

## **GENERAL TERMS AND CONDITIONS**

Whereas it is desirable to declare general terms and conditions applicable to all purchase agreements, contracts of sale, commission agreements and related agreements concluded within the framework of its business,

**Organic Trade Company Holland B.V.**  
**Bronsweg 7**  
**8211 AL Lelystad**  
**The Netherlands**

and/or its successors in title and/or allied enterprises, hereinafter referred to as OTC-Holland B.V., laid down the following general terms and conditions:

### **SALE**

#### **ARTICLE 1: APPLICABILITY**

1. Unless expressly otherwise agreed, only the following terms and conditions shall apply to all agreements OTC-Holland B.V. concludes with third parties, hereinafter referred to as "the buyer".
2. The agreements referred to in paragraph 1 shall include purchase agreements, contracts of sale, commission agreements and related agreements.
3. Any stipulations that deviate from these terms and conditions shall only be binding if they have been agreed in writing.

#### **ARTICLE 2: OFFER, PRICES**

1. All our contracts of sale shall be deemed to have been concluded in the town where OTC-Holland B.V. has its registered office, as regards both implementation and payment. All our prices shall be quoted in euro's (unless otherwise stated) and are exclusive of transport costs.
2. We shall not be obliged to satisfy an agreement at a price which is obviously based on a typing or writing error.
3. Unless expressly otherwise agreed by the parties, prices stated shall be exclusive of turnover tax (VAT).
4. Each offer shall be entirely free of engagement. The agreement shall be deemed to have been fully concluded unless OTC-Holland B.V. announces immediately after acceptance that it revokes the offer.

### **ARTICLE 3: PLACE AND TERMS OF DELIVERY**

1. Delivery shall be made ex warehouse.
2. If it is agreed that transport is taken care of by or on behalf of OTC-Holland B.V., receipt shall be deemed to take place at the moment of delivery at the agreed place.
3. If the goods are stored for the buyer by or on behalf of OTC-Holland B.V. at OTC-Holland B.V.'s premises or at premises of third parties, delivery shall be deemed to be made at the moment when the goods are stored.
4. Any delays in delivery, in so far as these remain within reasonable limits, shall not entitle the buyer to dissolve the agreement.

### **ARTICLE 4: RISK**

From the moment the goods have been delivered, they shall be at buyer's risk, and if the buyer fails to cooperate in the delivery, they shall be at buyer's risk from the moment when the buyer refuses to cooperate.

### **ARTICLE 5: QUANTITY DELIVERED**

The quantity delivered - as regards number, weight and requirements under public and private law - shall be deemed to be in accordance with what has been agreed or prescribed, barring proof to the contrary to be furnished by the buyer.

### **ARTICLE 6: RETENTION OF TITLE**

1. Goods delivered by OTC-Holland B.V. shall remain the property of OTC-Holland B.V. until all claims of OTC-Holland B.V. against the buyer on account of agreements concluded between the parties have been paid in full, including interest and costs.
2. Goods delivered by OTC-Holland B.V. for which the retention of title is claimed pursuant to paragraph 1 may only be sold on within the framework of the buyer's normal conduct of business.
3. If the other party fails to fulfil its obligations or there are good reasons to suspect that it will not fulfil its obligations, OTC-Holland B.V. shall be entitled to remove any goods delivered for which the retention of title is claimed pursuant to paragraph 1 from the buyer's premises or from the premises of third parties keeping the goods on the buyer's behalf, or to have them removed.
4. If third parties wish to encumber the goods delivered subject to retention of title with any right or if they wish to exercise such right, the buyer shall be obliged to inform OTC-Holland B.V. thereof as soon as may reasonably be expected.

5. The buyer undertakes to cooperate, within reasonable limits, in all measures which OTC-Holland B.V. wishes to take to protect its proprietary rights to the goods delivered.

#### **ARTICLE 7: FORCE MAJEURE**

1. In the event of force majeure the obligation to deliver and other obligations of OTC-Holland B.V. shall be suspended. The obligations shall revive when fulfilment of the obligations is reasonably possible again.  
Force majeure shall be understood to mean unforeseen circumstances with respect to persons and/or materials employed or usually employed by OTC-Holland B.V. when carrying out the agreement, which are of such a nature that as a result thereof implementation of the agreement becomes impossible or problematic and/or disproportionately expensive to such a degree that it cannot reasonably be required any longer that the agreement be carried out.
2. If OTC-Holland B.V. has already partially fulfilled its obligations when the situation of force majeure arises or can only partially fulfil its obligations, it shall be entitled to send a separate invoice for the goods already delivered and/or the part which can be delivered, and the buyer shall be obliged to pay this invoice as if it concerned a separate contract.

