



*These terms and conditions are effective from 1<sup>st</sup> February 2021 and replace all previously published versions of Bejo Zaden B.V.*

## **General Terms and Conditions of Sale and Delivery of Bejo Zaden B.V., the Netherlands**

Drawn up by Bejo Zaden B.V., Trambaan 1, 1749 CZ Warmenhuizen, the Netherlands. These general terms and conditions are deposited at the Chamber of Commerce in Alkmaar, the Netherlands (registration number 37048509).

### **Article 1. Application of These General Terms and Conditions**

1. These general terms and conditions apply to each offer of Bejo Zaden B.V., hereinafter to be called the "Seller", and to each agreement between the Seller and the Buyer, unless expressly provided otherwise in writing.
2. The application of any terms and conditions of the Buyer is expressly rejected.

### **Article 2. Definitions**

1. Product: seeds, planting material and/or other goods and/or agreed services.
2. Processing: the treatment of the product, although not exclusively, to improve the sowability and emergence and/or the protection against (spread of) pests and/or diseases.

### **Article 3. Offers and Acceptance**

1. All offers made by the Seller are without engagement and can be withdrawn at any time. The prices specified in an offer are exclusive of VAT.
2. Offers can only be accepted in writing; the Seller nevertheless reserves the right to treat a verbal acceptance as if it were given in writing.
3. If the Buyer accepts an offer, the Seller nevertheless reserves the right to withdraw the offer within 3 working days after receipt of acceptance (either verbally or in writing), in which case no agreement is concluded between the parties.
4. Verbal offers automatically expire if the Buyer does not accept them in writing within 7 days.
5. Written offers automatically expire if not accepted by the Buyer in writing within 30 days.
6. An offer to the Buyer or a purchase agreement between the Seller and the Buyer does not imply, and may not in any way be explained as a silent license (agreement) to the Buyer with regard to any intellectual property right to the offered or sold products.

### **Article 4. Crop and Processing Reservation**

1. All deliveries are subject to the customary crop and processing reservation. If the Seller invokes the crop and processing reservation, the Seller is not obliged to supply. The Seller will, if possible, attempt to deliver part of the quantity ordered and/or the nearest alternative.
2. The Buyer is not entitled to compensation if the Seller invokes this reservation.



## **Article 5. Ordering and Delivery**

1. If the quantity ordered in any order differs from the standard quantity applied by the Seller or a multiple thereof, the Seller will deliver the next highest quantity.
2. The Seller reserves the right to charge an additional fee of EUR 10 for orders with a value of less than EUR 75.
3. The Seller will always act to the best of its ability in fulfilling its obligation to deliver.
4. Fulfilment of the Seller's obligation is also understood to mean: delivery with a minor difference in size, packaging, number or weight.
5. The Seller is permitted to make part shipments of the products sold. If the products are delivered in part shipments, the Seller has the right to invoice each shipment separately.
6. Carriage takes place in accordance with the latest valid Incoterms.
7. The Seller undertakes to deliver within a reasonable period, in accordance with the sowing season or planting season, following the conclusion of the purchase agreement.
8. An agreed delivery period will not be binding. In the event of late delivery, the Buyer must give the Seller notice of default in writing and grant a reasonable period in which the Seller may fulfil the agreement.
9. The Buyer must specify in writing, upon placing orders and at the first request of the Seller, what data, specifications and documents are required pursuant to the regulations of the country in which the delivery is to be made, such as those relating to invoices, phytosanitary certificates, international certificates and other import documents.

## **Article 6. Retention of Title**

1. The products delivered by the Seller and/or the products derived from the products delivered will remain the property of the Seller until the Buyer has paid the full purchase value. This retention of title also applies to any claims that the Seller may acquire against the Buyer due to the Buyer's failure to fulfil one of its obligations towards the Seller.
2. Products delivered by the Seller to which the retention of title pursuant to Paragraph 1 applies, may be resold or used only in the normal course of business. If they are resold, the Buyer is obliged to demand retention of title from its own buyers, and Article 16 of these general terms and conditions will remain to apply.
3. The products delivered by the Seller, which are subject to retention of title pursuant to Paragraph 1, will at all times be stored and/or used in such a way that the quality will remain guaranteed and that the products can easily be identified.
4. The Buyer is not permitted to pledge or otherwise encumber the products.

