

INTRODUCTION

These general terms and conditions of sale are written in the French language and are subject to the conditions of French law for all questions that may arise in the interpretation and execution of their clauses. If, for various reasons, these general terms and conditions of sale were to be translated or written in another language, only the French version of the terms and conditions shall be deemed authentic in the event of a dispute.

The terms and conditions of sale set out below, in accordance with professional rules, national and international customs, are expressly applicable, in the absence of a specific agreement, to all sales entered into with arboriculturists, nursery owners, landscapers, local authorities, producers' organisations (POs), groups, retailers, etc. (hereinafter referred to as the Customers) deemed to have technical competence equivalent to that of the Seller. Placing an order implies the Customer's full acceptance of these terms and conditions of sale, which appear in the catalogues and/or on all commercial documents. These terms and conditions shall prevail over any other conditions stipulated by the Customer, and in particular, but not exclusively, over its general purchasing conditions or the clauses stipulated on its purchase orders and other commercial documents, which shall not be enforceable against the Seller unless accepted in writing by the Seller.

I - ORDERS

Any order placed by a Customer shall only be deemed to be accepted or confirmed by the Seller once the Customer has returned, within 15 days, the summary Order Form sent by the Seller together with the corresponding deposit. If the Customer fails to do so, the Seller reserves the right to cancel the order, it being understood that non-payment of the deposit shall not automatically cancel the order.

Any cancellation of an order after the start of production shall result, without prior notice, in the application of a penalty, the amount of which shall be equal to the planned advance payment.

In view of the random nature of production, which is linked to its living nature and of which the Customer acknowledges that he is aware, accepted or confirmed orders will be carried out as far as possible. They may therefore be subject to postponement, splitting, reduction or cancellation, even after written confirmation of the order by the Seller, in the event of a production shortfall or zero.

This will also be the case in the event of an administrative decision or force majeure, both of which are linked to climatic conditions, asphyxia, game damage or other calamities such as serious diseases or parasitic invasions, the impossibility of normal transport compatible with the nature of the product, a strike or any other social unrest, fire, voluntary destruction for legitimate reasons related to the nature of the product, etc.

Furthermore, certain articles may be destroyed by chance or be, at the time of preparation of the order, unsuitable to give satisfaction to the Customers. Consequently, the Seller reserves the right, notwithstanding any correspondence exchanged prior to execution and regardless of the date of registration of the order, to distribute production equitably among all Customers. However, unless otherwise ordered in writing at the time of the order, items lacking in the quality of the variety requested will be replaced by those of the quality of the variety and price closest to it.

Failure to deliver items that are out of stock or unavailable at the time the order is placed shall not give rise to any claim for compensation by the Customer.

II - PRICES

Unless special conditions are stipulated in the order form, the Seller's prices are those of the price list in force on the date of the order.

The prices indicated in the order forms constitute basic prices which may be modified if economic fluctuations occur during the sales season. The Customer shall be informed of such changes before the goods are supplied.

The Seller's prices are exclusive of tax from the production centres and warehouses where the Seller's goods are located and will be increased by the legal taxes in force on the day of invoicing. Any change in the legal rate of VAT or any other legal tax will automatically be reflected in the price of the products and services, on the date indicated by the legislative or regulatory text.

III - SPECIAL TERMS AND CONDITIONS GOVERNING THE SALE OF PROTECTED FRUIT VARIETIES

Varieties protected by a Plant Variety Certificate application or title (hereinafter referred to as "protected varieties") are indicated in the Seller's catalogue by the word (COV)

The purchaser of seedlings of these varieties is forbidden to multiply them, even for personal use, or to transfer them or give them to third parties, even free of charge, except with the prior written authorisation of the Seller (cuttings, branches and grafts, etc.). The exploitation of seedlings and the marketing of the fruits of these varieties may only be carried out using the variety names and/or registered trademarks by persons who have acquired this right, either by purchasing seedlings bearing the corresponding authenticity guarantee labels, or by grafting contract, in compliance with the variety exploitation contracts that the Customer may be required to sign with the owner of the varieties or his assigns, prior to planting. The owner of the intellectual property rights or its assignees reserve the right to prosecute, by any means of their choice, any offender, if necessary, for any infringement of their rights.

The Customer shall be informed in writing by the Seller at the time of the order in the event that certain agreements and regulations prohibit the Seller from exporting some of the varieties in its catalogue to certain countries.

IV - TERMS OF PAYMENT

All sales are deemed to be made and payable at the time of collection of the goods from the Seller's warehouse.

Invoices must be paid within thirty days of the invoice date. Payment shall be made at the Seller's domicile or principal place of business. No discount shall be granted for payment before the due date.

Failure to pay a single invoice or bill of exchange on the agreed due date shall render all invoices or bills of exchange that have not yet fallen due payable for all orders delivered or in progress, ipso jure and without prior notice. The amicable or judicial liquidation of the debtor's assets, the cessation of his business or his death shall result in the immediate payment of the sums due in interest and principal.

In accordance with the provisions of Articles L441-10 to L441-16 of the French Commercial Code, late payment penalties are payable on the day following the settlement date shown on the invoice if the sums due are paid after this date.