#### **ARTICLE 8: OBLIGATIONS OF THE BUYER**

1. When a delivery is made by OTC-Holland B.V. (as referred to in article 3, paragraph 2) the buyer must inspect the goods delivered in the presence of the driver. On that occasion the buyer is to ascertain whether the goods supplied are in accordance with the stipulations of the agreement, i.e.:
  - a. whether the correct goods have been delivered;
  - b. whether the goods delivered meet the quality requirements which may be set for normal use and/or for trade purposes;
  - c. whether the quantity of the goods delivered (number, weight) is in conformity with the agreed quantity. If the difference between the short delivery and the agreed quantity is less than 10% of the total quantity, the buyer shall be obliged to fully accept the goods delivered, in which case the price shall be reduced proportionately.
2. If the goods are delivered in the sales room (as referred to in article 3) the buyer shall immediately inspect the goods in conformity with paragraph 1.
3. If the goods are delivered to a third party who keeps them for the buyer, the buyer shall be obliged to carry out the inspection referred to in paragraph 1 (or to have such inspection carried out) on the day of delivery.
4. If the buyer intends to lodge a complaint he shall notify OTC-Holland B.V. thereof as soon as possible after the failure is detected or after he could

reasonably have detected the failure, but in any case not later than 8 hours after delivery. If this notification was an oral one it must be confirmed to OTC-Holland B.V. in writing (telex, fax, letter, writ).

5. The shipment must remain present in its entirety and the buyer must give OTC-Holland B.V. the opportunity to inspect the goods.
6. The buyer shall be obliged to take care of the goods as a prudent debtor at all times.

#### **ARTICLE 9: LIABILITY OF OTC-Holland B.V.**

1. Except in case of force majeure OTC-Holland B.V. shall only be liable for loss and/or damage if non-fulfilment or late fulfilment is due to intent or gross negligence on its own part or on the part of its employees, up to an amount not exceeding the invoice amount of the goods. OTC-Holland B.V. shall never be liable for any other loss or damage, regardless of how it is called, other than loss or damage resulting from death or personal injury.
2. The buyer shall indemnify OTC-Holland B.V. against all costs, damage and interest resulting to OTC-Holland B.V. from claims of third parties on account of any defect in the products delivered on account of transactions entered into by OTC-Holland B.V. with the buyer.

#### **ARTICLE 10: PACKAGING**

1. The packaging supplied by OTC-Holland B.V., including pallets, crates and boxes, for which a deposit has been paid shall be taken back at the invoice price applying at the time when the packaging is returned, possibly increased by a fixed packaging fee in accordance with the relevant regulations. The container to be returned must be so clean and fresh that it is suitable for fresh edible horticultural products.
2. When packaging is returned using OTC-Holland B.V.'s own means of transport, the packaging must be sorted and ready for transport.
3. Packaging not delivered through OTC-Holland B.V. shall only be accepted in so far as OTC-Holland B.V.'s assortment includes the products concerned.

#### **ARTICLE 11: PAYMENT**

1. The goods delivered must be paid within two weeks of the date of the invoice relating to the delivery in question, unless this rule is deviated from by means of an agreement in writing.
2. Each payment for outstanding invoices shall be deemed to have been made in settlement of the oldest unpaid items.

3. A set-off against any claim which the buyer has or thinks to have against OTC-Holland B.V. shall not be permitted, unless OTC-Holland B.V. has sent the buyer a credit note or has been ordered by the court to pay the buyer a sum of money.
4. If the period mentioned in paragraph 1 is exceeded the buyer shall owe a default interest of 1% per month, without prejudice to OTC-Holland B.V.'s right to claim legal compensation.