## **Article 7. Prices and Payment**

1. The Seller reserves the right to change its prices. Each new price listing will invalidate the preceding one with regard to all orders placed after the issue of the new price list.
2. The Seller must receive payment within 30 days of the invoice date. At the end of that period, the Buyer will be in default, in which case the Buyer will owe interest at a rate of 1 (one) % a month on the outstanding amount as from the date of default.
3. If the Buyer is liquidated, declared bankrupt or granted a suspension of payment, the Buyer's payment obligations will fall due immediately and the Seller will be entitled to suspend the further performance of the agreement or to dissolve the agreement, all of this without prejudice to the Seller's right to claim compensation.



4. If payment in instalments has been agreed, the entire remaining amount will fall due immediately without notice of default being required in the event of late payment of an instalment. The provisions of the last sentence of Paragraph 2 apply accordingly.
5. Without the prior written permission from the Seller, the Buyer has under no circumstance the right to postpone payments or to set these off against invoice amounts to be paid by the Seller, irrespective of whether the Buyer sets off its claims due to assumed defects in the shipment or for any other reason.

#### **Article 8. Suspension and Security**

1. If the Buyer fails to fulfil one or more of its obligations or to do so correctly and/or in time:
  - the Seller's obligations will automatically and immediately be suspended until the Buyer has fulfilled all its obligations (in case of a payment obligation, including payment of any extrajudicial costs);
  - the Seller may demand full payment and/or sufficient security from the Buyer, for instance in the form of a bank guarantee to be issued by a reputable banking institution, with regard to the performance by the Buyer.
2. The Seller is entitled to demand full payment and/or sufficient security for payment by the Buyer before performing, if there is reason to believe that the Buyer will not (or cannot) fulfil its obligations correctly and/or in time.

#### **Article 9. Collection Costs**

If the Buyer is in default or fails to perform one or more of its payment obligations, all the collection costs both in and out of court will be for the Buyer's account.

#### **Article 10. Use and Guarantee**

1. The Seller guarantees that the product delivered will comply to the best of the Seller's ability with the relevant product specifications. However, the product specifications will not apply as a guarantee. The Seller furthermore does not guarantee that the product will comply with the purpose given to them by the Buyer.
2. All information on quality provided by the Seller will exclusively be based on reproducible tests. The supplied quality information merely indicates the result as achieved by the Seller at the time when the test was performed, subject to the conditions under which such test was performed. No direct relationship may be assumed between the information provided and the results achieved by the Buyer. The results achieved by the Buyer depend, among other factors, on the location, climatic conditions and cultural practices.
3. Any and all guarantees on the part of the Seller will lapse if the Buyer processes the products or has them processed, repackages the products or has them repackaged, or uses the products incorrectly.
4. The products delivered by the Seller are intended for the production of plants, and are neither in an unprocessed nor in a processed condition intended for human or animal consumption. The plants produced from the products in question may only be used for human or animal consumption if the plants have been completely separated from the products delivered. The products delivered may not be used for the production of sprouting vegetables as the sprouting vegetables will be consumed together with the seeds. The Seller is not liable for any substances and/or micro-organisms that are present on and/or in the seeds.



