriction on compensation, German Supreme Court, Civil Senate 77, 130)

6. The purchase of patented rose varieties or varieties protected by law and those whose name is a trademark obligates the buyer to use the original labels supplied upon delivery for resale and not use the purchased roses or parts thereof for propagation and not to sell such roses in foreign countries. In case of resale, the buyer is obligated to make his customers aware of these stipulations and make them uphold them.

§ 8 Place of execution and venue for the settlement of all disputes

1. If the customer is a merchant, a legal person under public law, or a special fund under public law, the place of execution for all services to be performed in this contractual relationship is Tremmen; the venue for the settlement of all disputes is Potsdam. For private customers, the place of execution is the location where counter-performance is provided, hence the buyer's venue for the settlement of all disputes. This also applies for the check, bill of exchange and document process.
2. German law applies.
3. The German right applies to all sales contracts, lease contracts or other contractual relationships of company H. Lorberg Baumschulerzeugnisse GmbH & Co.KG with the purchaser and for conflicts between the parties, for whatever reasons. Therefore the district court Potsdam or the country court Potsdam is solely the competent court for legal disputes between the parties. Place of performance is Tremmen.

§ 9 Arbitration

1. If there are any professional disputes – particularly for questions of plant quality between members of the BdB – the German Federal Court of Arbitration makes the final ruling.