## **ARTICLE 12: DISSOLUTION AND LIABILITY OF THE BUYER**

1. If the buyer fails to fulfil his obligations set out above (or fails to fulfil them on time), OTC-Holland B.V. shall have the right to suspend further delivery. In that case the buyer shall be in default. OTC-Holland B.V. shall then be entitled to dissolve the agreement without any court intervention by means of a written declaration, and the buyer shall be liable for any loss or damage sustained by OTC-Holland B.V., including loss of profits, other financial losses, product damage, costs and interest, transport costs, commission, legal and non-legal expenses, as well as all other costs directly or indirectly relating to the purchase.
2. All non-legal expenses incurred by OTC-Holland B.V. in case of late or inadequate fulfilment by the buyer shall be entirely for account of the buyer. The non-legal expenses incurred by OTC-Holland B.V. shall amount to 15% of the total sum the buyer owes OTC-Holland B.V., up to an amount not exceeding € 3500 for collection measures in the Netherlands and € 7000 for collection measures outside the Netherlands, with a minimum of € 125.

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## **PURCHASE**

### **ARTICLE 13: APPLICABILITY**

1. These terms and conditions shall apply to all purchase agreements to which OTC-Holland B.V. is a party as buyer, as well as to all requests and orders of OTC-Holland B.V. where an order is also regarded as an offer.
2. For the purposes of these terms and conditions "supplier" shall be understood to mean each (legal) person with whom OTC-Holland B.V. has concluded or wishes to conclude an agreement, and also his representative(s), successor(s) in title, heir(s) and attorney(s)-in-fact.
3. These terms and conditions shall also apply if OTC-Holland B.V. explicitly accepts an offer made by a supplier, referring to these terms and conditions and by which any conditions of sale are expressly declared inapplicable.
4. Deviations from these terms and conditions must always be agreed with the supplier; the supplier shall not be able to invoke any deviations agreed upon in an earlier contractual relationship with OTC-Holland B.V.

### **ARTICLE 14: OFFERS, AGREEMENTS**

1. All requests, orders and offers made by OTC-Holland B.V. or its employees in any form whatsoever shall always be free of engagement, unless otherwise stated.
2. An agreement shall only be effective if it is confirmed by OTC-Holland B.V. within 48 hours after the supplier has sent his acceptance, or if the offer is made by the supplier by accepting this offer.
3. The supplier shall be obliged, also after the agreement has been concluded, to make all such non-fundamental changes thereto as OTC-Holland B.V. may require.

### **ARTICLE 15: PRICES**

An agreed price cannot be increased by the supplier, even if the reason is a cost increase (regardless of the reason), unless OTC-Holland B.V. expressly agrees thereto.

### **ARTICLE 16: DELIVERY**

1. The delivery periods stated by the supplier shall be binding periods unless otherwise agreed by the parties. In case of late delivery the supplier shall

- immediately be in default and OTC-Holland B.V. shall be entitled to dissolve the agreement and/or to claim damages.
2. If the supplier suspects that the delivery period which he has undertaken to meet cannot be met, he shall inform OTC-Holland B.V. thereof forthwith, stating the relevant circumstances. If the supplier fails to do so, his exceeding the term cannot be excused later, not even in case of force majeure.
  3. In case of cancellation on account of late delivery OTC-Holland B.V. shall be entitled to return any goods already supplied for account and risk of the supplier.
  4. Without prejudice to its right to legal compensation, OTC-Holland B.V. shall be entitled, in case of late delivery and cancellation, to demand reimbursement of any extra expenses incurred to reasonably substitute the goods that are not received.
  5. Unless otherwise agreed, the supplier shall deliver goods to OTC-Holland B.V.'s address, free of charge.

#### **ARTICLE 17: TRANSFER OF OWNERSHIP**

1. The ownership of goods, as well as the risk of the goods shall only be transferred as a result of delivery.
2. If any other rights than the supplier's ownership rights encumber the goods, the supplier shall inform OTC-Holland B.V. thereof forthwith.

#### **ARTICLE 18: TERMINATION OF THE PURCHASE AGREEMENT**

1. OTC-Holland B.V. shall be entitled to unilaterally terminate/dissolve the agreement, without further notice of default being required, in the following cases:
  - a. in case of late or inadequate fulfilment by the supplier of his obligations under the contract or relating to the contract;
  - b. in the event that the supplier is adjudicated bankrupt or applies for a moratorium or in case of discontinuation or liquidation of his business.
2. In case of a circumstance as referred to in paragraph 1, the supplier shall be in default by operation of law and OTC-Holland B.V. shall be entitled to claim legal compensation.
3. All claims OTC-Holland B.V. has against the supplier shall become due and payable forthwith as a result of this.
4. Under the above-mentioned circumstances OTC-Holland B.V. may choose to cause all or part of the goods ordered to be produced or completed by third parties, for account and risk of the supplier, provided the supplier is notified thereof in writing in advance.