The interest rate of these penalties is equal to the Average Effective Rate charged during the previous calendar quarter by credit institutions for overdrafts to companies plus 2.5 percentage points, without this rate being less than three (3) times the legal interest rate. These penalties are payable without the need for a reminder.

The defaulting debtor shall also be liable to pay a fixed indemnity for collection costs and management of the unpaid amount of forty (40) euros, without prior notice. If the collection costs and in particular the legal costs incurred as a result of debt collection proceedings are higher than this compensation, the seller shall be authorised to receive additional compensation on the basis of proof.

In addition, a penalty clause of fifteen percent (15%) shall be applied to the amount of the unpaid amount and the sums still due as a fixed compensation for the damage suffered, without prior notice of default.

In the event of payment by bill of exchange, their acceptance by the Client must take place upon receipt of the invoice. This acceptance does not have the effect of derogating from the above-mentioned payment conditions concerning the payment of late payment surcharges.

Refusal to accept the bills of exchange after delivery of the goods shall result in the Customer's having to pay in cash as well as the corresponding costs and premiums.

Prices are established and payable in the Seller's currency, i.e. in Euros.

V - DELIVERY

Terms of delivery - Unless otherwise agreed, prices are quoted ex production centres and warehouses where the Seller's goods are located, unpacked, on lorries, wagons or containers. The costs of packaging (cartons, pallets, etc.) and home delivery shall be borne by the Customer. They shall be invoiced in addition to the goods if the Seller has to advance them on behalf of the Customer.

Except in exceptional cases, packaging is never taken back. The prices invoiced include the costs of labour and supplies. According to custom and the law, horticultural products are considered to be approved in the Seller's packaging shops. They travel at the Customer's expense and risk, even if they are sent carriage paid.

It follows that the addressee alone is qualified to make a complaint to the carriers responsible or to any administrative or governmental authority in the event of problems or delays that may occur during the entry of the goods into his country, of delivery times being exceeded, of packages or goods being damaged. Under no circumstances shall the Customer be released from the obligation to pay the Seller for the goods.

Delivery date - Shipments are made according to the date of arrival of orders and weather conditions. The details given as to delivery times are only indicative and no refusal to supply is permitted on the grounds of early or late delivery provided that the said delivery takes place within the normal planting period or, if it takes place

outside the normal planting period, that the delay or early delivery in question cannot compromise the resumption of planting of the goods supplied. Any delays do not entitle the Customer to cancel the sale, to refuse the goods or to automatically deduct discounts or penalties.

VI - COMPLAINTS

Any complaint concerning the external appearance of the plants and their quantity must be made within 3 days of the goods being handed over to the Customer.

Any complaint concerning the non-return of the goods must be made within the normal return period following the handover of the goods and may not exceed two months from the first day of spring following the handover.

Any complaint concerning varietal authenticity must be made within the normal time limits for inspection following the date of handover of the goods to the Customer and may not exceed a period of two (2) years for apple trees and three (3) years for pear trees and stone fruits, starting from the date of handover.

Any duly substantiated complaint must be sent to the Seller within the aforementioned time limits, by registered letter with acknowledgement of receipt.

VII - REMEDIES AGAINST CARRIERS

IN ALL CASES, THE GOODS TRAVEL AT THE CUSTOMER'S RISK. THE CUSTOMER IS THE SOLE JUDGE AND RESPONSIBLE FOR ANY CLAIMS TO BE MADE ON ARRIVAL.

As soon as the goods are collected from the Seller's warehouse, during transport, upon receipt and use of the goods, the Customer must immediately take appropriate care of the plants, particularly in the event of arrival in **very hot** or **very cold** weather. In the latter case, the goods must be placed in a temperate room where thawing will take place slowly and without damage. As frost is a case of force majeure, the carrier is only liable for the damage it causes if the legal transport deadlines are exceeded.

If the transport time limits are exceeded, the recipient has a period of 3 days, not including public holidays, to notify the carrier concerned by extrajudicial act or by registered letter.

Insurance: As the Customer assumes all risks of the goods, in particular those related to transport, it is his responsibility to take out any necessary insurance policy. If the goods are insured, the consignee must strictly observe the stipulations of the insurance policy in the event of damage.

VIII - WARRANTIES

The Seller guarantees the Customer, at the time of collection from its warehouses, the supply of sound, fair and merchantable goods in accordance with the state of scientific and technical knowledge at the time of production.

The behaviour of the product delivered being largely conditioned (i) by the care given by the Customer at the time of collection from its warehouses, during transport and on arrival, (ii) by factors which are difficult or impossible to assess or predict, which cannot be controlled by the Seller, and which may vary according to the regions, countries environment and agronomic and atmospheric conditions, (iii) by the cultivation techniques and operations, the Seller cannot provide a guarantee of recovery or development nor a guarantee of harvest even after having offered advice and suggestions, the results obtained not depending solely on the quality of the products delivered.