## Article 11. Defects and Complaint Terms

1. The Buyer must inspect the products purchased upon delivery, or as soon as possible after delivery. In doing so the Buyer must check whether the products delivered comply with the agreement, i.e.:
  - whether the correct products have been delivered;
  - whether the quantity of the delivered products corresponds with the agreement;
  - whether the delivered products meet the agreed quality requirements or - if none were agreed - the requirements that may be stipulated for normal use and/or trading purposes.
2. If visible defects or deficiencies are established, the Buyer must inform the Seller accordingly in writing within 3 working days after delivery, specifying the lot number, packing list and/or invoice details.
3. The Buyer must report any non-visible defects to the Seller in writing within 3 working days after discovery, specifying the lot number, packing list and/or invoice details.
4. Complaints must be described in such a manner that the Seller or a third party can verify them. For that purpose the Buyer must also keep records with regard to the use of the products and, in the event of resale of the products, with regard to its buyers. If the Buyer does not file a complaint within the aforesaid period, the complaint will not be dealt with and rights will expire.
5. In the event of a continuing dispute between the parties regarding the germination, trueness to type, varietal purity, technical purity and health, an inspection will be performed, at the request of either party, by Naktuinbouw (Netherlands Inspection Service for Horticulture), whose registered office is in Roelofarendsveen, the Netherlands. The costs of such inspection shall be borne by the party to be found most at fault. This request must be submitted within 6 months after the first written report of the problem to the other party. The inspection will be carried out on the basis of a sample taken and retained by the Seller prior to sale. The result of this inspection will be binding on both parties, without prejudice to the parties' right to submit disputes on the consequences of this result to the institutes referred to in Article 19.

## Article 12. Provision of Information

1. Information provided by the Seller in any form whatsoever is without commitment. Descriptions, recommendations and illustrations in promotional publications such as websites, catalogues and brochures are based as closely as possible on experiences in tests and in practice and are intended for general information purposes only and not as an indication of quality and/or guarantee. The Seller in no event accepts any liability, however, on the basis of such information for different results obtained in the cultivated product. The Buyer must determine whether the products are suitable for the intended horticultural crop and/or can be used under local conditions.
2. In the information provided by the Seller, the following meaning is given to the terms below:
  - 'Susceptibility': the inability of a plant variety to restrict the growth and development of a specified pest.
  - 'Resistance': the ability of a plant variety to restrict the growth and development of a specified pest and/or the damage they cause when compared to susceptible plant varieties under similar conditions.  
Resistant varieties may exhibit some disease symptoms or damage under heavy pest or climate pressure.  
Two levels of resistance are defined:
    - i. high resistance (HR): plant varieties that highly restrict the growth and development of the specified pest under normal pest pressure when compared to susceptible varieties.
    - ii. intermediate resistance (IR): plant varieties that restrict the growth and development of the specified pest, but may exhibit a greater range of symptoms or damage compared to high resistant varieties.



It is to be noted that if a resistance is claimed in a plant variety it is limited to the specified biotypes, pathotypes, races or strains of the pest.

If no biotypes, pathotypes, races or strains are specified in the resistance claim for the variety, it is because no generally accepted classification of the cited pest by biotype, pathotypes, race or strain exists. New biotypes, pathotypes, races or strains that may emerge are not covered by the original resistance claim.

- 'Immunity': a plant variety is not subject to attack or infection by a specified pest.
3. The Seller may at all times assume that the information and details provided by the Buyer to the Seller in the framework of the conclusion and performance of the agreement are correct and complete.

### **Article 13. Force Majeure**

1. Force majeure means circumstances that make fulfilment of the agreement impossible and cannot be attributed to the Seller. This will also include, if and in so far as these circumstances make the fulfilment of the agreement impossible or unreasonably complicated: extreme weather conditions, natural disasters, measures by or regulations of any government, war or civil riot, destruction of the production facilities or materials due to fire, epidemic, failure of public facilities or transport, strikes in other companies other than the Seller's, unofficial or political strikes in the Seller's company, complete or partial lack of raw materials and other goods and services required to deliver the agreed performances, unforeseen delays at suppliers or other third parties that the Seller depends on, and transport difficulties.
2. The Seller will inform the Buyer as soon as possible if it is unable to deliver or to deliver in time due to force majeure.
3. If the force majeure lasts longer than 2 months, both parties will be entitled to dissolve the agreement in writing.
4. If it is a matter of force majeure as described in this Article, the Seller is not obliged to pay any compensation.