**ARTICLE 19: PAYMENT**

1. Payment shall be made on the basis of an invoice within 30 days of receipt of the goods and after these are found to be correct without reservation. Payment shall not release the supplier from the obligation to provide any guarantee and/or to pay any compensation which he must provide and/or pay by virtue of the agreement or the law.
2. OTC-Holland B.V. shall at all times be entitled to set off any outstanding invoices against its own claims against the supplier.

**ARTICLE 20: INSPECTION**

1. The goods delivered must meet the agreed requirements, specifications and all conditions which OTC-Holland B.V. may expect with respect to the goods, both as regards quality and as regards quantity, and they must also meet the statutory requirements and be in accordance with other governmental provisions.
2. After the goods have been delivered OTC-Holland B.V. shall have the right to inspect or test the goods for its own account before accepting them.
3. If the supplier has not received any notice regarding this 48 hours after delivery, he may assume that the goods have been accepted.
4. If OTC-Holland B.V. rejects the goods, it shall inform the supplier thereof in writing within 4 days of delivery, stating the option it has selected in accordance with the following paragraph.
5. If the goods delivered are rejected, OTC-Holland B.V. shall have the following options:
  - a. to return the goods delivered, for account of the supplier, and to demand proper fulfilment, possibly in combination with damages;
  - b. to proceed to dissolution in conformity with the provisions of article 16 of these terms and conditions;
  - c. to proceed to partial dissolution/partial fulfilment, possibly in combination with damages;
  - d. to propose a reduction in price;
  - e. to have third parties complete and/or produce the goods in conformity with the provisions of article 16, paragraph 4.

**ARTICLE 21: LIABILITY**

1. Without prejudice to the other relevant provisions of these terms and conditions, OTC-Holland B.V. can always claim damages if the supplier has not



delivered the goods, has not delivered them on time or has not delivered them properly.

2. If the supplier has not delivered the goods, has not delivered them on time or has not delivered them properly, and, as a result, OTC-Holland B.V. sustains any loss or damage because of claims of third parties/clients, the supplier shall be liable for such loss or damage.

If OTC-Holland B.V. sustains any loss or damage because of the presence of unwanted residues or because the norms for certain substances in the product are exceeded (e.g. chemicals, minerals), or because of productliability in case of defective primary agricultural products (e.g., EU Directive 99/34 EC) and for that reason, fines are imposed on OTC-Holland B.V. by the authorities or claims are filed by third parties/clients, the supplier shall be liable for such loss or damage.

3. The supplier can never be obliged to pay damages other than prescribed by law.

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## GENERAL

### ARTICLE 22: INDUSTRIAL AND INTELLECTUAL PROPERTY RIGHTS

1. OTC-Holland B.V. reserves any industrial and intellectual property rights (trademarks) in connection with products supplied by OTC-Holland B.V.
2. Goods supplied to OTC-Holland B.V. may not infringe on any patent, licence, copyright, registered drawing or design, trademark or trade name. The supplier indemnifies OTC-Holland B.V. and its client against all and any claims of such a nature and it shall compensate any loss or damage caused thereby.

### ARTICLE 23: GOVERNING LAW

1. All agreements, including purchase agreements, contracts of sale and other agreements, concluded with OTC-Holland B.V. shall exclusively be governed by the laws of the Kingdom of the Netherlands.
2. The Dutch text shall prevail. In the event of transactions with foreign parties, the applicability of the Uniform Sales Acts and the Vienna Sales Convention is expressly excluded.

### ARTICLE 24: DISPUTES

1. Any disputes arising from purchase agreements, contracts of sale and commission agreements concluded with OTC-Holland B.V., including claims relating to overdue payments, shall be settled by the competent court in the town where OTC-Holland B.V. has its registered office, to the exclusion of any other body.
2. Contrary to the provisions of paragraph 1, the parties may agree in writing that any disputes can be settled by another body.

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