The Seller shall not be held responsible for any damage resulting from transport, customs or administrative formalities for entry into foreign countries, legal and compulsory treatments carried out by the Seller or the representatives of the authorities of the countries concerned before or during delivery, any treatment and cultivation operations carried out after delivery, or any problem that may arise after the Customer has collected the goods from the Seller's warehouse.

The Seller, the publisher and the breeder shall not be held liable, for any reason whatsoever and on any grounds whatsoever, for all varieties considered to be tolerant to diseases, bacteria, insects or any other external aggression and more particularly for all varieties considered to be resistant to scab (resistance to the common race of scab carrying the Vf gene), in the event of circumvention of these tolerances and resistances.

In spite of all the precautions that may have been taken in the selection process, the Seller may not be held responsible for the genetic and sanitary instability of the plants and/or the unpredictable nature of the plant varieties and their mutations that may affect the goods or products marketed by the Customer.

In the event that the Customer processes the goods supplied by the Seller, the Seller shall not, for any reason whatsoever, be held liable for the processing of the goods by the Customer or for the delivery and use by any person of the product resulting from such processing. The Customer shall also refrain from calling the Seller to account in the event of any problem that may arise at this level.

With regard to rootstock cultivars in general and more specifically for which the Seller, given the state of technical and scientific knowledge at the time of sale, is not in a position to have sufficient feedback from large-scale cultivation in orchards, whether sold alone or grafted, and given that the behaviour of the product delivered is largely conditioned (i) by factors that are difficult or impossible to assess or predict, and that cannot be controlled by the Seller, and which may vary according to regions, countries, environment and agronomic and atmospheric conditions, (ii) by cultivation techniques and operations, the Seller cannot provide the Customer, throughout the life cycle of the product, with a guarantee of development or harvesting of the said rootstock or of the tree on this rootstock in accordance with the Customer's reasonable expectations, even after having offered advice and suggestions, as the results obtained do not depend solely on the quality of the products delivered.

In view of the nature of the products sold, the Seller's liability, in the event of a proven error on its part, shall under no circumstances, and in particular in the event of mixing, exceed the total amount of the supply delivered, including for justified costs resulting from the return of the goods. By way of compensation, the Seller undertakes to replace the article in the quality supplied or to reimburse the amount of the supply insofar as the Customer has made payment, to the exclusion of all damages and other indemnities.

IX - INTELLECTUAL PROPERTY

The Customer may be required to use varieties protected by trademarks and/or plant variety protection titles.

The Customer acknowledges that he has no right to these trademarks and/or plant variety protection titles and undertakes not to harm them. The Customer undertakes to inform the Seller immediately of any infringement of the Seller's rights (in particular counterfeiting and unfair competition) of which he is aware and undertakes to provide all the assistance required to put an end to this infringement.

Furthermore, any mutations of the protected varieties must be notified without delay to their owner or rightful claimant and may not be used without the agreement of the owner of the initial variety or its rightful claimant. In the event of non-compliance with this clause, the operator will be considered an infringer.

X - RETENTION OF TITLE CLAUSES

The Seller reserves ownership of the goods delivered until the Customer has actually paid the full price, in principal and accessories. In this respect, the handing over of bills of exchange or securities creating an obligation to pay shall not constitute payment within the meaning of this provision.

The Customer, insofar as he is not an arboriculturist, is authorised in the normal course of his business, except in the case of products subject to trial contracts or non-multiplication agreements or special agreements, to resell the goods delivered. However, he may not pledge them or transfer ownership of them as security. The resale of the goods to a third party purchaser shall ipso facto result in the assignment by the Customer to the Seller of all claims arising from this resale to the third party purchaser. The resale authorisation shall be automatically withdrawn in the event of an assignment of payment by the Customer.

The Customer shall also be entitled to process the delivered goods in the normal course of business. In this case, the customer hereby assigns to the Seller the ownership of the object resulting from the processing in order to secure the Seller's rights under paragraph 1. If the delivered goods are processed with other goods not belonging to the Seller, the Seller shall acquire co-ownership of the new product obtained in proportion to his rights. In the event of seizure or any other intervention by a third party against the Customer, the Customer is obliged to notify the Seller immediately.

This retention of title clause does not prevent the transfer to the Customer of the risks of loss or deterioration of the goods sold as well as the damage they may cause.

XI-CONFIDENTIALITY, DATA PROCESSING AND LIBERTIES

The information transmitted by the Buyer to the Seller is intended for internal use only and shall not be transferred to third parties under any circumstances.

The Buyer has the right to access, modify and rectify any personal data concerning him/her, in accordance with Article 34 of the amended French Data Protection Act of 6 January 1978. To exercise this right, he/she may send a letter with acknowledgement of receipt and proof of identity to CIL DALIVAL, 75 avenue Jean Joxé, BP 90503, 49105 ANGERS Cedex.

XII - JURISDICTION

In the event of litigation opposing people having the quality of tradesman, only the courts of the seat of the establishment of the Salesman are qualified, even in the event of call in guarantee or plurality of defendants, namely the Commercial court of SOISSONS ruling in French right. In the event that one of the clauses of the present conditions of sale should be cancelled for any reason whatsoever, the other clauses will remain in force and must be respected by the Customer.