### **Article 14. Liability**

1. The Seller is not liable for damage as a result of any deficiency in the fulfilment of the agreement unless there is evidence of intent and/or gross negligence on the part of the Seller and/or its employees.
2. The Seller is not liable for damage as a result of non-delivery or late delivery nor for failure to correctly specify the requirements as referred to in Article 5, Paragraph 9, if as a result thereof the order cannot be delivered (on time).
3. The Buyer is required to limit as much as possible the damage with regard to the products delivered about which a complaint is filed against the Seller.
4. The Seller does not accept any liability for damage caused by seed and/or planting material that has not been multiplied and/or reproduced by or on behalf of the Seller.
5. If the Seller is liable on the basis of one or more conditions, such liability will be limited to the invoice value of the delivered products; the Seller will by no means be liable for any form of consequential damage, lost sales or lost profit.
6. Any possible claim to compensation on the basis of these terms and conditions will expire if no written claim was made to the Seller within one year after delivery of the products.

### **Article 15. Indemnification**

The Buyer will indemnify the Seller against all actions and claims from third parties for damages (allegedly) caused by or otherwise related to any product delivered by the Seller, including actions and claims filed



against the Seller in its capacity as a producer of goods pursuant to any regulation regarding product liability in whatever country, unless that damage is due to intent or gross negligence of the Seller and/or its employees.

#### **Article 16. Reproduction and/or Multiplication Reservation**

1. The Buyer is not entitled to use the supplied products and/or derived components and/or derived plant material for further multiplication and/or reproduction of parent material. Nor is the Buyer permitted, without the explicit permission of the Seller, with respect to the (multiplied) products and/or components and/or derived plant material:
  - I) to treat and/or use these for multiplication,
  - II) to offer them for sale,
  - III) to sell them,
  - IV) to import or export them and/or
  - V) to keep them in stock for any of these or similar purposes.This includes all varieties essentially derived from a variety supplied by the Seller.
2. In the case of the resale of the supplied products, the Buyer shall impose the above clause on its own buyers, under penalty of a fine for each infringement. The amount of the fine will not be less than the benefit obtained by the buyer.
3. The Buyer shall grant the holder of plant breeders' rights, or a party acting on its behalf, direct access to its business, including in particular the greenhouses, to enable the Seller to carry out (or have carried out) an inspection. Business in this sense also includes all activities performed by third parties on behalf of the growers. The Buyer shall at the Seller's request grant immediate access to all administrative records with regard to the relevant parent material. The Buyer also imposes the aforesaid obligations on its own buyers.

#### **Article 17. Use of Trademarks and Signs**

The Buyer may not use trademarks and signs that are used by the Seller to distinguish its products from those of other legal entities/companies, or use trademarks and signs that are not clearly distinguishable from those of the Seller. An exception applies to the trade in products in the original packaging of the Seller with the trademarks and signs placed on them by the Seller.

#### **Article 18. Conversion**

1. If any provision of these general terms and conditions is invalidated, that provision will automatically (by operation of law) be replaced by a valid provision that corresponds as closely as possible to the purport of the invalidated provision. The parties must, if necessary, enter into reasonable consultations on the text of that new provision.
2. In that case the other provisions of these general terms and conditions will remain fully valid in so far as possible.

#### **Article 19. Settlement of Disputes**

1. Unless the parties have agreed on arbitration in consultation, all disputes will be settled by the civil court that is competent in first instance in the place where the Seller has its registered office, unless another



court is competent pursuant to the applicable mandatory rules of the law applicable by virtue of Article 20. The Seller will at any time have the right to summon the Buyer to the court that is competent by law or pursuant to the applicable international convention.

2. In the event of a dispute the parties will, however, first try to reach an amicable solution in consultation, or otherwise by means of mediation, before the parties submit the dispute to an arbitration tribunal or to the civil court.

#### **Article 20. Applicable Law and Other Applicable Conditions**

1. All agreements between the Seller and the Buyer are governed by the law of the country in which the Seller has its registered office.
2. The application of the 'United Nations Convention on Contracts for the International Sale of Goods' (Vienna Sales Convention (CISG)) is excluded.